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April 23, 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

104(c) Hearing – Defense’s Closing Arguments

Dear Judge Lemieux:

On April 8, 2024, a 104(c) hearing was held before this Court. At that time, the Court heard testimony from 5 witnesses, who each testified to various statements that Mr. Caneiro made, or allegedly made, on the morning of November 20, 2018. In opposition to the State’s motion to admit these statements at trial, please accept this letter brief in lieu of a closing, oral argument.

Recap of Relevant Testimony

Fire Marshall Craig Flannigan – UNRECORDED STATEMENTS

During his testimony, Flannigan acknowledged that he did not independently recall the events to which he was testifying. In fact, when the Court questioned Flannigan about whether he had “a specific recollection as to what you’re testifying to or do you need the report to refresh your memory,” Flannigan responded that he needed the report to refresh his memory because “it’s been a long time.” (T:19-6 to 16). Likewise, when questioned by defense counsel, he agreed that he did not independently recall what, specifically, Mr. Caneiro said, but rather was relying on what he wrote in his report. (T:35-3 to 20). Importantly, Flannigan acknowledged having reviewed his report several times prior to testifying in court that day, as well as having met with the prosecutor in recent time to review his report and his testimony – and yet, still had difficulty remembering

what occurred on November 20, 2018. (T:59-11 to 60-6). During the course of his testimony, Flannigan referenced his report no less than 10 times.

After struggling to testify to what, specifically, his conversation with Mr. Caneiro entailed on the morning of 11/20/18, he attempted (twice) to testify to what his “normal questions are.” However, after an objection by defense counsel, it was evident that he did not recall his specific conversation with Mr. Caneiro. He, therefore, relied heavily on his report to testify at the hearing. In so doing, he initially testified on direct that his report was written “a day or two later” however, on cross examination, he conceded that his report was actually not written until 8 days later. (T:17-1 to 9; 35-21 to 36-13). He also acknowledged that there were some things he paraphrased or added in his report, that differed from what he wrote in his notes while on scene. (T:52-7 to 57-12).

Nevertheless, Flannigan testified that he spoke with Mr. Caneiro twice. Flannigan arrived on scene at approx. 5:30 AM and thereafter spoke to Mr. Caneiro – both times – within the first hour so of his arrival (between 5:30 AM and 6:30 AM). (T:46-23 to 47-8). At that time, there were a lot of fire trucks present and about 30 fire fighters already present, however, over time, additional personnel arrived. (T:37-5 to 25). Flannigan initially recalled that the scene was “probably” blocked in and later stated that he believed both his car and Mr. Caneiro’s car were blocked in. (T:44-14 to 45-20; 65-19 to 66-1). Flannigan recalled that within minutes of his arrival, Officer Marino directed his attention to a suspicious gas can found near the garage, and that this was shown to him **before** he spoke to Mr. Caneiro. (T:12-18 to 13-18; 39-18 to 40-19; 51-13 to 52-6).

In contrast to the testimony to be discussed below, Flannigan testified that he did not suspect the fire was arson nor did he find the fire suspicious. He also testified that he turned the fire over to the County Fire Marshall due to the ‘extensive property damage’ caused by the fire and that he never learned that day that the scene had become an arson investigation. (T:39-6 to 13; 50-1 to 15). Despite his testimony, Officer Marino confirmed that the County Fire Marshal was called out to the scene because “the fire was deemed to possibly be started intentionally” per his report. (T:114-18 to 25). Likewise, Det. Brady also confirmed during his testimony that Flannigan contacted the County Fire Marshall and called them out to the scene because Flannigan “deemed the fire to be suspicious.” (T:235-24 to 236-16). These conflicts/ contradictions in the testimony only further underscore Flannigan’s lack of memory regarding these events. Which, in turn, bears on the reliability and therefore admissibility of these statements.

