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March 21, 2025

Honorable Marc C. Lemieux, A.J.S.C.
Monmouth County Courthouse
71 Monument Park, 3rd Floor
Freehold, NJ 07728

Re: State v. Paul Caneiro
Case No. 18-004915 / Indictment No. 19-02-283-I

Defense Opposition to State's Motion to Admit Defendant's Statements

Dear Judge Lemieux:

Please accept this letter brief, in lieu of a more formal brief, in opposition to the State's Motion to Admit Defendant's Statements.

RELEVANT FACTS

At approximately 5:00 AM on November 20, 2018, a fire erupted at the residence of Paul Caneiro in the home he shared with his wife and two adult daughters. Mr. Caneiro safely evacuated his family and moved his wife's car from the garage to the street, away from the fire, where the family anxiously waited. Soon thereafter, first responders, local law enforcement, and the fire department arrived on scene to respond to the emergency.

On scene, Mr. Caneiro was surrounded by the members of these various agencies. He appeared visibly distressed. Despite the ongoing fire, the police questioned, and continued to question, Mr. Caneiro as well as search his loaner vehicle. The questions

amounted to more than basic or preliminary questioning. They were investigative and accusatory in nature, related to specific questions regarding the fire, his evacuation, his injuries, and the operation of his home security system.

Later, law enforcement instructed Mr. Caneiro and his family to report to police headquarters for formal statements. When the family requested time to clean up and change clothes, their request was denied. The family complied and went to headquarters, followed by police, where Mr. Caneiro's wife and daughters provided statements. Mr. Caneiro, when faced with Miranda warnings prior to giving his statement, however, exercised his right to counsel.

Mr. Caneiro was later indicted on the instant charges. The State now seeks to admit statements that Mr. Caneiro made to police while at the scene of his burning home, in violation of Miranda.

LEGAL ARGUMENT

POINT I

THE STATE CANNOT PROVE BEYOND A REASONABLE DOUBT THAT DEFENDANT'S STATEMENTS ARE ADMISSIBLE AT TRIAL.

"One of the most fundamental rights protected by both the Federal Constitution and state law is the right against self-incrimination." State v. O'Neill, 193 N.J. 148, 167 (2007). The Fifth Amendment to the United States Constitution guarantees that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself[.]" It thus "prohibits the government from forcing persons to disclose information that would tend to incriminate them in future proceedings." In re Martin, 90 N.J. 295, 331 (1982). It is also "firmly established as part of the common law of New Jersey and has been incorporated into our Rules of Evidence." Ibid.

Because "custodial interrogation by law enforcement officers is inherently coercive," State v. Diaz, 470 N.J. Super. 495, 513 (App. Div. 2022), the United States Supreme Court set forth the procedures to be followed to safeguard the protection of an

individual's privilege against self-incrimination in Miranda v. Arizona, 384 U.S. 436 (1966). These safeguards respond to the "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." Id. at 467; State v. Carrion, 249 N.J. 253, 275 (2021). Thus, "the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored." Ibid.

"The Miranda warnings ensure 'that a defendant's right against self-incrimination is protected in the inherently coercive atmosphere of custodial interrogation.'" State v. Tillery, 238 N.J. 293, 315 (2019) (quoting State v. A.M., 237 N.J. 384, 397 (2019)). "The essential purpose of Miranda is to empower a person—subject to custodial interrogation within a police dominated atmosphere—with knowledge of his basic constitutional rights so that he can exercise, according to his free will, the right against self-incrimination or waive that right and answer questions." State v. Nyhammer, 197 N.J. 383, 406 (2009).

"Miranda warnings must be given before a suspect's statement made during custodial interrogation may be admitted in evidence." O'Neill, 193 N.J. at 615 (citing Dickerson v. United States, 530 U.S. 428, 431-32 (2000) (internal punctuation omitted)). Accord State v. Ahmad, 246 N.J. 592, 610 (2021). "Custodial interrogation" was defined by the United States Supreme Court as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." State v. Hubbard, 222 N.J. 249, 265-66 (2015) (quoting Miranda, 384 U.S. at 444). "The critical determinant of custody is whether there has been a significant deprivation of the suspect's freedom of action based on the objective circumstances." State v. P.Z., 152 N.J. 86, 103 (1997).

Importantly, "custody in the Miranda sense does not necessitate a formal arrest, nor does it require physical restraint in a police station, nor the application of handcuffs, and may occur in a suspect's home or a public place other than a police station." P.Z. at 103 (internal quotation marks omitted); see also State v. Godfrey, 131 N.J. Super. 168, 175 (App. Div. 1974), aff'd o.b., 67 N.J. 267 (1975). The inquiry is an objective one based upon the reasonable person in the suspect's position. Hubbard, 222 N.J. at 267. A

defendant is also “in custody” if he can be charged with a crime for “leaving.”. See State v. Reyes, 207 N.J. Super. 126, 142 (App. Div. 2014).

Worth noting, is that “whether the suspect is in custody depends on the objective circumstances of the interrogation, not the subjective views harbored by either the interrogating officers or the person being questioned.” State v. O’Neal, 190 N.J. 601, 615-16 (2007) (quoting Stansbury v. California, 511 U.S. 318, 323 (1994)). Meaning, a police officer’s subjective intent to detain and a defendant’s subjective intent to remain in the place of questioning is not controlling. See ibid; see also State v. Gordon, 2019 WL 3214392 at *3. Rather, the test solely focuses on “how a reasonable person in the suspect’s position would have understood his situation.” O’Neal, 190 N.J. at 615-16 (quoting Berkemer v. McCarty, 468 U.S. 420, 442 (1984)). Thus, the State’s focus on the defendant’s alleged intention to speak to police due to a “desire to maintain the appearance that he was innocent” is not only speculative, but also irrelevant. (Sb14).

The second aspect of Miranda rights, interrogation, means “either express questioning or its functional equivalent.” Rhode Island v. Innis, 446 U.S. 291, 300-01 (1980). “[T]he term ‘interrogation’ under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” Hubbard, 222 N.J. at 267 (quoting Innis, 446 U.S. at 301).

New Jersey courts have also routinely suppressed even nonverbal responses induced by Miranda violations. For example, in State v. Mason, 164 N.J. Super. 1 (App. Div. 1979), police questioned a defendant, without advising her of her Miranda rights, about whether she had any drugs. Id. at 3. In response, the defendant handed the officer drugs that had been hidden in her shirt. Ibid. The court suppressed the evidence, explaining, “Nonverbal responses to questioning are treated in the same way as are verbal responses. The privilege against self incrimination extends to all acts intended to be of a testimonial or communicative character, whether in verbal or other form.” Id. at 4. See also State v. Stephenson, 350 N.J. Super. 517, 521, 530-31 (App. Div. 2002)

(suppressing statement and physical evidence where officers asked “where the gun is,” and defendant “gestured with his head towards the dresser”); State v. Hall, 253 N.J. Super. 84, 91 (Law Div. 1990), aff’d o.b., 253 N.J. Super. 32 (App. Div. 1991) (suppressing “a non-verbal response to the police officer’s inquiry” “because the defendant produced the cocaine in direct response to the detective’s questioning whether he ‘had anything on him’”).

N.J.R.E. 104c mandates that the trial court conducts a hearing to determine the admissibility of a defendant’s statements. “In such a hearing the rules of evidence shall apply and the burden of persuasion as to the admissibility of the statement is on the prosecution.” At this hearing, the State bears the burden of establishing the voluntariness of the statement beyond a reasonable doubt. State v. Yough, 49 N.J. 587 (1976); State v. Sheika, 337 N.J. Super. 228, 239-240 (App. Div. 2001); State v. Galloway, 133 N.J. 631, 654 (1993); see also State v Kelly, 61 N.J. 283, 294 (1972). Accord State v. Hreha, 217 N.J. 368, 383 (2014) (citing State v. Galloway, 133 N.J. 631, 654 (1993)); State v. Marczak, 344 N.J. Super. 388, 398 (App. Div. 2001), certif. denied, 171 N.J. 44 (2002). In demonstrating the voluntariness of a confession, there is no per se rule that the State must produce as witnesses every police officer and other person present during the defendant’s interrogation. See Sheika, 337 N.J. Super. at 239-240. Nevertheless, the absence of a witness may be viewed by the trial judge as a factor affecting the proof of voluntariness of the statement. That is, “the judge surely can find a deficiency in the State’s proofs by reason of the absence of the witness.” Id. at 240

“Determining whether the State has met that burden requires a court to assess the totality of the circumstances, including both the characteristics of the defendant and the nature of the interrogation.” Hreha, 217 N.J. at 383 (citation and internal punctuation omitted). See State v. L.H., 239 N.J. 22, 43 (2019); Nyhammer, 197 N.J. at 402 (reaffirming adherence to the totality of the circumstances approach to determining voluntariness of a statement). Under the totality of the circumstances analysis, a court must consider such factors as the defendant’s “age, education and intelligence, advice as to constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature and whether physical punishment or mental exhaustion was

involved.” AM., 237 N.J. at 398. Psychological coercive techniques in the aggregate have the capacity to overbear a suspects will. L.H., 239 N.J. at 48-49. Minimization of conduct and the gravity of the charges and befriending the defendant by offering advice as to future conduct are considered manifestations of this technique. Id. at 50-52.

While the State notes that “general on-the-scene questions as to facts surrounding a crime or other general questioning of citizens in the fact-finding process” do not typically require Miranda warnings, (Sb10), this is not always the case. When “the totality of the objective circumstances attending the questioning, viewed from the perspective of the reasonable person, impose a ‘restraint on freedom of movement of the degree associated with a formal arrest[.]’” Miranda warnings must be administered. State v. Smith, 374 N.J. 425, 430 (2005). Relevant considerations for this analysis include “the time, place and duration of the detention; the physical surroundings; the nature and degree of the pressure applied to detain the individual; language used by the officer; and objective indications that the person questioned is a suspect.” Ibid. In Smith, the Court found that Miranda was not necessary because the on-the-scene questioning was “brief, lasting a matter of moments.” Id. at 435. Also, the questions “were neither harassing nor intimidating” and the defendant was only questioned by one single officer, clearly lacking the “police dominated” atmosphere found when Miranda warnings are required. Ibid.

In contrast, the Smith Court pointed to Orozco v. Texas, 394 U.S. 324, 325 (1969), which held that “Miranda warnings were required when suspect was questioned in his bedroom by four officers and one of the officers testified that the suspect was under arrest.” Id. at 436. “This was on-the-scene questioning not custodial interrogation.” Ibid.

Likewise, in State v. Pierson, 223 N.J. Super. 62, 67 (App. Div. 1988), Miranda was not necessary because “the defendant was questioned initially by asking his identity and what he was doing at 2 a.m. in the parking lot of an apartment where several suspicious fires had occurred . . . and the brief questioning was held to be part of an ‘on-the-scene’ investigation rather than a custodial interrogation.” State v. Hall, 253 N.J. Super. 84, 90 (Law Div. 1990). However, in contrast to Pierson, State v. Hall was distinguishable because “the officer [in Hall] physically controlled the defendant’s

movements, and was frisking and asking questions at the same time. Though it was accomplished in a relatively brief encounter, not at police headquarters, there were seven other officers in the apartment and the defendant had been prevented from leaving.” Ibid. Also, the court found significant that, “the question was open-ended and by definition called for an incriminating answer. Defendant did not spontaneously volunteer; the circumstances were obviously and inherently coercive.” Ibid. Thus, Hall’s statements were suppressed. Id. at 91.

Applying these principles to the present case, Mr. Caneiro was subjected to custodial interrogation and did not voluntarily waive his Miranda rights. The defense disputes the allegations charged by the State and contends that any statements given to law enforcement are inadmissible. Despite the State’s assertion that Mr. Caneiro was not in custody when making these statements, the totality of the circumstances suggest otherwise. In support of its position, the defense will rely on the facts established during the N.J.R.E. 104(c) hearing, the legal authorities cited herein, and the oral arguments presented by counsel. The defense also reserves the right to submit supplemental briefing following the testimonial portion of the hearing.

CONCLUSION

For the forgoing reasons, the defense respectfully requests that the State’s Motion to Admit the defendant’s statements be denied.

Sincerely,

/s/ Monika Mastellone

Monika Mastellone, Esq. 122942014

/s/ Victoria Howard

Victoria Howard, Esq. 021052012

CC: AP Chris Decker; AP Nicole Wallace