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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-4917-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTONIO L. TURNER,

Defendant-Appellant.

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Submitted December 5, 2017 – Decided December 27, 2017

Before Judges Reisner and Mayer.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Indictment No. 14-  
12-2892.

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

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

PER CURIAM

Defendant Antonio L. Turner appeals from a pretrial order denying his motion to suppress evidence. On appeal, defendant

argues that a third party, who consented to the requested search, did not have actual or apparent authority over the searched room and that evidence seized during the search should have been suppressed. In addition, defendant contends that his sentence was excessive. We disagree with defendant's contentions and affirm.

Defendant pled guilty to third-degree conspiracy, in violation of N.J.S.A. 2C:5-2, third-degree possession of a controlled dangerous substance, in violation of N.J.S.A. 2C:35-10(a)(1), and two counts of second-degree unlawful possession of a weapon, in violation of N.J.S.A. 2C:39-5(b). Consistent with the plea agreement, defendant was sentenced to seven years' incarceration, with forty-two months of parole ineligibility.

The facts leading to defendant's guilty plea are undisputed. Newark police officers witnessed defendant, along with other individuals, participate in a suspected drug transaction.<sup>1</sup> The officers observed defendant enter and exit a home in Newark for what they believed to be the purpose of retrieving narcotics for eventual sale. After arresting defendant, the police sought to search the house. The police obtained consent to search the home from the homeowner. The homeowner claimed that defendant was a

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<sup>1</sup> In addition to defendant, two other individuals, Rashawn Pickett and Thomas Herrill, were charged in connection with the suspected drug transaction.

friend of her grandson and had been using her grandson's room. The homeowner told the police that she had not seen her grandson in a few weeks. The search of the home uncovered weapons and narcotics.

A hearing was held on defendant's motion to suppress the drug evidence. The only witness to testify was Newark Police Detective Horacio Lorenzo. Lorenzo testified that he and several other officers conducted a narcotics surveillance on July 15, 2014. As part of this surveillance, the police arrested an individual who purchased narcotics, but did not apprehend the seller.

The next day, the police returned to the same location seeking to arrest the seller. According to Lorenzo, Sergeant Johnny Whitaker arrived at the location and stated that he observed an individual from the prior day's surveillance, Rashawn Pickett, engage in a drug transaction. Whitaker observed Pickett speak with defendant. Defendant then walked into a nearby home, exited a few moments later, and handed several items to Pickett. At that time, Whitaker instructed the officers to arrest defendant and Pickett.

Lorenzo testified that incident to defendant's arrest, the police found several glassine envelopes of heroin. Lorenzo then walked to the single family home where defendant was seen entering and exiting just prior to the transaction. The police knocked on

the front door and an elderly woman, P.C., answered.<sup>2</sup> Lorenzo told P.C. that the police had been conducting surveillance for suspected drug sales in the area and that an individual who had been arrested was seen entering and exiting P.C.'s home. Lorenzo testified that he asked P.C. if she knew of any activities in or around her home related to drug dealing. In response to the detective's questions, P.C. stated that she owned the home and that her grandson had been staying with her. However, P.C. told Lorenzo that her grandson had been gone for a few weeks, that his friends had been using his room, and had "pretty much [taken it] over." P.C.'s son-in-law, K.H., lived upstairs in the same house with P.C. K.H. told Lorenzo that he did not intervene in his mother-in-law's attempts to get defendant and his companions out of the house because K.H. was afraid of them. K.H. also told Lorenzo that he and P.C. repeatedly told defendant he could not be in the house and that it was a "constant battle" to get rid of defendant and defendant's friends. At the suppression hearing, Lorenzo testified that the area formerly occupied by P.C.'s grandson consisted of two adjoining rooms closed off from the rest of the home. Lorenzo further testified that P.C. explained defendant only used her grandson's room.

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<sup>2</sup> We use initials to protect the identity of the homeowner.

According to the hearing testimony, Lorenzo told P.C. that defendant's observed behavior was consistent with storing narcotics at her home. With this explanation, Lorenzo requested permission to search P.C.'s home. Lorenzo advised P.C. that she could refuse to consent to a search of her home. P.C. wanted to speak with a relative who was an attorney. According to Lorenzo, P.C. spoke to someone on the phone for several minutes and then allowed the police to search the rooms that had been occupied by her grandson. P.C. also signed a written consent to search form. The search of the two rooms used by defendant produced two guns, eleven Ziploc bags of marijuana, six glassine envelopes of heroin, eleven vials of cocaine, and thirteen Xanax pills.

During cross-examination at the suppression hearing, Lorenzo testified that the searched rooms in P.C.'s home did not have a dining room table or couch. The only items in the rooms were a radio, some clothes, and sneaker boxes which indicated to the detective that the rooms were used as a bedroom. P.C. told Lorenzo that the rooms were previously occupied by her grandson and that she had not seen her grandson for a few weeks. Neither Lorenzo nor any of the other officers involved in the consent search attempted to contact P.C.'s grandson. When asked to specify what P.C. meant by "weeks," Lorenzo testified that he was not sure if this meant two, three, or four weeks. In accordance with his

written report, Lorenzo also testified that defendant had only ever been allowed in the grandson's rooms according to P.C. Lorenzo did not independently verify that P.C. owned the home other than the statements of ownership provided by P.C. and her son-in-law who also lived in the home.

Based on Lorenzo's testimony, the motion judge found that P.C. told the detective that "her grandson's friends had taken over what used to be his room as he was no longer around . . . ." The motion judge also found P.C. told Lorenzo that defendant "was only allowed to use a specific area in the residence, her grandson's former room." Finally, the judge noted P.C. expressed to Lorenzo that "due to her precarious health, she had been powerless to prevent her grandson's friends from coming and going from her house as they pleased, and that they had taken over that area of the house."

In denying defendant's motion to suppress, the judge concluded that:

The defendant[] could have no reasonable expectation of privacy in the area of [P.C.'s] home that [he was] using without her permission: there has been no evidence presented before this Court that the defendant[] paid rent to the homeowner, or that [he] had the authority to deny her access to that area of the house.

The judge held that "the officers had a reasonable belief that [P.C.] had the authority to first permit entry into her home . . . [and] had the requisite access and control over the room and that she consented to the search." The judge further ruled that P.C. had been advised of her right to refuse the search or to stop the search at any time. Under these circumstances, the motion judge determined that P.C. provided valid third-party consent to search in her home.

After denial of his motion to suppress, defendant pled guilty pursuant to a negotiated plea agreement. The judge accepted defendant's guilty plea. At the sentencing hearing, the judge noted that defendant had eleven prior arrests as an adult, this was defendant's second indictable conviction in New Jersey, and defendant had a multistate arrest record as well as a pending violation of probation charge. The judge found the following aggravating factors: the risk that the defendant would commit another offense, the extent of the defendant's prior criminal record and the seriousness of the offenses of which he/she has been convicted, and the need for deterring the defendant and others from violating the law. The judge found no mitigating factors.

On appeal, defendant raises the following issues:

POINT I - SUPPRESSION WAS REQUIRED BECAUSE THE OFFICERS DID NOT REASONABLY RELY ON A THIRD PARTY'S CONSENT TO ENTER THE ROOM WITHOUT

MAKING INQUIRIES INTO THE THIRD PARTY'S  
AUTHORITY. U.S. CONST. AMENDS. IV, XIV; N.J.  
CONST. ART. I, PARA. 7

POINT II - MR. TURNER'S SENTENCE IS EXCESSIVE,  
UNDULY PUNITIVE, AND MUST BE REDUCED

I.

A. Motion to Suppress

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)). 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 well-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)). 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 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 a 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 judge properly found P.C. was the home's owner and, thus, had the authority to allow the police to search her residence. Moreover, the judge correctly determined the P.C.'s consent to search was knowing and voluntary. P.C. was advised that she could refuse consent or even decide to terminate the search at any time after she consented.

The judge also correctly found defendant was a trespasser. P.C. told the police that she repeatedly attempted to get defendant and his friends to leave her home. P.C. was unable to get defendant out of her home and was powerless to do so due to her advanced age and her health problems. Based on Lorenzo's uncontroverted and credible testimony, the judge determined defendant was a trespasser. As a trespasser, defendant has no standing to object to the search. See State v. Brown, 216 N.J. 508, 529 (2014). Further, based on what P.C. told the police, they had a reasonable basis to believe that defendant was a trespasser. They also had reasonable grounds to believe that P.C., as the homeowner, had authority to consent to a search of the bedroom which her grandson was no longer occupying. See Cushing, 226 N.J. at 200.

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

#### B. Excessive Sentence

In reviewing a sentence on appeal, we assess the trial court's "sentencing determination under a deferential standard of review." State v. Grate, 220 N.J. 317, 337 (2015) (quoting State v. Lawless, 117 N.J. 594, 606 (2013)). We are "bound to affirm a sentence, even if [we] would have arrived at a different result, as long as the trial court properly identifies and balances aggravating and

mitigating factors that are supported by competent credible evidence in the record." Ibid. (quoting State v. O'Donnell, 117 N.J. 210, 215 (1989)).


"In determining the appropriate sentence to impose within the range, judges first must identify any relevant aggravating and mitigating factors set forth in N.J.S.A. 2C:44-1(a) and (b) that apply to the case." State v. Case, 220 N.J. 49, 64 (2014) (citing State v. Fuentes, 217 N.J. 57, 72 (2014)). "The finding of any factor must be supported by competent, credible evidence in the record." Ibid. (citing State v. Roth, 95 N.J. 334, 363 (1984)). "The Court Rules require that the sentencing court explain the reasoning behind its findings. That explanation is important for meaningful appellate review of any criminal sentence challenged for excessiveness." State v. Bieniek, 200 N.J. 601, 608 (2010) (internal citations omitted).

In this case, the trial judge explained his reasoning in analyzing the required factors. The judge found that defendant had eleven prior arrests, this arrest was defendant's second indictable conviction in New Jersey, defendant had a multistate arrest record, and defendant had a pending probation violation charge. The sentence imposed by the judge was based on defendant's extensive criminal history in multiple states.

Based on the judge's analysis and explanation for the sentence imposed, we reject defendant's challenge that his sentence was excessive. The aggravating factors were analyzed and the sentence was supported by substantial credible evidence. Further, the judge explained why he found no mitigating factors. Moreover, the sentence was consistent with the recommendation in the negotiated plea agreement. Thus, we find that defendant's sentence does not shock the judicial conscience. See O'Donnell, 117 N.J. at 215-216.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION