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APPROVAL OF THE APPELLATE DIVISION**

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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1626-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WILLIAM LEE a/k/a
WILLIAM W. LEE,
and WILLIAM T. LEE,

Defendant-Appellant.

Submitted December 7, 2022 – Decided July 18, 2023

Before Judges Haas and DeAlmeida.

On appeal from the Superior Court of New Jersey,
Law Division, Cumberland County, Indictment No.
16-05-0427.

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

Jennifer Webb-McRae, Cumberland County
Prosecutor, attorney for respondent (Stephen C. Sayer,
Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant William Lee appeals from a September 13, 2017 judgment of conviction of drug possession with intent to distribute entered after a guilty plea. At issue is the validity of the Law Division's December 9, 2016 order denying Lee's motion to suppress evidence seized at his arrest and during a warrantless search of his home. We remand for required findings of fact based on credibility determinations.

I.

In 2016, defendant was arrested on the porch of his Millville home after a State Trooper observed him engaging in what the officer believed to be three drug sale transactions. A large amount of heroin and cash were recovered when defendant was arrested.

A grand jury indicted defendant, charging him with: (1) third-degree possession with intent to distribute a controlled dangerous substance (CDS) (heroin), N.J.S.A. 2C:35-5(b)(3); and (2) third-degree possession of CDS (heroin), N.J.S.A. 2C:35-10(a)(1).

Defendant moved to suppress the evidence obtained during his arrest. He argued that the State Troopers who arrested him lied when they reported that they found heroin on his person and that they entered his home without a

warrant and with no justification for an exception to the warrant requirement to search for evidence. The trial court held an evidentiary hearing at which defendant, his girlfriend JoAnn Mojica, and State Troopers Kite, Cresci, and Shaub testified.

Shaub testified that during a surveillance operation, he observed defendant engage in two suspected drug transactions outside of his house. The trooper testified that he subsequently witnessed a third transaction between defendant and a man on the porch of defendant's home. According to Shaub, the two men were having a conversation, the man handed defendant money, and then defendant went into his house. At that point, Shaub alerted the other troopers who were nearby to arrest defendant and the man.

Troopers Kite and Cresci testified about the circumstances of defendant's arrest. So did defendant and Mojica. Their accounts of the arrest differed in significant ways.

The witnesses agree that defendant was arrested on his porch. Kite testified that when he was arresting defendant, he saw defendant drop six blue wax folds of suspected heroin to the ground. He also testified that when he searched defendant, he found on defendant's person 142 more blue wax folds

of suspected heroin and \$940 in currency. Defendant testified that when he was arrested, the only thing found on his person by Kite was the currency.

The troopers testified that the door to defendant's house was open during the arrest. According to the troopers, because the door was open, they could see inside. Cresci testified that from the threshold of the doorway he saw wax folds of suspected heroin on a bookshelf against the wall near the door. The wax folds matched in appearance those found on defendant's person when he was arrested. Cresci testified that he could not see into the entire house because the door opened inward and blocked his view to the left of the doorway. Unsure if anyone else was in the house who could destroy the evidence, Cresci entered the home and collected the suspected contraband, which turned out to be approximately fifty blue wax folds of suspected heroin.

Defendant and Mojica testified that when defendant was arrested the door to his house was closed. Defendant testified that the troopers opened the door and went inside the home immediately after he was handcuffed and searched for evidence without a warrant or justification for doing so.

Mojica testified that when defendant was arrested, she was sleeping on a mattress in the living room of his house because she recently had foot surgery. Mojica testified that she was awakened by noise on the porch. According to

Mojica, the door had been closed, but she saw the front door swing open and the shadow of someone holding a gun through the window of the door. She testified that a trooper entered the home, and when he saw her, announced that he was a police officer. The trooper, Mojica testified, helped her put on her boot and get up from the mattress, then patted her down. She testified that she saw the trooper reach for little baggies on the floor and say, "Bingo. We got it." She could not recall whether the trooper took anything from a bookshelf in the house before he took Mojica outside.

Cresci testified that after the heroin was collected from defendant's home, the troopers obtained defendant's consent to search the house. Shaub testified that he received verbal, voluntary consent from defendant while he was handcuffed and obtained written consent from defendant after he was taken to the police station. Defendant, however, testified that he initially refused to consent to the search of his home, but the troopers told him that if he did not consent, they would board up the house for three or four days, leaving Mojica with nowhere to live. He testified that he consented to the search only to prevent Mojica from not having a place to recover from her surgery. The troopers discovered \$200 in currency in the home.

