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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0930-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CARLOS SANCHEZ,

Defendant-Appellant.

Submitted June 1, 2022 – Decided November 16, 2022

Before Judges Fisher and Smith.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Indictment No. 16-07-1418.

Joseph E. Krakora, Public Defender, attorney for appellant (Melanie K. Dellplain, Assistant Deputy Public Defender, of counsel and on the briefs).

Bradley D. Billhimer, Ocean County Prosecutor, attorney for respondent (Samuel Marzarella, Chief Appellate Attorney, of counsel; William Kyle Meighan, Supervising Assistant Prosecutor, on the brief).

PER CURIAM

Defendant, Carlos Sanchez, appeals from an order denying his motion to suppress evidence seized by police without a warrant from his mother's home. He argues that the police did not have valid consent to enter the home, nor search the premises. As a result, defendant contends, the evidence seized should have been suppressed. We are not persuaded and affirm. We remand for modification of defendant's judgment of conviction to reflect the proper allocation of jail credits.

I.

Testimony at the suppression hearing revealed the following facts. On February 4, 2016, at approximately 5:45 a.m., Detective Sean Flynn and other officers of the Ocean County Prosecutor's Office and members of the DEA Regional SWAT team executed a no-knock search warrant search of defendant's house. When the officers entered defendant's home, they encountered defendant and his two daughters. Detective Flynn advised defendant of his Miranda¹ rights and informed him the officers were conducting a narcotics investigation. Det. Flynn questioned defendant about where he kept his drugs, and defendant told Flynn that he had stored cocaine at his parents' house nearby, on the same street.

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

The police triggered an alarm when they entered defendant's home. Defendant's sister² was an emergency contact for the alarm company, and when the company could not reach defendant by phone, she was notified. When she could not reach defendant by phone, she called defendant's mother, Rosa Sanchez (Rosa),³ and asked her to check on defendant. Rosa went outside and started her car in order to go to defendant's house, however she saw approaching officers and turned off her car.

Rosa asked the police officers to tell her what was going on, but they did not answer her question. An officer took her by the hand and instructed her to go back inside. The officers escorted Rosa back into her home and placed her in the dining room. She again asked the officers what they were doing there and told them they should not be there. She called defendant's sister and spoke to her for a few minutes before the officers took Rosa's cell phone.

² Defendant's mother's name is Rosa Sanchez. Defendant's sister's name is Rosa N. Sanchez. For ease of reference and to avoid confusion, we will reference defendant's mother as "Rosa" and defendant's sister as "Rosa's daughter" or "defendant's sister."

³ We use Rosa's first name because she shares a surname with the defendant, as well as two other witnesses, her daughter, and her husband, Carlos. We intend no disrespect.

Defendant's sister then called Rosa back on a second phone and instructed Rosa to tell the police officers they did not have permission to be in her mother's home. Rosa relayed the message to police. Rosa tried to place defendant's sister on speakerphone so she could talk to the officers. The officers blocked Rosa from doing so, directing her to hang up the phone. The officers took the second phone from Rosa and instructed her to sit down in the dining room.

Defendant's father, Carlos Sanchez-Ramos (Carlos, Sr.), was present in Rosa's home that morning. Although he was married to Rosa, the couple was separated, and Carlos, Sr. lived with defendant. However, Carlos, Sr. testified that he had spent the previous night at Rosa's home. So, on the morning of February 4, he was brushing his teeth in the bathroom when police officers entered with Rosa in tow. The police pulled Carlos, Sr. from the bathroom and directed him to sit down in the dining room with Rosa.

After defendant told Det. Flynn that the drugs were stashed at his mother's home, Flynn departed for Rosa's house with Detective Mitch Calwick. He knocked on the door and Carlos, Sr. let them in, leading them to the dining room. Det. Flynn asked Carlos, Sr. to sign a consent to search form for Rosa's home, but Carlos, Sr. refused.

Shortly thereafter, police brought defendant to Rosa's home, and took him into the dining area. Defendant spoke with his parents. His father was calm, but more than one witness described Rosa as "breathing heavily," and "visibly upset." After getting permission to speak to his parents from the police, defendant told his parents that "everything was going to be okay."

Det. Flynn called Detective Melissa Matthews, of the Ocean County Prosecutor's Office, who was fluent in Spanish, to translate for Carlos, Sr. She had been assigned to assist at defendant's home on the search warrant, but upon receiving Flynn's call, she reported to Rosa's home. While she had no formal training as a Spanish translator, Det. Matthews grew up in a Spanish household, and could read, write, and speak the language. In Spanish, Matthews told Carlos, Sr. that the police were in Rosa's home because of a narcotics investigation, and then she read to him, in Spanish, the consent to search form which was written in English. Det. Matthews translated the Ocean County Prosecutor's consent to search form from English to Spanish for Carlos, Sr., "line by line." Both Carlos, Sr. and Det. Matthews testified that defendant was present at the time she read the form to his father. After Det. Matthews finished the translation, she asked Carlos, Sr. if he had any questions. He stated that he did not, and he signed the consent form.

