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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3892-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

V.

ALLAN FARMER, a/k/a RAHEEM TUBBLETON, A.J. FARMER, and ALLEN J. FARMER,

Defendant-Appellant.

Submitted January 23, 2018 - Decided February 15, 2018

Before Judges Yannotti and Carroll.

On appeal from Superior Court of New Jersey, Law Division, Union County, Indictment Nos. 08-12-1156, 09-04-0317, 09-04-0318, 09-10-0926, 10-08-0870, and 11-02-0159.

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

Gurbir S. Grewel, Attorney General, attorney for respondent (Sarah D. Brigham, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

In this appeal, defendant Allan Farmer challenges the denial of his motion to suppress drugs and a weapon that were seized during a search of his motel room, and a weapon that was seized during a subsequent search of an unoccupied apartment. Both searches were conducted without a warrant, and had their genesis in a tip police received from a known informant that defendant possessed an assault weapon, which he planned to move from one room to another room in the motel. For the reasons that follow, we affirm.

I.

Defendant was charged with first-degree attempted murder and various drug and weapons offenses in a series of Union County indictments, including Indictment Nos. 08-11-0953-I, 08-12-1156-I, 09-04-0317-I, 09-04-0318-I, 09-07-0600-I, 09-10-0926-I, 10-08-0870-I, and 11-02-0159-I. Specifically at issue in this appeal are Indictment Nos. 09-04-0317-I and 09-04-0318-I, which stem from the December 4, 2008 warrantless searches of the motel room and vacant apartment.

Indictment No. 09-04-0317-I charged defendant with third-degree possession of cocaine, N.J.S.A. 2C:35-10(a)(1) (count one); second-degree unlawful possession of an assault firearm, N.J.S.A. 2C:39-5(f) (count two), fourth-degree possession of a large capacity ammunition magazine, N.J.S.A. 2C:39-3(j) (count three);

third-degree unlawful possession of a shotgun, N.J.S.A. 2C:39-5(c)(1) (count four); and third-degree possession of a prohibited weapon (sawed-off shotgun), N.J.S.A. 2C:39-3(b) (count five). In Indictment No. 09-04-0318-I, defendant was charged with second-degree certain persons not to possess weapons, N.J.S.A. 2C:39-7(b)(1) (count one); and fourth-degree certain persons not to possess weapons, N.J.S.A. 2C:39-7(a) (count two).

From March 19, 2010, to April 12, 2010, the trial court conducted evidentiary hearings on defendant's motions to suppress evidence relating to Indictment Nos. 08-11-0953-I, 09-04-0317-I, 09-04-0318-I, and 09-07-0600-I.[1] Pertinent to this appeal, on April 19, 2010, the motion judge denied defendant's motion to suppress the guns and drugs seized from the motel room and vacant apartment.

On January 15, 2016, defendant entered into a consolidated plea agreement on Indictment Nos. 08-12-1156-I, 09-04-0317-I, 09-04-0318-I, 09-10-0926-I, 10-08-0870-I, and 11-02-0159-I. Defendant pled guilty to (1) count two of Indictment No. 08-12-1156-I, third-degree possession of cocaine; (2) count one, third-degree possession of cocaine, and count two, third-degree unlawful possession of an assault firearm, under Indictment No. 09-04-0317-

[1] The record reflects the court granted defendant's motion to suppress evidence in Indictment No. 09-07-0600-I, presumably resulting in the dismissal of that indictment.

I; (3) count two of Indictment No. 09-10-0926-I, second-degree resisting arrest; and (4) count one of Superseding Indictment No. 11-02-0159, first-degree attempted murder. Defendant reserved the right to appeal the denial of his suppression motions. In return, the State agreed to (1) dismiss the remaining counts of those four indictments; (2) dismiss Indictment Nos. 09-04-0318 and 10-08-0870-I in their entirety; and (3) recommend an aggregate twelve-year prison sentence with an eighty-five percent parole ineligibility period pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. On March 11, 2016, the trial court sentenced defendant to an aggregate ten-year prison term, with an eighty-five percent period of parole ineligibility under NERA.

II.

As noted, in this appeal, defendant challenges only the December 4, 2008 warrantless searches of his motel room and an unoccupied apartment, which formed the basis of Indictment Nos. 09-04-0317-I and 09-04-0318-I. We recount the facts developed in connection with defendant's motion to suppress the evidence seized in those searches.

The State presented the testimony of Detective James Malone, Jr. at the suppression hearing. Malone estimated he had made over 1000 narcotics-related arrests and "probably a couple hundred"

gun-related arrests during his twenty-five-year career with the Elizabeth Police Department.

Malone testified that on December 4, 2008, he received an in-person tip from a confidential informant (CI) that defendant possessed a weapon in Room 204 of the Knights Inn. The CI referred to the weapon as an AK47, but he described it to Malone as a smaller automatic weapon. The CI advised Malone that defendant told the CI he was preparing to move the AK47 to room 210 "because too many people knew he had it and sooner or later the police were going to find out and come looking for it."

According to Malone, the CI had provided credible information that led to arrests in the past. Malone was already familiar with defendant "as someone who was violent and selling drugs in the Elizabeth area." Malone was also aware that the Knights Inn was a high-crime area, known for narcotics and prostitution, and he had previously made some ten to fifteen arrests there.

After receiving the tip, Malone, accompanied by Sergeant Todd Kelly, Detective Lawrence Smith, Detective Thomas Mekros, and Detective Jim D'Oreo, immediately drove to the Knights Inn to investigate, arriving there at approximately 9:49 p.m. As the officers pulled into the Knights Inn parking lot in their unmarked car, they observed defendant walk across the second-floor walkway and enter Room 204 with a key card.

Malone testified there was no "vantage point where [the police] could sit and watch that particular apartment without sooner or later being detected as police officers." He further explained that, even if he had a vantage point where he could watch the hotel room, he would not be able to tell if someone left the room with the gun because "[i]t could have been placed down their pants [or] under a jacket." He also deemed it "way too dangerous to place someone up on the second floor waiting for someone to come out with . . . a weapon[,]" and stated the police officers' "vests would be useless with an AK47."

Malone cited his inability to safely approach Room 204 to make further observations, the danger involved with the assault weapon, and the lateness of the hour, as reasons he decided to attempt to gain defendant's consent to search the motel room rather than seek a search warrant. He conceded, however, that the officers have "pager numbers" and "[j]udges that [they] can call to get warrants no matter what the hour."

The police proceeded to Room 204, with Detective D'Oreo leading the way. D'Oreo walked by Room 204's window and observed defendant in the room. He also saw a woman, subsequently identified as M.P.,[2] lying on the bed.

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[2] M.P. subsequently testified at the suppression hearing. We use initials to protect the privacy interests of the witnesses.

D'Oreo knocked and defendant opened the motel room door. Malone asked defendant if the officers could enter and defendant consented. Defendant was aware they were police officers, and Malone informed defendant they "had a report that he was in possession of a . . . firearm, or . . . [they] suspected that he was in possession of a firearm." Malone then "asked [defendant] if he had a weapon, he said he did and I said where is it, he pointed towards the bathroom. And I asked [defendant] if I could go retrieve it and he said yes."

Malone went to the bathroom and discovered a semi-automatic Tec 9 assault weapon and a plastic bag containing a vial of cocaine. The assault weapon was loaded with an attached large-capacity magazine containing eighteen rounds of ammunition. The police also recovered marijuana and drug paraphernalia, which they observed in plain view on the nightstand next to the bed.

According to Malone, defendant was cooperative, was not handcuffed, and there were no guns drawn on him throughout this interaction. On cross-examination, Malone conceded the police had no consent forms with them and did not inform defendant he had the right to refuse consent to search the room.

After Malone stated he found the weapon, Detective Mekros advised defendant of his Miranda[3] rights and asked him if he had any other weapons. Defendant replied "there was another shotgun located at XXX Westminster Ave."[4] Malone testified that "[a]s far as the apartment number[,] [defendant] didn't know. He said if you walked in . . . through the front door it was the first apartment to the right and it would be in there." Defendant was then arrested and transported to police headquarters.

Malone and the other officers then drove to XXX Westminster Avenue, which was also in an area known to be "[h]igh in crime" and "high in narcotics and prostitution." Upon arriving, Malone rang the superintendent's doorbell and the superintendent's brother, J.H., answered. In his statement to police, the superintendent, A.B., explained that J.H. "is sort of like [his] helper and he lives with [him]."

