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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1649-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DEREK JUDSON, a/k/a  
IKE JUDSON and R,

Defendant-Appellant.

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Submitted November 28, 2022 - Decided December 21, 2022

Before Judges Currier and Puglisi.

On appeal from the Superior Court of New Jersey, Law  
Division, Hudson County, Indictment No. 19-10-1122.

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

Matthew J. Platkin, Attorney General, attorney for  
respondent (Debra G. Simms, Deputy Attorney  
General, of counsel and on the brief).

PER CURIAM

Defendant appeals from the October 13, 2020 order denying his motion to suppress evidence seized by police from defendant's residence following the execution of a search warrant. We affirm.

Defendant was charged in an indictment with: two counts of third-degree possession of heroin/fentanyl and cocaine, in violation of N.J.S.A. 2C:35-10(a)(1); two counts of third-degree possession with intent to distribute cocaine and heroin/fentanyl, in violation of N.J.S.A. 2C:35-5(a)(1) and 2C:35-5(b)(3); three counts of third-degree distribution of cocaine, heroin, and heroin/fentanyl, in violation of N.J.S.A. 2C:35-5(a)(1) and 2C:35-5(b)(3); two counts of second-degree possession with intent to distribute cocaine and heroin/fentanyl within 500 feet of a public park, in violation of N.J.S.A. 2C:35-5(a)(1) and 2C:35-7.1(a); three counts of second-degree distribution of cocaine, heroin, and heroin/fentanyl within 500 feet of a public park, in violation of N.J.S.A. 2C:35-5(a)(1) and 2C:35-7.1(a); two counts of third-degree possession with intent to distribute cocaine and heroin/fentanyl within 1,000 feet of school property, in violation of N.J.S.A. 2C:35-5(a)(1) and 2C:35-7(a); three counts of third-degree distribution of heroin/fentanyl, heroin, and cocaine within 1,000 feet of school property, in violation of N.J.S.A. 2C:35-5(a)(1) and 2C:35-7(a); second-degree possession of a firearm, a 9 millimeter Kel-Tec, while committing, attempting

to commit, or conspiring to commit a drug offense within 500 feet of a public park and within 1,000 feet of a school, in violation of N.J.S.A. 2C:35-5, 2C:35-7(a) or 2C:35-7.1(a) and 2C:39-4.1(a); fourth-degree possession with intent to distribute drug paraphernalia, in violation of N.J.S.A. 2C:36-3; and second-degree certain persons not to have a weapon, in violation of N.J.S.A. 2C:35-7 and 2C:39-7(b)(1).

Defendant's counsel moved to suppress the seized evidence. Neither counsel filed a brief. Nevertheless, the court conducted a hearing during which defendant challenged the search warrant and affidavit.<sup>1</sup>

During the suppression hearing, Lieutenant Mohammed Riaz of the Jersey City Police Department testified he was working on the perimeter unit of a surveillance operation with six officers when he received information that defendant was conducting drug transactions from a specific basement apartment. Riaz obtained a photograph of defendant and confirmed he lived at that address. Riaz gave the information to Jersey City police officer Joemy Fernandez who was conducting surveillance at the location.

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<sup>1</sup> Two months after the court denied the motion, defendant submitted a one-page handwritten pro se brief.

Fernandez testified that he "observed a Hispanic male approach [defendant] in front of [the basement apartment address] and then engage in a brief conversation." Fernandez then saw the two men walk into the alleyway, and "a minute later the male [came] out and [was] counting small objects consistent with the size and shape of CDS heroin." Fernandez notified the perimeter units and informed them of the direction of the man's travel, but the individual was not apprehended. Fernandez stated a perimeter unit cannot apprehend someone "very close to where the surveillance location is" because it would reveal the surveillance operation, so sometimes officers lose someone because the person goes inside a building or vehicle prior to being apprehended.

A few minutes later, Fernandez "observed a male approach [defendant's location] and . . . motion[] for [defendant] who, at this point, was sitting . . . or standing on the elevated porch of [the apartment] speaking with a male later identified as Antoine Webb." The man and defendant then had a brief conversation and went into the alleyway. Fernandez then said another male, "later identified as Mr. Cody . . . [came] out . . . counting small objects consistent with heroin, and he walk[ed] south on [the street]."<sup>2</sup> Fernandez notified the

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<sup>2</sup> Cody was a co-defendant, indicted on drug possession charges.

perimeter units who then apprehended him. Fernandez testified police recovered "three bags of heroin labeled dope dick" and "one . . . labeled red lobster."

Shortly thereafter, Fernandez saw a white male approach defendant; they engaged in a brief conversation, went into the alleyway, and the man then came out counting small objects consistent with heroin.

Fernandez next observed a black male approach defendant on the porch and yell, "[l]et me get a brick." Fernandez testified that "a brick is a street term for [fifty] glassine bags of heroin. And they're held in bundles of ten. So . . . five bundles of [ten], and they're wrapped in magazine paper." Fernandez said he was ten to fifteen feet away and was able to clearly hear the man. Defendant and the man then went into the alleyway, the man put the object in his pocket, and walked south on the street.

Fernandez described a similar encounter between defendant and a white male across the street from the apartment, after which they walked into the alleyway, and the man was "holding an object in his left hand . . . consistent with heroin." The perimeter units were unable to locate this man.

After a few minutes, Fernandez observed a black male conversing with defendant, they walked into the alleyway, and the man emerged "counting small objects consistent with heroin" and walked south down the street. The perimeter

units apprehended the man, who told the officers "he had narcotics on him," which the officers recovered. The man was arrested.

Shortly thereafter, Fernandez testified that defendant was speaking to Webb, after which Webb stepped off the porch, crossed the street, looked into the vehicle Fernandez was in, and made eye contact. Webb continued looking at the car, then walked over to defendant, pointed to Fernandez's vehicle, and said, "[t]hat's the police in that truck." When Webb and defendant walked to the front of Fernandez's vehicle, Fernandez informed the perimeter units and told them to respond.

As the officers approached defendant, he took two bags of heroin out of his pocket and threw them on the ground. The police arrested defendant and Webb. The two bags on the ground were labeled "dope dick."

The only access to the basement apartment was the alleyway. Fernandez testified there was nothing else in the alleyway other than the door to the apartment. However, Fernandez never saw defendant enter the apartment as he did not have a view of the door and could only see him entering the alleyway.

After the arrests, Riaz approached the basement door in order to "secure the apartment pending a search warrant application" and "make sure that no narcotics were being destroyed." He noted there was a camera pointed toward

the door. He also testified the outer door to the basement apartment was open, and he knocked on the interior door and "stated 'police' so [the officers] could gain access and see if anyone [was] trying to destroy evidence." Riaz demonstrated how loud he knocked on the door, which the court described as "[f]airly loud." Riaz knocked a second time, after which he "heard a voice from inside the apartment state, '[c]ome in. I can't get up.'" The interior door was unlocked, so Riaz went in. He described the apartment, stating "there's just a slight right into the apartment and straight ahead to the left-hand side there's a bedroom, there's actually two bedrooms, one to the right and one to the left. The one on the left is Freddy Judson['s], who is [defendant's father]."

Riaz saw defendant's father in one of the bedrooms, noting he was "handicapped, he does not have legs." Riaz told defendant's father that defendant was under arrest and the officers were going to apply for a search warrant for the apartment. Riaz stated defendant's father told him he lived with his son, whose bedroom was next door and that the officers "could stay as long as [they] want[ed]." As Riaz was talking to defendant's father, Riaz looked to the bedroom next door "and there was [sic] a bunch of drugs and paraphernalia on the black table inside the right bedroom, which is the son's bedroom." Riaz said these items were "in plain view."

Riaz testified that two officers remained in the apartment while he and Fernandez left to apply for the search warrant. Fernandez prepared the search warrant; it was signed by a judge and Riaz and three other officers executed it.

In defendant's bedroom, the officers recovered "approximately 488 glassine bags of heroin with various logos," "[seventy-eight] clear glass vials of cocaine with varying tops," "a baggie of marijuana," and paraphernalia in the form of "[e]mpty vials and multicolored tops [that] are usually used to package CDS cocaine." The officers also found "a hide-a-can,"<sup>3</sup> "over \$600.00 of currency, which was suspected CDS proceeds," and a scale. In addition, police recovered "a .9 [m]illimeter Kel-Tec firearm" on the top of the kitchen cabinet which "was loaded with a hollow point and . . . had some ballpoint rounds in the magazine." The officers also took a cellphone or a credit card bill and a lease agreement from the living room area.

Riaz testified that he did not know whether anyone else lived in the apartment other than defendant and his father. None of the officers saw anyone walk into the basement apartment during their surveillance.

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<sup>3</sup> Riaz testified that a "hide-a-can" "looks like a normal soda can, but . . . unscrews to hide drugs within."



On October 13, 2020, the court denied defendant's motion to suppress. In a written decision, the judge found probable cause for the issuance of the search warrant because of Fernandez's detailed affidavit regarding his observations of drug transactions near the entrance to defendant's apartment and the arrests of two individuals found with heroin following their interaction with defendant. In addition, Fernandez described the drugs and associated paraphernalia observed inside a bedroom of the apartment after defendant's father told police to enter and informed them the bedroom was defendant's.

Defendant subsequently pleaded guilty to second-degree unlawful possession of a weapon without a permit, N.J.S.A. 2C:39-7(b)(1). He was sentenced to a five-year prison term with a forty-two-month parole ineligibility term.

On appeal, defendant presents the following argument for our consideration:

**POINT I**

**THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS BECAUSE DEFENDANT'S FATHER DID NOT VOLUNTARILY CONSENT TO THE WARRANTLESS ENTRY INTO HIS HOME, AND THE INDEPENDENT SOURCE DOCTRINE CANNOT SAVE THE ILLEGAL WARRANTLESS SEARCH.**

We defer to "a trial court's factual findings in support of granting or denying a motion to suppress . . . 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)). This is "because the 'findings of the trial judge . . . are substantially influenced by [their] 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)). We will not disturb the trial court's findings of fact unless they are "so clearly mistaken 'that the interests of justice demand intervention and correction.'" State v. Goldsmith, 251 N.J. 384, 398 (2022) (quoting State v. Gamble, 218 N.J. 412, 425 (2014)).

"A trial court's legal conclusions, however, and its view of 'the consequences that flow from established facts' are reviewed de novo." Ibid. (quoting State v. Hubbard, 222 N.J. 249, 263 (2015)).

We also "'pay substantial deference' to judicial findings of probable cause in search warrant applications." State v. Andrews, 243 N.J. 447, 464 (2020) (quoting State v. Kasabucki, 52 N.J. 110, 117 (1968)).

On appeal, defendant contends the officers conducted an unlawful search when they initially entered defendant's home without a warrant. Defendant

asserts his father did not give police consent to entering the apartment "because the State failed to establish that [defendant's father] knew of his right to refuse to allow the police inside his home." In addition, although acknowledging the officers ultimately secured a search warrant for the apartment, defendant contends "the independent source doctrine cannot save the initial illegal entry because police relied on contraband they saw inside the apartment in the warrant application, and because, even if that information is excised from the warrant, the police engaged in flagrant misconduct, requiring suppression."

In response, the State asserts defendant did not preserve for appeal the issue regarding the validity of the consent for entry into the apartment because, according to court records, the motion to suppress was withdrawn at the time of defendant's guilty plea on November 3, 2020.

The State's position regarding the threshold issue lacks merit. Under Rule 3:5-7(d), a defendant may appeal from the denial of a motion to suppress evidence on the grounds of unlawful search and seizure after the entry of a guilty plea. Those motions "automatically survive the entry of a guilty plea." State v. Knight, 183 N.J. 449, 471 (2005) (quoting State v. Greeley, 178 N.J. 38, 50-51 (2003)). The motion was not mentioned during the plea hearing but court records reflect the motion was withdrawn on the plea hearing date.

Nevertheless, pursuant to the Rule and case law, the motion was preserved for our review.

However, the State further contends the issue cannot be heard on appeal because defense counsel only filed a "general motion to suppress evidence seized from the apartment" but never specified any grounds or basis for the motion. During the hearing, defendant challenged the sufficiency of probable cause for the issuance of the search warrant that resulted in the subsequent seizure of evidence. Counsel did not raise the issue of valid consent for the initial entry into the apartment. It was not until two months after the court denied the motion to suppress that defendant filed a pro se brief in which he contended his father did not give consent to search the apartment.

In State v. Velez, 335 N.J. Super. 552, 557-58 (App. Div. 2000), we found that evidence developed at a motion to suppress hearing that pertained to a certain issue meant that the claim "was sufficiently raised at the [Rule] 3:5-7 hearing and preserved under [Rule] 3:5-7(d), even though the proper vehicle for asserting" the type of claim was not the exact claim raised at the hearing. We stated that the purpose of Rule 3:5-7(d) is to "permit defendants to preserve an issue for appeal without requiring him or her, or the State, to spend time and resources trying the case in order to preserve the issue for appeal." Id. at 556.

We also note that defendant agrees in his brief that "the facts adduced at the suppression hearing provide all relevant information necessary to decide this issue."

We are satisfied the issue before us falls under the Rule 3:5-7(d) exception and we may review the suppression order. We therefore turn to a consideration of whether defendant's father provided valid consent for police to enter the apartment.

After police arrested defendant and Webb, they approached the basement door in the alleyway to "secure the apartment pending a search warrant application." Riaz saw a camera pointed toward the door. After noting the outer door was open, he knocked on the interior door and identified himself as police. After he knocked a second time, he heard a voice inside the apartment stating "come in, I can't get up." The interior door was unlocked.

Riaz saw defendant's father in bed in a bedroom to the left of the entrance. He advised defendant's father that defendant was under arrest and police were applying for a search warrant for the apartment. Defendant's father told Riaz that he lived with his son whose bedroom was next to his and the officers "could stay as long as they wanted."

When Riaz knocked on the door, he was not seeking consent to search the apartment. He was requesting permission to enter the apartment to secure it pending the application for a search warrant and to prevent the destruction of evidence. Defendant's father told police to enter, informing them he lived in the apartment with defendant and police could stay in the residence as long as necessary. Riaz did not ask defendant's father for consent to search the apartment or defendant's bedroom. He waited for the issuance of a search warrant before conducting the search and subsequent seizure of evidence.

Police were not required to inform defendant's father he had the right to refuse consent to enter the premises. See State v. Williams, 461 N.J. Super. 80, 101 (App. Div. 2019). After being invited to "come in," their entry into the apartment to prevent the destruction of evidence after defendant's arrest was reasonable. See State v. Pineiro, 369 N.J. Super. 65, 73 (App. Div. 2004) (stating defendant's giving the officers permission to enter "was the same as that of any other social guest or business visitor, and did not constitute a Fourth Amendment search"); State v. Padilla, 321 N.J. Super. 96, 108 (App. Div. 1999) (holding police did not need to advise of a right to refuse consent to the entry into a motel room but only to seek consent to search). And the subsequent search

and seizure was conducted under a valid search warrant as found by the trial court and not contested by defendant on appeal.

Any remaining arguments not addressed lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2)

Affirmed.

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



CLERK OF THE APPELLATE DIVISION