Defendant next told Det. Flynn that he had a bag containing drugs in the closet of the single bedroom in his mother's home. He then signed a consent to search form giving Det. Flynn permission to search the bag. Defendant guided the detectives to the bedroom and showed them a black bag on the closet floor. Dets. Flynn and Calwick seized the bag, which contained, among other things, cocaine and money.

Defendant was indicted by an Ocean County grand jury and charged with: three counts of third-degree possession of a controlled dangerous substance (CDS), N.J.S.A. 2C:35-10(a)(1); second-degree possession of CDS with intent to distribute, N.J.S.A. 2C:35-5(b)(4); second-degree possession of CDS with intent to distribute, N.J.S.A. 2C:35-5(b)(2); and third-degree possession of CDS with intent to distribute, N.J.S.A. 2C:35-5(b)(5).

Defendant filed a motion to suppress the evidence seized from Rosa Sanchez' home. The trial court denied the motion, and defendant pled guilty to a single count of second-degree possession of CDS with intent to distribute. Defendant was sentenced to nine years in prison with fifty-four months of parole ineligibility. On appeal, defendant raises the following arguments:

POINT I.

THE MOTION COURT'S DENIAL OF
DEFENDANT'S SUPPRESSION MOTION MUST BE

REVERSED BECAUSE THE POLICE SEARCHED DEFENDANT'S MOTHER'S HOUSE WITHOUT A WARRANT AND THE EXIGENT CIRCUMSTANCES AND CONSENT EXCEPTIONS TO THE WARRANT REQUIREMENT DID NOT APPLY.

A. The Denial of Defendant's Suppression Motion Should Be Reversed Because the Police Did Not Have a Warrant for Defendant's Mother's House and the Exigent Circumstances Exception to the Warrant Requirement Did Not Apply.

B. The Denial of Defendant's Suppression Motion Should Be Reversed Because the Police Did Not Have a Warrant for Defendant's Mother's House and the Consent Exception Did Not Apply.

1. Consent From Defendant and His Father Was Invalid Because It Was Tainted by the Police Officers' Initial Unlawful Search of Defendant's Mother's House.

2. Consent from Defendant's Father Was Invalid Because Defendant's Mother Objected to the Search.

3. Consent from Defendant and His Father Was Invalid Because Their Consent Was Coerced.

4. Consent from Defendant's Father Was Invalid Because He Was Not a Native English Speaker and Spanish Interpretation Was Done By a Police Officer Who Was Not a Licensed Interpreter.

POINT II.

DEFENDANT IS ENTITLED TO ONE ADDITIONAL DAY OF JAIL CREDIT.

II.

In reviewing a motion to suppress, we defer to the factual and credibility findings of the trial court, "when 'those findings are supported by sufficient credible evidence in the record.'" State v. A.M., 237 N.J. 384, 395 (2019) (quoting State v. S.S., 229 N.J. 360, 374 (2017)). Deference is afforded "because the 'findings of the trial judge . . . are substantially influenced by his [or her] 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)). "An appellate court should disregard those findings only when a trial court's findings of fact are clearly mistaken." State v. Hubbard, 222 N.J. 249, 262 (2015) (citing State v. Johnson, 42 N.J. 146, 162 (1964)). Legal conclusions to be drawn from those facts are reviewed de novo. State v. Radel, 249 N.J. 469, 493 (2022); Hubbard, 222 N.J. at 263.

The Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution protect individuals from unreasonable searches and seizures.

If police officers make an investigatory stop or detain a person, the officers must have "specific and articulable facts which, taken together with rationale inferences from those facts," give rise to a reasonable suspicion of criminal activity. State v. Legett, 227 N.J. 460, 472 (2017) (quoting State v. Rodriguez, 172 N.J. 117, 126). If police officers have such reasonable articulable suspicions, then the officers can conduct a lawful investigatory stop and such a stop is a recognized exception to the warrant requirement. State v. Coles, 218 N.J. 322, 342-43 (2014).

The burden is on the State to show by a preponderance of the evidence that it possessed sufficient information to give rise to the required level of suspicion. State v. Pineiro, 181 N.J. 13, 19-20 (2004). That reasonable suspicion standard requires "some minimal level of objective justification for making the stop." State v. Amelio, 197 N.J. 207, 211-12 (2008) (quoting State v. Nishina, 175 N.J. 502, 511 (2003)). "The principal components of a determination of reasonable suspicion . . . [are] the events which occurred leading up to the stop . . ., and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to a reasonable suspicion" State v. Stovall, 170 N.J. 346, 357 (2002)

(alteration in original) (quoting Ornelas v. United States, 517 U.S. 690, 696 (1996)).

In determining whether reasonable suspicion exists, a reviewing court should consider "the totality of the circumstances." State v. Gamble, 218 N.J. 412, 431 (2014) (quoting United States v. Cortez, 449 U.S. 411, 417 (1981)).

III.

Defendant first contends that the officers' entry into Rosa's home was improper, and that all subsequent actions by the police were tainted, ultimately rendering seizure of the black bag illegal. We disagree.

Defendant, after being Mirandized at his home, informed Det. Flynn that he had stashed illegal drugs at his mother Rosa's home a few houses away. The police went to Rosa's house right away. They had "specific and articulable facts which, taken together with rational inferences from those facts," gave rise to their reasonable suspicion that criminal activity was taking place at Rosa's house. Legett, 227 N.J. at 472. The totality of the circumstances reveal sufficient objective justification to support an investigatory stop and detention of Rosa Sanchez, initially in her driveway. State v. Amelio, 197 N.J. at 211-12.

Officers stopped Rosa, then led her back to her own dining room where she was not free to leave. We find the parties' dispute about the location of

Rosa's detention, whether at her car or in her home, to be a distinction without a difference. The record shows no officer attempted to search her home until Dets. Flynn and Matthews secured consent to search forms from Rosa's husband and defendant later that morning. The bag which was ultimately seized was not located as a result of Rosa's driveway stop and subsequent detention. We find, under the totality of the circumstances, that the police's warrantless entry did not violate defendant's constitutional rights.

Defendant next contends that Rosa Sanchez did not consent to the police entering her home, and therefore the evidence seized was tainted. We are not persuaded. This argument was not raised in the trial court, and so we apply the plain error standard. R. 2:10-2. The parties dispute whether Rosa's actions in relaying her daughter's instructions or questioning the officers about their purpose in entering her home represent her denial of consent to search. Whether the trial court found Rosa objected to search of the home is not dispositive, since Carlos, Sr. gave consent. The record shows that Carlos, Sr., who testified at the suppression hearing, was Rosa's husband. He spent the night at her home and police encountered him there when they brought Rosa inside. Carlos, Sr. opened the door to let Det. Flynn into the home and, after receiving a Spanish translation of the consent to search form from Det. Matthews, gave written consent to search

the property. There was sufficient credible evidence in the record for the trial court to find that Carlos, Sr. was a co-tenant. Carlos, Sr.'s consent, given to detectives in Rosa's presence in the dining room, renders their entry into the home constitutionally reasonable as to defendant. State v. Lamb, 218 N.J. 300, 318 (2014). We find no plain error.

Defendant next contends that his father's consent to search the property and his consent to search the bag were coerced, and consequently invalid.

"Implicit in the very nature of the term 'consent' is the requirement of voluntariness." State v. King, 44 N.J. 346, 352 (1965). Accordingly, "consent must be 'unequivocal and specific' and 'freely and intelligently given.'" Ibid. (quoting Judd v. United States, 190 F.2d 649, 651 (D.C. Cir. 1951)).

In King, the Supreme Court listed the following non-exhaustive factors tending to indicate coerced consent:

(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

[Id. at 352-53 (citations omitted).]

The King Court also listed the following opposing factors suggesting that a defendant's consent was voluntary:

(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 . . . ; [and] (3) that the defendant affirmatively assisted the police officers

[Id. at 353 (citations omitted).]

The Court, however, acknowledged that "[e]very case necessarily depends upon its own facts," and that "the existence or absence of one or more of the above factors is not determinative of the issue." Ibid.

As to Carlos, Sr.'s consent, the detectives recognized that he would need a translation of the printed consent to search form, and they provided it. Indeed, Det. Matthews, fluent in reading, writing, and speaking Spanish, provided a "line by line" translation. Carlos, Sr. did not sign the form until he had it translated for him by Det. Matthews and until defendant, his son, arrived and explained the circumstances to him.

Defendant was in custody when he reached his mother's house, yet he had affirmatively assisted the police by telling them the drugs were hidden there. At his mother's house he continued helping the police by leading them to the bag in the bedroom closet.

The trial court heard the testimony, made findings, and concluded that both men had knowingly, voluntarily, and intelligently consented to the search of the premises. There was sufficient credible evidence in the record to support this finding, and we see no reason to disturb it.

We affirm as to the trial court's denial of defendant's motion to suppress. However, we note that parties agree that an additional jail credit of one day, for January 15, 2019, should have been awarded to defendant. Therefore, we remand to the sentencing court for modification of the judgment of conviction so as to reflect the additional day of jail credit due defendant.

Affirmed in part, remanded in part for proceedings consistent with this opinion.

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



CLERK OF THE APPELLATE DIVISION