Believing that J.H. was the superintendent, Malone asked him if anyone lived in the apartment that defendant had described to the police. J.H. responded "no it was vacant" but "they were getting ready to rent it." When asked if anything was in the

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

[4] We use a fictitious street address to protect the privacy of the owners and occupants of the multi-family dwelling.

apartment, J.H. replied "no, there shouldn't be." Malone asked J.H. if he could enter the apartment to look, and J.H. consented.

Malone and the other officers entered the apartment and, in the kitchen, Detective Larry Smith found a sawed-off shotgun on top of the cabinets. Smith also found a bag containing numerous letters addressed to defendant. Malone testified that the apartment was "clearly vacant" and there was "[n]o furniture, no clothes, [and] some paint cans." He elaborated that the apartment "smelt of freshly painted walls or ceilings for that matter."

The superintendent's statement to police was admitted in evidence without objection at the suppression hearing. In his statement, A.B. confirmed that the apartment had been vacant for approximately three months. Consequently, defendant may have had access to the apartment "because it was unlocked." A.B. stated he had seen defendant around XXX Westminster Avenue "[a] lot of times" because he "sells drugs."

M.P. testified on behalf of defendant at the suppression hearing and gave a different version of events. M.P. described herself as defendant's girlfriend and confirmed she was present in the motel on the night of the police entry. According to M.P., the police did not announce their presence but instead "they kicked the door in and [ran] in with guns, and stuff, and they put us in handcuffs." The police then began searching the room while asking

"Where's the gun at? Where's the gun at?" After searching for approximately twenty minutes, one of the officers announced he found a gun in the bathroom. On cross-examination, M.P. denied any knowledge of the gun or the marijuana on the nightstand.

After hearing the testimony of both witnesses, the motion judge found Malone "was a credible and believable witness." Specifically, the judge found Malone was "calm, persuasive, prepared, and responsive to the questions[,]" and there was "nothing in [Malone's] demeanor that caused me any problems in accepting the truthfulness of his testimony."

In contrast, the judge found M.P. "not to be a credible or believable witness." The judge cited M.P.'s "prior conviction for prostitution, her hesitancy in responding [to] questions, and her admitted relationship with . . . defendant" as factors bearing on his credibility determination.

The judge found that, while probable cause may not have initially existed to search the motel room based on the CI's tip alone, "when Detective Malone saw [defendant] use a key card to enter [room 204], then at that point probable cause had clearly ripened." The judge concluded that "exigent circumstances . . . existed and they justified not applying for [a search] warrant." The judge elaborated:

> [W]e have a firearm by a violent offender in a fly-by-night hotel where . . . there is occupancy that is in and out, we know that a defendant is . . . aware that too many people know [about] the gun and are about to move it, we have a surveillance point where the officers could easily be detected if they waited [too] long. I'm satisfied that it was objectively reasonable under the circumstances for the police officers upon seeing [defendant] go into that room for those officers to go to that room and to ask and to inquire regarding it.
>
> I am further satisfied that upon [corroborating] the tip, by observing [defendant] enter Room [204] it was reasonable for the officers to enter without a warrant and to search and seize any weapons found.

The judge also found that defendant's consent to the search of the motel room formed an independent basis to validate the search. The judge reasoned:

> [A]lternately, I'm also satisfied that there was consent to search here. After knocking at the door and allowing the . . . officers['] entry into the apartment, once he was confronted with the information they had it, [defendant] gave no indication . . . of anything other than cooperation, he never said anything, he nodded in the direction of the . . . bathroom where the weapon was ultimately recovered.
>
> I'm satisfied that given [defendant's] previous experience, he testified under another indictment that he understands the system as well as anyone, and . . . under all of the circumstances he knew that he had a right to refuse [the] search, he had a right to refuse the . . . occupancy of that motel room by the officers. There was certainly no

> break in by the officers. They confronted him with the information they had and he gave it up willingly. So I'm satisfied that there is probable cause plus exigency but alternately I'm satisfied that the defendant consented to this search.