The trial court issued a written opinion denying defendant's motion. The court began its decision by identifying the witnesses that testified. The court then stated, "[a]s a result of this testimony the court makes the following findings of fact." The court then recounts its findings of fact in accord with the troopers' testimony. The court makes no express credibility determination with respect to any of the troopers.

The opinion makes no mention of defendant's version of events. Because defendant's testimony is not recounted, the court does not explain why it apparently found defendant to lack credibility or why it accepted the troopers' version of events over his.

The opinion also summarizes Mojica's testimony, which is presented as what she testified to, but not as findings of fact. The only fact findings with respect to Mojica are that she lives with defendant and was present on the date of his arrest. The court makes no credibility determination with respect to Mojica and does not explain why it apparently rejected the aspects of her testimony that conflicted with the testimony of the troopers.

Based on its findings of fact, the court concluded that: (1) the troopers had probable cause to arrest defendant; (2) defendant was, in effect, in public while on the porch of his house, negating the need for a warrant to arrest him

on the porch; (3) the troopers did not need a warrant to search defendant's person incident to the arrest; (4) the troopers observed contraband in the house in plain view through the open door; (5) exigent circumstances permitted the troopers to enter defendant's home to seize the contraband; and (6) defendant knowingly and voluntarily consented to the search of his residence after seizure of the contraband. A December 9, 2016 order memorializes the court's decision.

After the court denied his motion to suppress, defendant entered a guilty plea pursuant to an agreement with the State. Defendant pled guilty to count one of the indictment. The court subsequently sentenced defendant to a four-year term of imprisonment with a two-year period of parole ineligibility.

This appeal followed.¹ Defendant makes the following arguments.

POINT I

THE WARRANTLESS ENTRY INTO
DEFENDANT'S HOME VIOLATED HIS
CONSTITUTIONAL RIGHTS. ACCORDINGLY,

¹ In 2018, defendant filed a petition for post-conviction relief, alleging he was denied effective assistance of counsel when his trial attorney failed to follow his instructions to file a direct appeal challenging the denial of his suppression motion. The Law Division denied the petition. On appeal, we elected to remedy the alleged deprivation by granting defendant leave to file a direct appeal of the order denying his motion to suppress as if within time. State v. Lee, A-0405-19 (App. Div. Feb. 9, 2021).

THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO SUPPRESS ALL EVIDENCE FOUND AS A RESULT OF THE UNLAWFUL ENTRY.

POINT II

THE TRIAL COURT ERRED BY FAILING TO MAKE ANY CREDIBILITY FINDINGS.

II.

We apply a deferential standard of review to a trial court's factual findings after a suppression hearing, upholding findings "supported by sufficient credible evidence in the record." State v. S.S., 229 N.J. 360, 381 (2017). "Deference to a trial court's fact-findings is especially appropriate when the evidence is largely testimonial and involves questions of credibility." In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997). Since the trial court "'hears the case, sees and observes the witnesses, [and] hears them testify,' it has a better perspective than a reviewing court in evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (alteration in original) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)).

We cannot apply this deferential standard of review, however, in the absence of credibility determinations by the trial court when, as is the case here, witnesses testify to directly conflicting versions of critical events.

Defendant testified that the door to his home was closed when troopers arrested him and that the officers opened the door, entered the house, and seized contraband without a warrant. Mojica's testimony supports defendant's version of events. The troopers testified directly to the contrary. In addition, defendant testified that he was not in possession of heroin when he was arrested. Mojica's testimony also tended to support that version of events, as she claimed to have witnessed a trooper pick up contraband from the floor in the house. Again, the troopers' testimony was to the contrary.

While it is apparent from the court's findings of fact that it rejected defendant's testimony, the court's opinion does not explain why it found the troopers' testimony to be more credible than that of defendant. Nor did it explain why it found Mojica's testimony not to be credible corroboration of defendant's version of events. Indeed, defendant's version of the events is not even mentioned in the court's opinion. It is not possible for this court to determine if the court's apparent credibility determinations are supported by the record, even under the deferential standard of review applicable here.

The same is true with respect to defendant's testimony that, essentially, he consented to the search of his home under duress due to the troopers' claim

that they would board up his home if he refused. It is apparent that the court did not credit this testimony, but its opinion does not explain why.

Because we cannot conduct effective appellate review of the court's apparent credibility determinations based on the record before us, we remand this matter for required findings of fact, including determinations with respect to the credibility of the witnesses, based on the testimony already taken in this matter. Remand proceedings shall be completed within ninety days. We do not retain jurisdiction. In the event of an appeal by either of the parties from the trial court's decision on remand, this court will accelerate the appeal for disposition.

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



CLERK OF THE APPELLATE DIVISION