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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0253-15T2

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

DAMEON L. WINSLOW,

Defendant-Respondent.

Submitted January 5, 2016 – Decided March 10, 2016

Before Judges Yannotti and St. John.

On appeal from Superior Court of New Jersey, Law Division, Monmouth County, Indictment No. 14-11-2024.

Christopher J. Gramiccioni, Acting Monmouth County Prosecutor, attorney for appellant (Paul H. Heinzel, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the briefs).

Joseph E. Krakora, Public Defender, attorney for defendant (Brian P. Keenan, Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

After a suppression hearing, and with leave granted, the State appeals the August 4, 2015 order granting defendant Dameon

Winslow's motion to suppress certain evidence seized when defendant was arrested on an outstanding warrant. Upon reviewing the arguments advanced on appeal, in light of the record and applicable law, we reverse.

I.

Based on the testimony presented at the suppression hearing, on September 29, 2014, around 3:30 a.m., Officer Robert Hagerman of the Neptune Township Police Department conducted a "registry check" at the Crystal Inn Motor Lodge (Crystal Inn). Crystal Inn, with about fifty to sixty rooms, is located on Route 35 in the Township of Neptune. Registry checks were typically conducted by police on slower nights during patrol; an officer would ask the hotel staff behind the desk for a printout of the registry and run the names to see if any guests had outstanding warrants.

That morning, Hagerman walked into the lobby, located in a building separate from the guestrooms, and asked the desk clerk to see the registry. While he could not remember the conversation exactly, he recalled saying something to the effect of "may I look at the register?" The desk clerk printed out a copy of the registry and gave it to the officer. This printout typically includes the guest's name, room number, check-in and anticipated check-out dates, and a photocopy of the guest's

driver's license or credit card. Hagerman testified that he believed the registry contained a photocopy of defendant's license.

Hagerman returned to his patrol car with the registry, and using the mobile data terminal (MDT) mounted in the vehicle, conducted a warrant check for each person listed. Upon entering defendant's information into the MDT, Hagerman found there was a warrant out of the Monmouth County Prosecutor's Office. Hagerman proceeded to contact the dispatcher to confirm the active arrest warrant.

After confirmation from dispatch, Hagerman requested that two additional officers respond to the Crystal Inn. Officers Werner and Espinosa arrived and the three officers went to defendant's room. The officers knocked on the door and about a minute later, defendant answered. Hagerman recognized defendant from the driver's license photograph he had seen using the MDT. At that point, Hagerman identified himself, advised defendant of the warrant for his arrest, and placed defendant under arrest with no resistance from him.

A search incident to the arrest revealed three bags of crack cocaine and a bag of marijuana in the right front pocket of defendant's pants. Defendant was subsequently transported to headquarters for booking.

A Monmouth County grand jury subsequently returned Indictment No. 14-11-2024 charging Winslow with one count of third-degree possession of a controlled dangerous substance (CDS), contrary to N.J.S.A. 2C:35-10a(1). On April 15, 2015, defendant filed a motion to suppress the cocaine seized from his person by the police during their warrantless search incident to the arrest.

At the suppression hearing, defendant argued that the officer did not have the authority to get the information in the hotel registry. Specifically, defendant contended: (1) the holding of State v. Lopez, 395 N.J. Super. 98 (App. Div.), cert. denied, 192 N.J. 596 (2007), does not apply because the case relies on a statute that only pertains to hotels with ten rooms or less; (2) in the alternative, if the statute does apply, Los Angeles v. Patel, 576 U.S. ___, 135 S. Ct. 2443, 192 L. Ed. 2d 435 (2015), determined such statutes to be unconstitutional; (3) the State did not obtain consent from the hotel to search, in that Officer Hagerman did not advise the hotel clerk that the registry did not have to be provided; (4) defendant has standing because of the proprietary information included in the registry; and (5) the arrest warrant was not executed correctly.

In opposing the motion, the State argued that Officer Hagerman's acquisition of the registry did not violate

defendant's rights, thus the arrest and seizure of the drugs from defendant's person incident to it were lawful. The State contended that Patel is not applicable because the registry was not provided pursuant to a statute, and more importantly, that case was brought by the hotel owners, not guests. Thus, the holding of Lopez is undisturbed, and defendant had no reasonable expectation of privacy in the information provided.

After the hearing on August 4, 2015, the motion judge issued his oral decision granting defendant's motion to suppress the drugs. The judge acknowledged that Patel "did not decide specifically whether or not the occupants of the room had a right to privacy" in the registry records. However, he found that "it seems illogical that the occupants of the rooms would not have rights to privacy for Patel to be decided by the U.S. Supreme Court in the way that it is." Moreover, "New Jersey law provides that a defendant has automatic standing to any charge of unlawful possession of evidence that's seized regardless of where the arrest occurs . . . ."

Additionally, the motion judge held "in order for there to be valid consent, the police have to inform the person before they consent that they have the right to refuse. That wasn't done here." The judge said, "[b]ased on Patel and Johnson, in order for there to be lawful consent to search for the location

of Mr. Winslow at this particular location, it appears that there be some ability . . . on the part of the hotel operator that [the operator] understood . . . [he] could contest the request . . . ."

In sum, the motion judge determined "Patel supports the idea that the occupants of the room in a closed door situation have the right to some degree of privacy, notwithstanding Lopez which was decided in 2007." Therefore, treating the officers' knowledge of defendant's location in the hotel as fruit of an unlawful search, the judge ordered suppression of the drug evidence seized incident to defendant's arrest.

On September 14, 2015, we granted the State leave to appeal the interlocutory order.

On appeal, the State presents the following issue for our consideration:

> POINT I
>
> THE SUPPRESSION ORDER SHOULD BE REVERSED BECAUSE IT IS PREDICATED ON THE LOWER COURT'S ERRONEOUS LEGAL CONCLUSION THAT DEFENDANT HAD A PROTECTED FOURTH AMENDMENT PRIVACY INTEREST IN THE INFORMATION CONTAINED IN THE HOTEL'S GUEST REGISTRY.

II.

When reviewing a motion to suppress, we "must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence

in the record." Handy, supra, 206 N.J. at 44 (citation omitted); see also State v. Mann, 203 N.J. 328, 336–37 (2010) (alteration in original) (citation omitted) ("[A]n appellate court must defer to the trial court's findings that are substantially influenced by [the court's] opportunity to hear and see the witnesses and to have the feel of the case, which a reviewing court cannot enjoy.").

When a reviewing court is satisfied that the findings of the trial court could reasonably have been reached on the record, "its task is complete and it should not disturb the result, even though it has the feeling it might have reached a different conclusion were it the trial tribunal." State v. Johnson, 42 N.J. 146, 162 (1964). The question of whether those judicially-found facts warrant suppression is purely legal and the trial court's decision to exclude is subject to plenary review. Handy, supra, 206 N.J. at 45 (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Both the United States and New Jersey Constitutions guarantee the right of individuals to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. U.S. Const. amend. IV; N.J. Const. art. 1, ¶ 7; see also State v. Walker, 213 N.J. 281, 288–89 (2013). A defendant seeking to invoke the protections afforded by these

constitutional provisions, however, must first "show that a reasonable or legitimate expectation of privacy was trammeled by government authorities." State v. Evers, 175 N.J. 355, 368-69 (2003) (citation omitted). See also State v. Taylor, 440 N.J. Super. 515, 522 (App. Div. 2015) ("Absent a reasonable expectation of privacy in the place or thing searched, an individual is not entitled to protection under either the Fourth Amendment or Article I, Paragraph 7 of the New Jersey Constitution.").

To meet that burden under the Fourth Amendment, a defendant must demonstrate (1) "'an actual (subjective) expectation of privacy'" in the object of the challenged search, and (2) that his or her subjective privacy expectation is "'one that society is prepared to recognize as reasonable.'" Evers, supra, 175 N.J. at 369 (quoting Katz v. United States, 389 U.S. 347, 361, 88 S. Ct. 507, 516 (1967) (Harlan, J., concurring)). "Unlike the federal test, the New Jersey constitutional standard does not require the defendant to prove a subjective expectation of privacy. . . . Instead, Article I, Paragraph 7 . . . 'requires only that an expectation of privacy be reasonable.'" Hinton, 216 N.J. 211, 236 (2013) (quoting State v. Hempele, 120 N.J. 182, 200 (1990)).

The motion judge analyzed Patel, supra, 576 U.S. ___, 135 S. Ct. 2443, 192 L. Ed. 2d 435, as implicitly extending to hotel guests a protected privacy interest in the guest's registration records, contrary our holding in Lopez, supra, 395 N.J. Super. at 106. In Patel, a group of hotel owners brought a facial Fourth-Amendment challenge to a Los Angeles city ordinance that required hotel operators to make their guest registries available to the police on demand. Patel, supra, 576 U.S. at ___, 135 S. Ct. at 2447-48, 192 L. Ed. 2d at 441-42. Any failure to supply the record was classified as a misdemeanor potentially punishable by jail and a fine. Ibid. Following a bench trial, the federal district court entered judgment in favor of the City, holding the challenge failed because there was no reasonable expectation of privacy in the records. Ibid. This was initially affirmed on the same grounds by a divided panel of the Ninth Circuit. Ibid.

However, on a rehearing en banc, the Ninth Circuit reversed, holding that "a police officer's nonconsensual inspection of hotel records under [the ordinance] [constituted] a Fourth Amendment 'search' because '[t]he business records covered by [the ordinance] are the hotel's private property' and the hotel therefore 'has the right to exclude others from prying into the[ir] contents.'" Ibid. (quoting Patel v. City of Los

Angeles, 738 F.3d 1058, 1061 (2013)). The Supreme Court granted certiorari only on two questions and the opinion did not address hotel guests' privacy interests. Patel, supra, 576 U.S. ___, 135 S. Ct. 2443, 192 L. Ed. 2d 435.

Here, the motion judge should not have extended any privacy interest enjoyed by hotel owners in their registries to hotel guests. Instead, the motion should have been denied based on what we determined in Lopez, supra, 395 N.J. Super. at 106, "[a]s a matter of law, defendant had no reasonable expectation of privacy as to his identity when he registered as a guest of the hotel." This is consistent with the longstanding United States Supreme Court precedent proclaiming that a person has no reasonable expectation of privacy in information revealed to third parties, "even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed." United States v. Miller, 425 U.S. 435, 443, 96 S. Ct. 1619, 1624, 48 L. Ed. 2d 71, 79 (1976).

Defendant asserts that in keeping with the greater protection afforded by our state courts against unreasonable searches and seizures, there exists a reasonable expectation of privacy, despite the fact the information is given to a third-party. See State v. Novembrino, 105 N.J. 95, 145 (1987). See

also State v. Earls, 214 N.J. 564, 584 (2013). Defendant cites a string of cases to support this position, yet the facts of those matters are unlike those present here. Specifically, he relies on State v. Hunt, 91 N.J. 338 (1982); State v. Mollica, 114 N.J. 329 (1989); State v. McAllister, 184 N.J. 17 (2005); State v. Reid, 194 N.J. 386 (2008); and Earls, supra, 214 N.J. 564. However, those cases all dealt with much more intimate information than a name and room number, as disclosed here.

For instance, in both Hunt and Mollica, the Court addressed the privacy of telephone billing records. The basis of both rulings was the Court's view that the identity of persons and places called on the telephone is highly private. See Mollica, supra, 114 N.J. at 341-42. See Hunt, supra, 91 N.J. at 345-47. In McAllister, the Court addressed bank records, finding "[w]hen compiled and indexed, individually trivial transactions take on a far greater significance . . . . Indeed, the totality of bank records provides a virtual current biography." McAllister, supra, 184 N.J. at 30-31 (citation omitted).

In Reid, the Court found that Internet subscriber information "can tell a great deal about a person. With a complete listing of IP addresses, one can track a person's Internet usage" and "learn the names of stores at which a person shops, the political organizations a person finds interesting, a

person's fantasies, her health concerns, and so on." Reid, supra, 194 N.J. at 398 (citation omitted). The Court acknowledged this could be "even more revealing" than telephone records. Id. at 398-99. In Earls, the Court addressed cell phone tracking and location information, finding it to be even more revealing than the classes of information noted above, functioning as a substitute for 24/7 surveillance without limits. Earls, supra, 214 N.J. at 586.

The same cannot be said with the records at issue here. There is nothing more contained within the registry than the name of the guest, the check-in and check-out dates, room number, and possibly a copy of his or her license. This does not amount to the level of intrusion protected by the cases relied upon by the defendant.

Next, the State contends that the officer's failure to inform the desk clerk of the right to refuse his request for the registry does not render the consent invalid. We agree.

It is true that "[w]here the State seeks to justify a search on the basis of consent it has the burden of showing that the consent was voluntary, an essential element of which is knowledge of the right to refuse consent." State v. Johnson, 68 N.J. 349, 353-54 (1975). However, contrary to the motion judge's ruling, Johnson "does not compel the police to

specifically advise the property owner of the affirmative right to refuse an inspection." State v. Brown, 282 N.J. Super. 538, 548 (App. Div.), cert. denied, 143 N.J. 322 (1995). Moreover, "in a non-custodial situation . . . the police would not necessarily be required to advise the person of his right to refuse to consent to the search." Johnson, supra, 68 N.J. at 354. In Brown, the court found valid consent based on the cooperative behavior of a building superintendent. Brown, supra, 282 N.J. Super. at 547.

This case is no different. Hagerman did not demand to see the registry, but requested a copy to be printed and the desk clerk readily complied. The manner in which Hagerman asked implied that the clerk "was permitted to reject the request . . . ." Id. at 548. Therefore, any failure to inform the desk clerk of the right to refuse did not render the consent invalid.

Reversed and remanded for further proceedings. We do not retain jurisdiction.