With respect to the ensuing search at XXX Winchester Avenue, the judge found it "clear" that defendant "has standing to contest seizure in that vacant room." Nonetheless, the judge determined that

> merely because [defendant] has automatic standing to contest the seizure does not mean that he has an expectation of privacy in a room in which he has no tenancy.
>
> Merely because he was an apparent trespasser or . . . a former tenant does not mean that he has the right to assert that the superintendent of the building cannot consent to a search of that vacant apartment and I'm satisfied that the recovery of the firearms at [XXX] . . . [Westminster] Avenue was reasonable under the circumstances. That search is good without the necessity of a warrant . . . .
>
> And I'm also satisfied that under [Wong Sun v. United States, 371 U.S. 471 (1963),] even if there was any illegal arrest . . . in the initial intrusion, that the providing of [defendant] with his Miranda [r]ights and the consent of the . . . superintendent that the recovery of the firearm[] would have been admissible even had there been any original violation but I don't find there was any Fourth Amendment violation to begin with.

Consequently, the judge denied defendant's motion to suppress the evidence seized from the motel room and vacant apartment. This

appeal followed, in which defendant presents the following arguments:

> THE TRIAL COURT'S FAILURE TO SUPPRESS THE EVIDENCE SEIZED IN THE ILLEGAL SEARCHES OF THE MOTEL ROOM AND THE APARTMENT VIOLATED DEFENDANT'S CONSTITUTIONAL RIGHTS.
>
> A. NEITHER THE INFORMER'S TIP ALONE NOR THE CORROBORATION OF THE ASPECT OF THE TIP THAT PLACED [DEFENDANT] AT THE MOTEL PROVIDED PROBABLE CAUSE TO SEARCH THE MOTEL ROOM.
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> B. THE TRIAL JUDGE'S FINDINGS OF FACT WITH RESPECT TO THE SEARCH OF THE MOTEL ROOM ARE NOT BASED ON CREDIBLE EVIDENCE IN THE RECORD.
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> C. [DEFENDANT] DID NOT GIVE VALID CONSENT TO SEARCH BECAUSE THE POLICE DID NOT TELL HIM THAT HE HAD THE RIGHT TO REFUSE CONSENT.
>
> D. NO EXIGENCY JUSTIFIED THE WARRANTLESS SEARCH.
>
> E. THE EVIDENCE SEIZED FROM THE APARTMENT WAS EXCLUDABLE AS THE FRUIT OF THE POISONOUS TREE BECAUSE IT WAS THE PRODUCT OF THE UNLAWFUL SEARCH OF THE MOTEL ROOM.

II.

Our Supreme Court has recently reaffirmed the principles by which our review is governed:

> An appellate court reviewing a motion to suppress evidence in a criminal case must uphold the factual findings underlying the trial court's decision, provided that those findings are "supported by sufficient credible evidence in the record." State v. Scriven, 226 N.J. 20, 40 (2016). The suppression motion judge's findings should be overturned "only if they are so clearly mistaken 'that the interests of justice demand intervention and correction.'" State v. Elders, 192 N.J. 224, 244 (2007) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). However, we owe no deference to conclusions of law made by lower courts in suppression decisions, which we instead review de novo. State v. Watts, 223 N.J. 503, 516 (2015).
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> [State v. Boone, ___ N.J. ___, ___ (2017) (slip op. at 9).]

An appellate court remains mindful not to "disturb the trial court's findings merely because 'it might have reached a different conclusion were it the trial tribunal' or because 'the trial court decided all evidence or inference conflicts in favor of one side' in a close case." Elders, 192 N.J. at 244 (quoting Johnson, 42 N.J. at 162). Rather, we reverse only when the court's findings "are so clearly mistaken 'that the interests of justice demand intervention and correction.'" Ibid. (quoting Johnson, 42 N.J. at 162).

Under the Fourth Amendment of the United States Constitution and Article 1, Paragraph 7 of the New Jersey Constitution, a warrantless search is presumed invalid, and places the burden on

the State to prove that the search "falls within one of the few well-delineated exceptions to the warrant requirement." State v. Pineiro, 181 N.J. 13, 19 (2004) (quoting State v. Maryland, 167 N.J. 471, 482 (2001)).

A.

With these principles in mind, we first address defendant's arguments with respect to the search of the motel room. It is true, as defendant contends, that "[p]olice are generally required to secure a warrant before conducting a search of . . . a hotel room." State v. Hathaway, 222 N.J. 453, 468 (2015) (citing Stoner v. California, 376 U.S. 483, 486 (1964)). Defendant contends the trial court erred in upholding the validity of the search of the motel room based on the exigent circumstances and consent exceptions to the warrant requirement.

(i) Exigent Circumstances

"New Jersey law establishes that one exception to the warrant requirement of Article I, Paragraph 7 is a search justified by probable cause and exigent circumstances." Brown v. State, 230 N.J. 84, 101 (2017).

> Although "exigent circumstances" cannot be precisely defined or reduced to a neat formula, see State v. Nishina, 175 N.J. 502, 516 (2003), some factors to be considered in determining whether law enforcement officials faced such circumstances are the urgency of the situation, the time it will take to secure

> a warrant, the seriousness of the crime under investigation, and the threat that evidence will be destroyed or lost or that the physical well-being of people will be endangered unless immediate action is taken. . . .
>
> At the very least, exigent circumstances will be present when inaction due to the time needed to obtain a warrant will create a substantial likelihood that the police or members of the public will be exposed to physical danger or that evidence will be destroyed or removed from the scene.
>
> [State v. Johnson, 193 N.J. 528, 552-53 (2008).]

"Police officers oftentimes must rely on information provided by others in assessing whether there is probable cause to believe a crime has been committed or whether there is an objectively reasonable basis to believe an ongoing emergency threatens public safety." Hathaway, 222 N.J. at 470-71. Hearsay may constitute probative evidence of probable cause "so long as a substantial basis for crediting the hearsay is presented." State v. Smith, 155 N.J. 83, 92 (1998) (quoting State v. Novembrino, 105 N.J. 95, 111 (1987)).

An informant's "veracity" and "basis of knowledge" are two highly relevant factors under the totality of the circumstances. Ibid. A deficiency in one of those factors "may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability."

Illinois v. Gates, 462 U.S. 213, 233 (1983). An informant's veracity may be established in a variety of ways. For example, "the informant's past reliability will contribute to the informant's veracity." State v. Zutic, 155 N.J. 103, 110-11 (1998) (citations omitted).

In this case, there is sufficient credible evidence in the record supporting the motion judge's ruling that exigent circumstances existed at the time of the officers' search of defendant's motel room and that the police had probable cause to search the room.

As required under Johnson, Detective Malone and his fellow officers had probable cause to believe the public would be exposed to physical danger and defendant would remove a dangerous assault weapon from the scene if they did not search his motel room. The tip that created this probable cause was not offered anonymously. Rather, it came from a known informant, who explained to Malone that defendant was preparing to move an assault weapon out of his motel room "because too many people knew he had it and sooner or later the police were going to find out and come looking for it."

The veracity of the CI's information was buttressed by his past credibility. The CI had provided information to the police in the past, which led to arrests. Furthermore, the CI's source of knowledge came from his direct conversation with defendant,

during which defendant himself spoke about the gun and expressed to the CI his intention to move it. Additionally, Malone already knew defendant "as someone who was violent and selling drugs in the Elizabeth area."

Malone testified that he and the other officers did not have a vantage point where they could watch defendant's motel room "without sooner or later being detected as police officers." He further indicated that, even if the police had a vantage point from which they could watch the room, they would not be able to tell if someone left the room with the weapon because it "could have been placed down their pants [or] under a jacket." Malone testified, however, that he and the other officers were able to observe defendant walking across the second-floor walkway of the hotel and into Room 204, using a key card to get in, thus corroborating the CI's information.

We must "examine the conduct of [the police] in light of what was reasonable under the fast-breaking and potentially life-threatening circumstances that were faced at the time." Hathaway, 222 N.J. at 469 (citing State v. Frankel, 179 N.J. 586, 599 (2004)). "When viewing the circumstances of each case, a court must avoid 'the distorted prism of hindsight' and recognize 'that those who must act in the heat of the moment do so without the

luxury of time for calm reflection or sustained deliberation.'" Ibid. (citing Frankel, 179 N.J. at 599)).

Here, the police were confronted with rapidly developing circumstances. The C.I. reported that defendant had a dangerous assault weapon in the motel room and planned to move it. The officers recognized defendant as a violent person who had previously engaged in illegal drug transactions. The police thus faced a situation where a substantial likelihood existed that they, along with any occupants of the motel, would be exposed to physical danger, and defendant could have concealed the weapon and removed it from the scene, during the period of time required to obtain a search warrant. We conclude that credible evidence in the record supports the judge's determination that the officers had probable cause to search defendant's motel room under the exigent circumstances exception to the warrant requirement.

(ii) Consent

Consent is a well-recognized exception to the Fourth Amendment's search warrant requirement. Schneckloth v. Bustamonte, 412 U.S. 218, 227-28 (1973). Furthermore, "consent searches are considered a 'legitimate aspect of effective police activity.'" State v. Domicz, 188 N.J. 285, 305 (2006) (quoting Schneckloth, 412 U.S. at 228).

"Consent may be obtained from the person whose property is to be searched, from a third party who possesses common authority over the property, or from a third party whom the police reasonably believe has authority to consent." State v. Maristany, 133 N.J. 299, 305 (1993) (citations omitted). To be valid, a consent to search must be voluntary and knowing in nature. Schneckloth, 412 U.S. at 222. In New Jersey, the person giving consent must first be advised of his or her right to refuse. State v. Johnson, 68 N.J. 349, 353-54 (1975).

Preliminarily, defendant concedes the State was not required to show he knew he could refuse to let the police enter the motel room. See State v. Padilla, 321 N.J. Super. 96, 102-03 (App. Div. 1999) (distinguishing between consent to allow police to enter motel room, which does not require notice of right to refuse, and consent to let police search the room, which requires that defendant be advised of right to refuse).

Notwithstanding, we part company with the motion judge's conclusion that defendant validly consented to the subsequent search of the room. It is undisputed the police did not inform defendant of his right to refuse consent. Nor can we infer from the fact that defendant was previously involved in "the system" that he knew he had the right to refuse consent or otherwise had a choice in the matter. Accordingly, on this record, we are

constrained to find defendant's consent to search the room was not voluntary.

B.

Finally, we address defendant's challenge to the subsequent search of the XXX Westminster Avenue apartment. Defendant argues the sawed-off shotgun seized there should be suppressed as the fruit of the illegal search of the motel room. He contends that, "[h]ad the police not conducted the unconstitutional search of the motel room and found a gun, they would not have arrested [defendant] and obtained his confession concerning the second gun at the apartment." We disagree.

"The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion." Wong Sun, 371 U.S. at 485. "[V]erbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest . . . is no less the 'fruit' of official illegality than the more common tangible fruits of the unwarranted intrusion." Ibid.

Here, the "fruit of the poisonous tree" doctrine does not apply because the search of the motel room was valid under the exigent circumstances exception to the warrant requirement. Moreover, defendant told the officers about the gun in the

Westminster Avenue apartment after he was administered Miranda warnings, the validity of which he does not otherwise challenge.

We note further that "under Article I, Paragraph 7 of the New Jersey Constitution, 'a criminal defendant is entitled to bring a motion to suppress evidence obtained in an unlawful search and seizure if he has a proprietary, possessory or participatory interest in either the place searched or the property seized.'" State v. Randolph, 228 N.J. 566, 581-82 (2017) (quoting State v. Alston, 88 N.J. 211, 228 (1981)). However, "[a]n accused will not have standing to challenge a search of abandoned property, property on which he was trespassing, or property from which he was lawfully evicted." Id. at 585 (citations omitted). "The State has the burden of establishing that one of those exceptions applies to strip a defendant of automatic standing to challenge a search." Ibid. (citing State v. Brown, 216 N.J. 508, 527-28 (2014)).

"A landlord of a building or his agent – if identifiable and available – presumably would know whether an apartment is leased and to whom." Id. at 586. "[C]ontacting the person who knows the rental status of the apartment is one way the police can identify a trespasser." Ibid.

Here, the police contacted the building superintendent and were informed by his helper, J.H., that the apartment defendant described was vacant and unoccupied. Accordingly, defendant

lacked any possessory or proprietary interest in the Westminster Avenue apartment and at best was a trespasser there, as the motion judge aptly concluded. Further, the police reasonably believed J.H. was the superintendent and was thus vested with the authority to consent to the search of the vacant apartment.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION