

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."  
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-4461-14T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LAQUAY J. GIBBS, a/k/a  
LAQUAY LIVINGSTON, KEVIN  
PERRY, JOHN GIBBS and  
KEVIN GIBBS,

Defendant-Appellant.

---

Submitted February 8, 2017 – Decided March 1, 2017

Before Judges Simonelli and Carroll.

On appeal from the Superior Court of New  
Jersey, Law Division, Atlantic County,  
Indictment No. 14-10-2966.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Stephen W. Kirsch, Assistant  
Deputy Public Defender, of counsel and on the  
brief).

Diane Ruberton, Acting Atlantic County  
Prosecutor, attorney for respondent (Melinda  
A. Harrigan, Special Deputy Attorney General/  
Acting Assistant Prosecutor, of counsel and  
on the brief).

PER CURIAM

Following the denial of his motion to suppress items seized from a hotel room, defendant Laquay J. Gibbs pled guilty to second-degree certain persons not to have weapons, N.J.S.A. 2C:39-7 (count eleven). In exchange, the State agreed to recommend a seven-year term of imprisonment with a five-year period of parole ineligibility pursuant to the Graves Act, N.J.S.A. 2C:43-6(c), and to dismiss the remaining ten counts of the indictment.<sup>1</sup> On April 13, 2015, the trial court sentenced defendant in accordance with the plea agreement. On appeal, defendant challenges the denial of his motion to suppress. For the following reasons, we affirm.

At the suppression hearing, Detective Lori Nolan of the Atlantic City Police Department testified that she was investigating the alleged sexual assault of a female victim who

---

<sup>1</sup> Those counts were: first-degree aggravated sexual assault of a helpless or incapacitated victim, N.J.S.A. 2C:14-2(a)(7) (count one); third-degree possession of a controlled dangerous substance (CDS), N.J.S.A. 2C:35-10(a)(1) (count two); third-degree manufacturing, distributing, or dispensing CDS, N.J.S.A. 2C:35-5(a)(1) and N.J.S.A. 2C:35-5(b)(13) (count three); second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b) (count four); second-degree possession of a firearm for an unlawful purpose, N.J.S.A. 2C:39-4(a) (count five); fourth-degree possession of a defaced firearm, N.J.S.A. 2C:39-3(d) (count six); second-degree committing a drug offense while possessing a firearm, N.J.S.A. 2C:39-4.1 (count seven); third-degree terroristic threats, N.J.S.A. 2C:12-3(a) (count eight); fourth-degree aggravated assault with a firearm, N.J.S.A. 2C:12-1(b)(4) (count nine); and fourth-degree possession of body armor penetrating bullets, N.J.S.A. 2C:39-3(f) (count ten).

reported that an individual named "K" sexually assaulted her; she was forced to do heroin; had a gun held to her head during one of the sexual assaults; and the assaults occurred in Room 311 of an Atlantic City hotel. Nolan relayed this information to Sergeant Stacy Herrerias of the Tactical Patrol Unit, along with a description of the suspect.

According to Herrerias, she responded, in uniform, to the hotel to investigate the matter and locate the suspect. She met Nolan and Detective Michelle Green there, and three other uniformed police officers later arrived. Herrerias and three uniformed officers went to Room 311. Herrerias knocked on the door, and a female inside the room asked who it was. Herrerias responded "it's me" out of concern that the female would be harmed if she identified herself as a police officer while a suspect was in the room and armed. The woman simultaneously asked "me who" and unlocked and opened the door. The woman responded "yes" when Herrerias asked if she could enter the room. The woman proceeded to back into the room and sat on the edge of the bed. Because she was not conducting a search of the room, Herrerias did not present a consent to search form, or advise the woman she had the right to refuse Herrerias's request to enter the room.

Herrerias and the other officers entered the room and saw two females sitting on the bed with a male sitting between them. The

male fit the description of the suspect who was alleged to be armed with a handgun. Herrerias immediately drew her weapon and ordered the male, later identified as defendant, to place his hands above his head and stand up so she could conduct a pat down search to assure he had no gun on him. The pat down revealed no weapons on defendant's person; however, while placing defendant and the two females into custody, Herrerias and the other officers saw in plain view the butt of a handgun sticking out from between the mattress and box spring and heroin on the bed where defendant had been sitting. Two officers who were present also testified and corroborated Herrerias's testimony. The State also presented photographs of the bed where the gun was sticking out from between the mattress and box spring.

One of the females who was inside the hotel room testified there was no gun or heroin there. The trial judge found her testimony not credible, and found the testimony of the State's witnesses was credible.

Defendant argued that the items seized from the hotel room should be suppressed because the police lacked consent to enter the hotel room. Noting that the facts in this case were nearly identical to those in State v. Padilla, 321 N.J. Super. 99 (App. Div.), certif. denied, 162 N.J. 198 (1999), the judge denied the motion. This appeal followed.

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

We are bound to uphold a trial court's factual findings in a motion to suppress provided those findings are supported by sufficient credible evidence in the record. Deference to those findings is particularly appropriate when the trial court has the opportunity to hear and see the witnesses and to have the feel of the case, which a reviewing court cannot enjoy. Nevertheless, we are not required to accept findings that are clearly mistaken based on our independent review of the record. Moreover, we need not defer to a trial . . . court's interpretation of the law because [l]egal issues are reviewed de novo.

[State v. Watts, 223 N.J. 503, 516 (2015) (citations omitted).]

Generally, in order for a search or seizure to be constitutionally permissible, a warrant must first be obtained, based on probable cause. State v. Maryland, 167 N.J. 471, 482 (2001). This requirement springs from the Fourth Amendment of the United States Constitution, and Article 1, Paragraph 7 of the New Jersey Constitution, which protect citizens against unreasonable searches and seizures. See State v. Rockford, 213 N.J. 424, 440-41 (2013).

A warrantless search is presumed invalid unless it falls within a recognized exception. State v. Witt, 223 N.J. 409, 422 (2015). Nonetheless, a balance must be maintained between

"individual freedom from police interference and the legitimate and reasonable needs of law enforcement." State v. Coles, 218 N.J. 322, 343 (2014). The State bears the burden, by a preponderance of the evidence, to establish that the warrantless search or seizure of an individual was justified in light of the totality of the circumstances. State v. Mann, 203 N.J. 328, 337-38 (2010).

The State has met its burden in this case. The officers were obligated to investigate, based on the information they received, whether the suspect who committed an armed sexual assault was located in Room 311 of the hotel. See Padilla, supra, 321 N.J. Super. at 107 (police investigated a motel after an anonymous caller reported three people entered a room with a gun). Thus, Herrerias's decision to knock, request permission to enter, and thereafter enter Room 311 for further investigation was reasonable. See ibid. (finding that officers did not need to advise occupant of a hotel room of her right to refuse to consent to their admission to the room when officers "merely sought permission to enter to continue their investigation"). Since the officers did not need to advise any occupants that they could refuse consent to the officers' entry for their investigation, it is inconsequential that other officers entered behind Herrerias. See id. at 108 (citing State v. Johnson, 68 N.J. 349, 346 (1975))

(holding that if the State seeks to rely on consent as the basis for a warrantless search, it has the burden of demonstrating knowledge on the part of the person involved that he or she had the right to refuse to consent, but here the officers did not seek consent to search).

Once an occupant inside the room opened the door and allowed Herrerias to enter, this gave the officers cause to follow the occupant inside the room. Id. at 107-08. The officers' presence in the hotel room was therefore constitutionally permissible, and it was their lawful presence which led to the plain view observations and seizure of heroin on the bed and a gun sticking out between the mattress and box spring. Similar to Padilla, once inside the room, the officers made visual observations, during the course of which they discovered the heroin and the gun. Id. at 108. Those items were properly seized under the plain view exception to the search warrant requirement. Ibid. As our Supreme Court recently iterated, the plain view doctrine allows seizures without a warrant so long as an officer is "lawfully . . . in the area where he observed and seized the incriminating item or contraband, and it [is] immediately apparent that the seized item is evidence of a crime." State v. Gonzales, 227 N.J. 77, 101 (2016). Defendant's arrest, and the seizure of the gun and heroin from the hotel room, were unimpeachable.

In accordance with Padilla, the officers' presence in the hotel room was justified. As the seizure of the gun and heroin in plain view was lawful, the motion to suppress was properly denied.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION