NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4102-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

YVES M. MARCELLUS,

Defendant-Appellant.

APPROVED FOR PUBLICATION
May 18, 2022
APPELLATE DIVISION

Argued May 3, 2022 – Decided May 18, 2022

Before Judges Fisher, Smith, and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Indictment No. 16-11-0791.

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

Michele C. Buckley, Assistant Prosecutor, argued the cause for respondent (William A. Daniel, Union County Prosecutor, attorney; Michele C. Buckley, of counsel and on the brief).

The opinion of the court was delivered by

FISHER, P.J.A.D.

Defendant was charged with the first-degree murder, on July 4, 2016, of Matthew Murrell in Union Township. After a three-day hearing, the judge denied defendant's motion to suppress the statements he gave police on July 5, 2016, and the physical evidence discovered by police during a warrantless search of a residence at 1091 Salem Road. Defendant later pleaded guilty to first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1), and was sentenced to a twenty-two-year prison term, subject to an eighty-five percent period of parole ineligibility, in conformity with a negotiated plea agreement.

Defendant appeals, arguing: (1) the warrantless search of 1091 Salem Road did not fall within the consent exception, and (2) if his first point is rejected, that he should be resentenced because the judge erred by failing to find any mitigating factors. Because we agree with the argument posed in defendant's first point and must, as a result, vacate the judgment of conviction and remand for the entry of a suppression order and further proceedings, we need not reach the second point.

The judge found from the factual record that Murrell was found by the side of a residence at 870 Salem Road on the morning of July 5, 2016; he had been beaten to death. The judge also found that defendant had attended a gathering there the evening before. During the early evening of July 5, after

Murrell's body was discovered, police questioned defendant and others who attended the July 4th gathering.

When questioned, defendant was not immediately warned about his Miranda[1] rights. Police were then only gathering information. They asked defendant where he lived and whether he was involved with gangs or drug use. He was asked about the party the night before and for the names of those who attended. Police also asked what clothes defendant was wearing and where those clothes might be located. One of the detectives asked to see defendant's hands and, observing they were cut and swollen, defendant was advised of his Miranda rights. Defendant asked whether he was under arrest; he was told he was not. Defendant then acknowledged he understood his rights, signed the form waiving those rights, and continued to speak to his interrogators.

Information derived through this interrogation led police to 1091 Salem Road, the location of the clothing defendant was wearing the night before. A detective spoke with the homeowner, Bernadette Saintfleur, who is defendant's aunt. Defendant's mother was present, but she spoke only Creole. Defendant's aunt told police defendant's mother lived there but that defendant was not allowed on the property; defendant acknowledged during his statement to police

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

that he was not allowed on the premises because, as the judge stated, defendant "disrespected" his aunt. Defendant asserted in his statement to police that he occasionally slept in a shed in the yard and, in fact, had slept there the evening of the fourth.

Defendant's aunt signed a consent-to-search form. Defendant's mother was present but not asked to consent to the search even though she had a room in the home. Sergeant Sofia Santos[2] testified that she told defendant's aunt that the police were

> looking for some of [defendant's] belongings and if we can – she would give us consent to – to look for those belongings, particularly his clothing.
>
> . . . .
>
> THE COURT: When you said you asked for this permission, was that to Ms. Saintfleur or to the –
>
> THE WITNESS: Saintfleur.
>
> THE COURT: – defendant's mom?
>
> THE WITNESS: Saintfleur.
>
> THE COURT: Okay. So was Ms. Saintfleur acting, essentially, as a translator for you in these –

[2] Sergeant Santos was the only witness to testify about this discussion or any other aspect of the search and seizure at 1091 Salem Road. She learned from her discussion with defendant's aunt, who was speaking with defendant's mother in Creole, that defendant had been "sneaking in and out" of the premises.

> THE WITNESS: Well, she's –
>
> THE COURT: – conversations?
>
> THE WITNESS: – the owner of the residence and she was allowing her sister – that was her sister – to stay there temporarily.

Although far from clear – as she and the judge spoke over each other – it would appear from this testimony as well as later testimony[3] that Sergeant Santos acknowledged she sought only defendant's aunt's consent to search the home. And whatever defendant's mother expressed by her actions came from whatever defendant's aunt may have said to her in a language the officers did not understand. The record is devoid of any information about what defendant's aunt said to defendant's mother, and vice versa, since neither testified at the hearing,[4]

---

[3] In later testimony, Sergeant Santos confirmed that consent was not sought from defendant's mother:

> Q. Did you ever ask to speak to [defendant's mother] separately and apart from Ms. Saintfleur?
>
> A. No. Because when I arrived there and spoke with Ms. Saintfleur, she had explained that [defendant's mother] didn't speak English. So I wasn't, obviously, going to be able to have a conversation with her.

[4] The hearing took place over three nonconsecutive days. On the first day, both defendant's aunt and mother were present – having responded to subpoenas –

and since Sergeant Santos and the other officers did not speak or understand Creole.

Notwithstanding the absence of defendant's mother's consent to a search of her room, the judge found that two officers went to defendant's mother's room and asked in English where "[d]efendant's clothes were." According to the judge's findings, defendant's mother "went to a particular bag 'on her own,' retrieved it, and provided it to the officers."[5] Inside the bag were "items of clothing, including a pair of blue jeans, one black sock, a white t-shirt, black plastic debris, and a ripped plastic bag." It is the contents of the bag and a shoebox that defendant sought suppressed pursuant to the exclusionary rule.

Much of the parties' arguments have been devoted to the extent to which defendant's aunt, as homeowner, could consent to the search that led to the opaque bag, the shoebox, and their contents. To be sure, defendant's aunt had

---

but they were not in attendance on the other two days, nor did any of the participants ever again mention whether they would testify.

[5] The only testimony about this part of the story came from Sergeant Santos, who testified that when she and the other officers entered defendant's mother's room, Sergeant Santos asked in English "where would his clothes be?" With that, defendant's mother, who spoke no English, "took us to the garbage bag. We opened the garbage bag." The bag contained "slacks, shirt [and] a sock," and police then observed "a box of Converse sneakers [a]nd we opened the box" and found "Converse sneakers covered in mud."

the authority to consent to an entry into the home and a search of the residence. But her authority only went so far. The judge found defendant's mother was "a tenant" and it was the mother's room from which the opaque bag and shoebox were seized. Although the judge's holding may have presupposed defendant's mother consented to entry into her room, there is little or no evidence to support that finding, only a supposition. The judge recognized that defendant's mother spoke only Creole and that the only translation to her of what was being said or asked was coming from the aunt. Even if we assume the aunt was translating faithfully all that the officers said or asked and assume further that defendant's mother understood her rights – all of which requires findings that the judge never made or a rather substantial leap of faith that we are unable to make on this record – we reject the notion that either defendant's aunt or mother could consent to a search of the opaque bag and shoebox. In other words, if we assume consent was lawfully given to officers to enter and search the home, and if we assume consent was lawfully given to enter and search defendant's mother's room, the question that remains is whether consent was validly given for a search into an opaque bag and closed shoebox that everyone, including police, knew belonged exclusively to defendant.

And so, even if defendant had no right to stand in the way of the discovery of his property – because he was not a tenant or authorized guest of either the home or his mother's room – the opaque bag and shoebox were still, beyond dispute, his property and the evidence points, to the extent necessary to the analysis, to his possession of a reasonable expectation of privacy in those items.[6] The focus must, therefore, be on defendant's right to be free from an unreasonable search of his property notwithstanding his property was found in a residence over which he had no possessory interest. The path to the proper answer to this question is hardly unchartered.

It is well established that law enforcement officers in this State may rely on a third party's consent to a search "when the consenter has common authority for most purposes over the searched space." State v. Coles, 218 N.J. 322, 340

[6] For this reason, the State's argument is misplaced about the significance of State v. Hinton, 216 N.J. 211, 215 (2013), where the Court considered and answered in the negative whether the defendant "had a constitutionally protected reasonable expectation of privacy in [an] apartment he had previously shared with his mother" from which they had been evicted. Even if, as in Hinton, defendant had no expectation of privacy "in the premises," id. at 234; see also State v. Randolph, 228 N.J. 566, 578-79 (2017), that fact does not foreclose the required analysis for conducting a warrantless search of a closed container found in those premises. For example, if an attorney left a briefcase in another attorney's office, the briefcase owner would have no reasonable expectation of privacy "in the premises" that would deter a warrantless search of the premises, but it goes without saying that the attorney would have a reasonable expectation of privacy in the briefcase and its contents.

(2014). The question, as stated in State v. Suazo, 133 N.J. 315, 320 (1993), is "whether the officer's belief that the third party had the authority to consent was objectively reasonable in view of the facts and circumstances known at the time of the search." Although the record presents grave questions about whether defendant's mother gave police consent to search her room, even an assumption that she validly consented takes the legality of this search only so far.

A thorough search of the record finds no evidence that would permit even an inference that the police possessed an objectively reasonable belief that either the defendant's aunt or the defendant's mother had a possessory interest in the opaque bag and shoebox. The police well understood that those items and their contents belonged to no one but defendant. So, it would not have been objectively reasonable for police to believe that either defendant's aunt or defendant's mother, neither of whom ever claimed ownership of the bag, the shoebox or their contents, had the authority to permit a search into them.[7]

[7] The State, of course, had the burden of proving by a preponderance of the evidence the validity of this warrantless search. State v. Edmonds, 211 N.J. 117, 128 (2012). Although the State forcefully argues that defendant must have given up his property rights to the bag and the shoebox by somehow giving or leaving them with his mother or in a place over which he held no domain – the record does not tell us how the bag and shoebox arrived in defendant's mother's room or what may have transpired between defendant and his mother about those items. While defendant's mother and aunt were both subpoenaed to appear at the

The circumstances facing the police at the moment they decided to open the bag and shoebox without a warrant was hardly different from what occurred in Suazo, where the Court acknowledged that a driver with "immediate possession of and control over" a motor vehicle may consent to a search of the vehicle, but "in the absence of evidence of joint access to or control over property found in the vehicle, a driver's apparent authority to consent to a search of the car does not include the authority to permit a search of the personal belongings of other passengers." 133 N.J. at 321 (citing numerous cases in support). The Court took the same approach when a similar warrantless search was conducted at the defendant's home in State v. Coyle, 119 N.J. 194, 217 (1990). There, the record revealed that the defendant was not the owner and may not have been a tenant in the usual sense, but he had a key to the premises and occasionally stayed in one of the bedrooms. The homeowners consented to a police search of the residence; the Court held that even if the true owners had authority to consent to the search of their home and even if police were entitled

---

suppression hearing, they were excused on the first day and never recalled during the remaining two days of the hearing. See n.4, above. By failing to elicit testimony from them that might have provided enlightenment about how these items came into defendant's mother's possession, we will not speculate about whether the fact that the items were found in defendant's mother's room meant that defendant had relinquished all interest in them.

to seize "any evidence that was in plain view," it was far from clear that the homeowners' authority to consent would authorize a search "of those possessions of defendant that were not in plain view," ibid., or to peer into closed containers, id. at 218. In other words, as then Judge (later Justice) Long explained in another case, "[e]ven where a third-party has authority to consent to a search of the premises, that authority does not extend to a container in which the third party denies ownership, because the police are left with 'no misapprehension as to the limit of [the third party's] authority to consent.'" State v. Allen, 254 N.J. Super. 62, 67 (App. Div. 1992) (quoting People v. Egan, 58 Cal. Rptr. 627, 630 (Cal. Ct. App. 1967)); see also State v. Younger, 305 N.J. Super. 250, 257 (App. Div. 1997).

Our standard of review requires our deference to the judge's findings when based on "sufficient credible evidence in the record." State v. Elders, 192 N.J. 224, 243 (2007). But the judge did not find it was objectively reasonable for the police to believe either defendant's aunt or defendant's mother was authorized to consent to the search of defendant's bag of clothing and shoebox. Indeed, even if he had, there is no evidence in the record to support such a finding. Because the police were not given valid consent to conduct the warrantless search of the opaque bag and shoebox, and because no other basis for sustaining this

warrantless search was presented, argued, or proven by the State, the order denying the motion to suppress that evidence must be reversed.

Reversed and remanded for entry of an order suppressing the evidence contained in the opaque bag and shoebox and for entry of an order vacating the judgment of conviction. Defendant is entitled to withdraw his guilty plea. The matter is remanded for further proceedings in conformity with this opinion or that must inevitably follow from today's mandate. We do not retain jurisdiction.