SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1865-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOHN M. GODLEY,

Defendant-Appellant.

Submitted October 26, 2017 – Decided January 23, 2018

Before Judges Simonelli and Rothstadt.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Indictment Nos. 15-05-0422 and 15-06-0638.

Joseph E. Krakora, Public Defender, attorney for appellant (Mark H. Friedman, Assistant Deputy Public Defender, of counsel and on the brief).

Fredric M. Knapp, Morris County Prosecutor, attorney for respondent (Paula Jordao, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant John M. Godley appeals from two December 6, 2016 judgments of conviction. On appeal, defendant contends the trial

judge erred in denying his motions to suppress evidence seized from his motel room during two warrantless searches. We disagree and affirm.

Defendant was arrested on October 13, 2014 and January 30, 2015, and charged in two separate indictments with third-degree possession of a controlled dangerous substance (CDS) (heroin), N.J.S.A. 2C:35-10(a)(1). Following the denial of his motions to suppress evidence seized on those dates, defendant pled guilty to the two counts of third-degree possession of a CDS, and was sentenced to a five-year non-custodial supervised probationary term.

The October 13, 2014 Search

At the suppression hearing, Police Officer Robert Koetzner from the Montville Township Police Department (MTPD) testified that at approximately 7:51 p.m. on October 13, 2014, he was dispatched to the Pine Brook Motel on the report of two men fighting in the parking lot. When he arrived, he learned from witnesses that one of the males involved in the fight, later identified as defendant, was the victim and was in his motel room.

Koetzner went to defendant's room to check on his well-being, get his version of the incident, and determine whether he wanted to sign a complaint against the other man involved in the fight. When Lieutenant Aquillo arrived, the two officers knocked on

defendant's door, but no one answered. Hearing movements inside the room, Koetzner became concerned for their safety, believing defendant could still be angry about the incident and might be retrieving a weapon. Koetzner and Aquillo identified themselves as police officers and said they needed to speak with defendant.

Defendant opened the door, and Koetzner asked to speak to him inside the room because the other man involved in the fight was nearby. Defendant let the officers inside and sat down on the bed. Defendant appeared unharmed, but Koetzner saw he had track marks consistent with heroin use and his pupils were "pinned," which was an indicator of being under the influence of heroin. Prior to this encounter, Koetzner never met defendant and did not suspect he was a heroin user. Koetzner also saw an empty wax fold and a string on the night stand. Based on his training and experience, Koetzner knew these items were indicative of heroin use: the wax fold is used to package the heroin and the string is commonly used as a tie off to ingest heroin. Defendant stated he knew what the items were and did not indicate they belonged to his wife, with whom he shared the room.

Defendant gave consent to search the room. As Koetzner was filling out the consent to search form, Aquillo asked defendant if there was anything in the room. Defendant responded there was a "bundle" in the desk drawer. Defendant then signed the consent

to search form and said he understood it. Defendant acknowledged on the form that he "knowingly and voluntarily [gave his] consent to search without fear, threat, or promise, expressed or implied[,]" and that Koetzner advised him of his right to refuse to consent to a search.

A search of the desk drawer revealed sixteen bundles of open wax folds, crushed Xanax tablets, a syringe with liquid residue, six vials containing a powdery substance, metal and plastic caps containing cotton commonly used to prepare heroin, and another string used as a tie off. A search of a pink and black purse located in the desk area revealed nine sealed wax folds, four used syringes, caps and cotton, and another tie off. A search of a duffle bag on the floor by the desk revealed 163 used and unused syringes, forty new syringes, metal caps and cotton pieces, and a paper bag containing a large amount of empty syringe wrappers. Defendant did not ask the officers to stop the search or indicate that the items found did not belong to him.

Defendant testified at the hearing and presented a version of the events that differed significantly from Koetzner. He denied he was involved in a fight and testified that he tripped exiting a vehicle, a man grabbed him to prevent him from hitting the ground, and he "walked straight from that into [his] room." He heard banging, but did not open the door because he believed it

was at the adjacent room. When the banging continued, he got dressed, opened his door, and saw Koetzner standing there. Koetzner pushed past him, entered the room, and then asked if it was okay to be inside, to which defendant replied, "it's a little late for that." Koetzner shined a flashlight around the room and began searching it. Aquillo arrived five minutes later, and Koetzner stopped the search.

Defendant denied that he sat down during the search or that there was drug paraphernalia on the nightstand. He testified the string on the nightstand had been pulled out from his hoodie and washed. He acknowledged signing the consent to search form, but testified he signed it after the search was completed because Koetzner threatened to charge him with possession of CDS with intent to distribute, which would subject him to harsher sentencing under the Brimage[1] guidelines due to his prior arrests, convictions, and sentences for drug offenses. Koetzner also threatened that bail would be set at a higher rate he could not afford. Defendant also denied he agreed to a search of the room, insisting, "why would I let them into my room knowingly having . . . things that are illegal? It makes no sense."

[1] State v. Brimage, 153 N.J. 1 (1998); Attorney General Directive 1998-1, incorporating by reference Attorney General Guidelines for Negotiating Cases Under N.J.S.A. 2C:35-12.

On cross-examination, defendant did not recall ever meeting Koetzner, but believed Koetzner knew he was Brimage eligible. He also admitted that nothing found in his room was consistent with drug distribution, and that he read and understood the consent form and understood he did not have to sign it. He insisted, however, that he signed the form because Koetzner threatened him.

In a written opinion, Judge Catherine I. Enright found Koetzner's testimony was "highly credible[,]" and defendant's conflicting testimony "sounded rehearsed[, d]efendant did not appear relaxed on the stand" and his testimony was not credible. The judge determined the plain view exception to the warrant requirement applied to the items found on the nightstand, finding as follows:

> Based on . . . [Koetzner's] testimony, this court is satisfied that the three prongs of the plain view doctrine have been met. Despite the conflicting testimony mentioned above, the court finds the officers were lawfully positioned in defendant's motel room based on his consent to enter same. They lawfully asked him questions about an altercation at the . . . motel, based on statements made to them by witnesses at the scene, including statements identifying defendant as being involved in the altercation. . . . Thus, based on the totality of the circumstances, the court find the officers properly questioned defendant about the altercation and their presence in defendant's motel room was proper after he allowed them to enter it.

> Once inside defendant's room, . . . Koetzner recognized evidence of drug paraphernalia in plain view. He did not have to move his position, or touch or open anything to view this contraband. Therefore, he had the right to be where he was when he made the observation of contraband and the first prong of the plain view doctrine is satisfied. Second, when the officers entered defendant's room, the court finds they had no preconceived notion that their questioning of defendant would result in his arrest for possession of a [CDS]. The officers were merely conducting general questioning regarding an altercation. But for defendant's own actions, the officers would have never been aware of the presence of illegal drug use. Finally, once inside defendant's motel room, with his permission, . . . Koetzner had probable cause to believe the evidence viewed on the nightstand was drug-related contraband, given his training.
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> Whether an officer had probable cause to believe evidence was associated with criminal activity is based on what the officer reasonably knew at the time of seizure. . . . The court finds . . . Koetzner recognized the materials on the nightstand as being commonly associated with illegal drug activity based on his training and experience. Likewise, his physical observation of defendant, once inside his motel room, led him to reasonably believe evidence of illegal drug use could be found inside the motel room.

Judge Enright determined the consent to search exception to the warrant requirement applied to the items found during the search of defendant's room, finding as follows:

> There is no evidence that defendant was coerced or threatened before he authorized the search, nor had he been handcuffed or arrested

> when he executed a consent to search form. Based on . . . Koetzner's credible testimony and the facts established . . . the court finds . . . Koetzner acted properly when he sought and obtained the consent of defendant to search the motel room, and it is satisfied the defendant was informed he had a right stop the search. Further, [Koetzner] credibly testified that defendant consented to the officers entering his motel room, and that they did not burst into the room uninvited, contrary to what the defense claims. The clear and positive testimony of this credible officer satisfies the court that consent by defendant was given voluntarily and without undue pressure or coercion. [Koetzner's] . . . testimony also confirms that at no time after the search was consented to did defendant indicate he wanted the search stopped. Under the totality of the circumstances, the court is satisfied defendant consented to the search of his own free will and that any evidence seized as a result of the consensual search is admissible.

The judge entered an order on April 12, 2016, denying defendant's motion to suppress the evidence seized on October 13, 2014.

The January 30, 2015 Search

Police Officer Ian Jacobsen of the MTPD testified that at approximately 1:00 a.m. on January 30, 2015, he was at the Pine Brook Motel transporting defendant's wife after her arrest for driving while intoxicated. It was dark and snowing heavily, the temperature was freezing, and the parking lot was not plowed.

Defendant's wife remained in the patrol car while Jacobsen and Officer Saldutti went to her motel room to see if her husband,

later identified as defendant, was there and would agree to sign a "John's Law" form.[2] After defendant opened the door, Jacobsen introduced himself, advised why the officers were there, and asked if defendant was willing to sign the form. Jacobsen could not see inside the room at that point.

For safety concerns stemming from the severe weather conditions, and because defendant was not appropriately dressed to come outside, Jacobsen asked defendant if the officers could enter the room to explain the form to him. Defendant denied their request, but agreed to sign the form. Jacobsen reviewed the form with him, indicated where he had to sign, and provided a pen.

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[2] N.J.S.A. 39:4-50.22 and N.J.S.A. 39:4-50.23 are commonly known as "John's Law." N.J.S.A. 39:4-50.22 provides as follows:

> Whenever a person is summoned by or on behalf of a person who has been arrested for a violation of [N.J.S.A. 39:4-50] or [N.J.S.A. 39:4-50.4a] in order to transport or accompany the arrestee from the premises of a law enforcement agency, the law enforcement agency shall provide that person with a written statement advising him of his potential criminal and civil liability for permitting or facilitating the arrestee's operation of a motor vehicle while the arrestee remains intoxicated. The person to whom the statement is issued shall acknowledge, in writing, receipt of the statement, or the law enforcement agency shall record the fact that the written statement was provided, but the person refused to sign an acknowledgment.

Defendant then opened the door, placed the form on it, and began to sign it. At that point, Jacobsen had a clear view of inside the lit room, and saw drug paraphernalia, wax folds, and hypodermic syringes on the foot of the bed in plain view. Saldutti indicated he made similar observations.

Defendant was arrested, administered his Miranda[3] rights, and brought inside the room so the officers could secure the evidence they saw in plain view. A search of defendant's person revealed a glassine wax paper fold containing suspected heroin. Jacobsen also saw a pill bottle on a countertop that had its label ripped off and contained wax folds. Based on his training and experience, Jacobsen believed the bottle contained contraband. Defendant did not testify.

In a written opinion, Judge Enright found Jacobsen's testimony credible. The judge determined the plain view exception to the warrant requirement applied to the items seized, finding as follows:

> both officers on the scene were lawfully positioned at the time they made the observation of suspected contraband in defendant's motel room. The officers arrived at defendant's motel room solely for the purpose of transferring [his wife] to the care and custody of her husband, as [his wife] had been arrested for driving while intoxicated. Her car had been detained and she had been

[3] Miranda v. Arizona, 384 U.S. 436 (1966).

transported back to the Pine Brook [M]otel so that defendant could be asked to execute a potential liability form. The officers knocked on defendant's door and when he opened it, he was asked if he would allow the officers to come inside, given the poor weather conditions outside. He declined this request and was not asked again by the officers for permission to come inside his room. Thus, the officers were properly positioned at the door of defendant's motel room and the first prong of the [plain view] test is satisfied. Only after defendant agreed to execute the potential liability form and proceeded to sign the form were the officers able to see contraband in plain view. The defendant fails to provide any proof that the officers were at his motel room for a purpose other than to relinquish custody of his wife to him, and the officers did not enter defendant's motel room when he initially denied them entry. Instead, they simply observed suspected paraphernalia because defendant further opened his motel room door while signing the paperwork the officers had provided to him regarding his wife.

. . . .

Officer Jacobsen credibly testified that his training included an arrest and search and seizure class and he further swore that he had been involved in over [one hundred CDS] arrests. He convincingly testified that he had heightened concern when he saw pill containers, including one pill container that had its label ripped off and he saw what he believed to be wax folds in a bottle. Based on his training, he had probable cause to believe contraband was in the bottles he observed. Given these circumstances, probable cause existed to seize the evidence retrieved from defendant's motel room.

The judge entered an order on April 12, 2016, denying defendant's motion to suppress the evidence seized on January 30, 2015.

On appeal, defendant argues there was insufficient credible evidence in the record to support Judge Enright's findings that the two warrantless searches fell within any recognized exception to the constitutional prohibition against unreasonable searches and seizures. Defendant also argues that in making her factual findings, the judge erroneously found the substance of Koetzner's and Jacobsen's testimony credible and gave too much weight to their demeanor on the stand.

Our Supreme Court has established the standard of review applicable to consideration of a trial judge's ruling on a motion to suppress:

> Appellate review of a motion judge's factual findings in a suppression hearing is highly deferential. We are obliged to uphold the motion judge's factual findings so long as sufficient credible evidence in the record supports those findings. Those factual findings are entitled to deference because the motion judge, unlike an appellate court, has the 'opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy.'
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> [State v. Gonzales, 227 N.J. 77, 101 (2016) (citation omitted) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)).]

When we are satisfied that the trial court's findings could reasonably have been reached based on sufficient credible evidence

in the record, our task is complete and we should not disturb the result, even though we might have reached a different conclusion. Johnson, 42 N.J. at 162. Nevertheless, "if the trial court's findings are so clearly mistaken 'that the interests of justice demand intervention and correction,' then . . . [we] should review 'the record as if [we] were deciding the matter at inception and make [our] own findings and conclusions.'" State v. Mann, 203 N.J. 328, 337 (2010) (quoting Johnson, 42 N.J. at 162). Applying these standards, we discern no reason to disturb Judge Enright's rulings.

"Since hotel occupants have a constitutionally protected expectation of privacy, a warrantless search of a suspect's 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." State v. Rose, 357 N.J. Super. 100, 103 (App. Div. 2003) (citations omitted). Here, the State argues the evidence was properly seized on both occasions under the plain view exception to the warrant requirement, and the evidence seized during the search of defendant's room on October 13, 2014 was properly seized under the consent to search exception.

The plain view exception, first recognized in Coolidge v. New Hampshire, 403 U.S. 443, 466-71 (1971), allows an officer to seize

evidence in plain view without obtaining a warrant if the following three requirements are satisfied:

> First, the police officer must be lawfully in the viewing area.
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> Second, the officer has to discover the evidence 'inadvertently,' meaning that he did not know in advance where evidence was located nor intend beforehand to seize it. Third, it has to be 'immediately apparent' to the police that the items in plain view were evidence of a crime, contraband, or otherwise subject to seizure.
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> [Mann, 203 N.J. at 341 (quoting State v. Bruzzese, 94 N.J. 210, 236 (1983)) (citations omitted).]

Although the Court, in Gonzales held that "inadvertent discovery of contraband or evidence is no longer a predicate for a plain-view seizure," that "holding is a new rule of law and therefore must be applied prospectively." 227 N.J. at 82. Since the search and suppression motions in this case pre-dated Gonzales, the inadvertence prong must still be satisfied to validate the warrantless seizure. To do so, the officers must have been unaware of the evidence's location in advance and must not have intended to seize the evidence. State v. Lane, 393 N.J. Super. 132, 147-48 (App. Div. 2007). Their presence at a particular location cannot serve as a pretext to discover and seize evidence. Ibid. At the same time, "the police, when rightfully in a particular location, are not required to avert or close their eyes

to keep from seeing what might constitute evidence of criminal activity or contraband." Id. at 148.

The third prong requiring it be "immediately apparent" to the officers that the item in plain view was related to criminal activity "requires a determination of whether the officer had 'probable cause to associate the property with criminal activity.'" Id. at 149 (quoting Texas v. Brown, 460 U.S. 730, 738 (1983) (plurality opinion)). Our Supreme Court has held:

> "Probable cause exists if at the time of the police action there is a 'well grounded' suspicion that a crime has been or is being committed." It requires nothing more than "a practical, common-sense decision whether, given all the circumstances . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." The flexible, practical totality of the circumstances standard has been adopted because probable cause is a "'fluid concept--turning on the assessment of probabilities in particular factual contexts--not readily, or even usefully, reduced to a neat set of legal rules.'" Probable cause "merely requires that 'the facts available to the officer would warrant a man of reasonable caution in the belief" . . . that certain items may be contraband . . . or useful as evidence of a crime, it does not demand any showing that such belief be correct or more likely true than false."
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> [State v. Johnson, 171 N.J. 192, 214-15 (2002) (citations omitted).]

Courts must determine if the officer's actions were reasonable by considering "the specific reasonable inferences . . . he is

entitled to draw from the facts in light of his experience." Id. at 215 (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)).

"A search conducted pursuant to consent is a well-established exception to the constitutional requirement that police first secure a warrant based on probable cause before executing a search of a home." State v. Domicz, 188 N.J. 285, 305 (2006). To justify a warrantless search under the consent to search exception, the State must prove "the consent was voluntary, an essential element of which is knowledge of the right to refuse consent." Id. at 307 (quoting State v. Johnson, 68 N.J. 349, 353-54 (1975)). The State must also demonstrate the consent was "unequivocal and specific" and "freely and intelligently given." State v. King, 44 N.J. 346, 352 (1965). To determine if the consent was voluntarily or coerced, courts must determine whether the consenting individual knowingly waived his or her right to refuse consenting to the search. Domicz, 188 N.J. at 308 (citation omitted). In noncustodial situations, such as here, law enforcement officers are not necessarily required to inform the individual of his or her right to refuse consent, but the State must show that the individual knew he or she had a choice to either give or withhold consent. Johnson, 68 N.J. at 354.

> Among those factors which courts have considered as tending to show that the consent was coerced are: (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, (5) that consent was given while the defendant was handcuffed.
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> Among those factors which courts have considered as tending to show the voluntariness of the consent are: (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 guilt before consent, (3) that the defendant affirmatively assisted the police officers[.]
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> [King, 44 N.J. at 352-53 (citations omitted)].

A finding of one or more of these factors is not dispositive, but merely serve as guideposts to aid the court. Ibid. The significance of their existence or absence depends on the totality of the circumstances in any given case. Ibid.

Here, there is ample credible evidence in the record supporting Judge Enright's findings that the two warrantless searches fell within the plain view exception, and the consent to search exception applied to the search of defendant's room on October 13, 2014. We have considered defendant's arguments to the contrary in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant

discussion in a written opinion. R. 2:11-3(e)(2). We affirm substantially for the reasons Judge Enright expressed in her thorough written opinions.

Affirmed.