Patrolman Daniel Marino

Marino testified that he responded to Mr. Caneiro’s home at approx. 5:04 AM, around the same time as three to four other officers. (T:87-1 to 13; 89-14 to 18). Over the course of the response, “numerous” additional agencies arrived and personnel rotated in and out. Marino recalled there being numerous fire trucks, EMS vehicles, and 7-8 police vehicles on scene. He described a chaotic scene with “numerous vehicles” and flashing lights and was able to identify the following agencies being present on scene: the Ocean Township Police Department, Oakhurst Fire Department, Wanamassa Fire Department, the County Fire Marshal, and the Ocean Twp. Fire Marshal, and, detectives from the Monmouth County Prosecutor’s Office (MCPO) “because they were investigating the fire.” (T:89-23 to 91-25). Though he remained on scene for an estimated 4.5-5 hours (until approx. 9:30-10 AM), his BWC captured less than one hour of footage. (T:87-1 to 22).

Approximately 9 minutes after his arrival (approx. 5:15), he spoke with Mr. Caneiro and his wife to gather pedigree information. (T:73-12 to 18). Marino testified that at that time, Mr. Caneiro was not a suspect. However, by approximately 5:30 a.m., Marino testified that the incident had begun to transition into what responding officers considered a crime scene, based on several “suspicious” observations, including a gas can near a small fire in the garage and what appeared to be gasoline doused on Mr. Caneiro’s vehicles. Marino confirmed that he, along with other officers, developed these suspicions and discussed them amongst themselves. (T:113-1 to 14; 104:1 to 105-10). Marino also confirmed that within a few minutes after 5:30 AM, they began using crime scene tape in the area. (T:113-1 to 6).

He confirmed that the area was blocked off to local traffic, and that “you could not get through.” (T:92-1 to 5). He began to confirm that Mr. Caneiro’s vehicle, the one him and his family were stationed in, was part of that scene, and therefore blocked off as well, however, ultimately stated he could not recall. He did recall Mr. Caneiro advising him that he did not have shoes on. (T:94-21 to 98-11). Additionally, around that time, Officer Malone directed that a presence be maintained on scene. He explained that, generally, “maintaining a presence” means “staying in the area, making sure nothing gets disturbed,” making sure that the area remains clear, and establishing a parameter to make sure that people do not stroll onto the scene. (T:106-11 to 112-25).

Patrolman Kevin Redmond

Redmond was the first officer on scene, arriving a few minutes past 5:00 A.M. (T:120-2 to 20). Due to the chaotic nature of the scene, he forgot to activate his BWC for the first half hour or so. (T:120-21 to 121-1; 127-4 to 9; 139-5 to 10). While on scene, Redmond noticed some items he found to be suspicious, including an out-of-place gas can on fire, unusual burn marks on the garage door, and what appeared to be burn marks on one of Mr. Caneiro’s Porsches. (T:125-22 to 126-7; 143-21 to 24; 151-13 to 153-6). Captured on BWC, Redmond discusses his suspicions with Officer Weinkofsky, calling what he observed to be “shady.” (T:138-2 to 16). He also recalled speaking to “numerous officers” including Sgt. Malone and Ptl. Marino about these suspicious items prior to speaking to Mr. Caneiro. (T:149-11 to 22). As such, Redmond agreed that by the time he spoke to Mr. Caneiro, his “suspicions were already raised” about this fire being an “intentional fire.” (T:152-22 to 24). Although Redmond claimed that Mr. Caneiro was not specifically a suspect, he acknowledged that there was “a” suspect, that they had not ruled anyone out, and that the purpose of him investigating was to see if he could ascertain who the suspect was. (T:154-8 to 155-2).

Right after making these observations and having these conversations, Redmond spoke to Mr. Caneiro, along with Officer Weinkofsky. (T:138-14 to 16). According to Redmond, the purpose in speaking to Mr. Caneiro was to inquire, specifically, about the suspicious gas can that was observed, and, more specifically, to ascertain whether it was his or someone else’s gas can. (T:143-21 to 144-12; 155-3 to 156-22). Redmond agreed that the reason he brought the gas can to Mr. Caneiro’s attention is because “he found it to be suspicious” and “wanted to inquire further.” (T:143-21 to 144-1). Redmond then asked Mr. Caneiro where he keeps his gas cans and agreed that the purpose of these questions was to investigate the suspicious fire. (T:143-21 to 144-10). He further agreed that he asked this question “to see if there was one missing,” however, Redmond never bothered to ask Mr. Caneiro whether the suspicious gas can was his. (T:155-12 to 156-2).

While speaking to Mr. Caneiro, it was evident from the BWC footage that he did not have any shoes on, however, Redmond claimed to not notice at the time. (T:142-1 to 8). As soon as Redmond finished speaking with Mr. Caneiro, he then went over to the shed and observed what he believed to be a spot with a missing gas can. This was all prior to 6 AM. (T:156-17 to 22). Overall, Redmond remained on scene for approx. two hours – from 5 to 7 AM. During this time, the fire investigation became a criminal investigation and by the time he left, the scene had become a crime scene. (T:149-23 to 150-1; 153-3 to 6).

Redmond also stated that, initially, there were approx. 5 law enforcement officers and 5 police vehicles on scene, however, over time, more officers responded, including officers assigned to scene security. By the time he left, at around 7 AM, there could have been more than 10 police vehicles on scene, along with numerous fire trucks and other first responder vehicles. (T:139-19 to 141-8). Redmond also agreed that Mr. Caneiro's parked vehicle was inside of the 'established perimeter' around the scene, which was also blocked off to local traffic. (T:142-9 to 143-7).

Officer Brenden Bernhard

Officer Bernhard testified that he arrived a few minutes past 5 AM – shortly after Officer Remond, other officers, and fire personnel had already begun to arrive. (T:160-25 to 161-18). He approximated that after the first hour, about 5 officers and a supervisor had arrived on scene, along with approx. 5 police vehicles and numerous other first responding vehicles/ fire trucks. (T:175-24 to 176-4; 180-20 to 181-13).

Approx. one hour after arrival (approx. 6 AM), Bernhard was instructed by Sgt. Malone to speak with Mr. Caneiro to ascertain where possible surveillance footage might be stored. (T:162-6 to 23). During that exchange, Bernhard asked Mr. Caneiro where the footage was stored and, before he could answer, Mr. Caneiro's daughter stated that the system was stored in the garage. When asked, his daughter also provided a more exact location of the system. A few minutes later, Bernhard again spoke with Mr. Caneiro, this time at the direction of Officer Marino, to ascertain whether the surveillance system was a "white DVR box." (T:163-3 to 19).

At no point during these two exchanges did Bernhard ask for consent to search Mr. Caneiro's garage or to seize his surveillance system. It was never explained to Mr. Caneiro (or his daughter) why these questions were being asked. (T:187-3 to 24).

Detective Christopher Brady – UNRECORDED STATEMENTS

Det. Brady was called to the scene around 5:45 AM and arrived at approx. 6:15 AM, at which time the fire was "more or less out" and the scene was blocked off, so he had to park down the street. (T:194-7 to 24; 220-9 to 21; 223-23 to 25). Brady explained that he was called onto the scene after "they realized what they had" which in this case meant "a suspicious fire." (T:221-5 to 13). He acknowledged that his specific purpose was to play an investigatory role in the context of a criminal investigation – specifically, to ascertain "how the fire started" and "who did it." (T:232-17 to 24; 235-24 to 237-5). Upon arrival, he was briefed by other officers and "brought up to speed" about what had been observed. (T:196-7 to 17). This included evidence that officers deemed suspicious such as the burnt gas can found near the garage. (T:231-9 to 25).

In total, Brady testified that he spoke with Mr. Caneiro 4-5 times while on scene. Brady was not equipped with a BWC; therefore, his communications with Mr. Caneiro were unrecorded. Also, despite there being numerous officers on scene equipped with BWC, Brady never made efforts to speak with Mr. Caneiro in the presence of an officer equipped with BWC to ensure that these conversations were recorded. Instead, he memorialized his conversations with Mr. Caneiro in a report that he wrote over 2 months later. (T:227-4 to 228-20).

Brady first spoke with Mr. Caneiro around 7:00 AM. (T:197-7 to 13). According to Brady, the purpose of the conversation was to ascertain what occurred that morning. More specifically, “to find out what occurred, when this fire started, what they did.” (T:201-20 to 23). Brady testified that while answering Brady’s questions, Mr. Caneiro made a comment, “I didn’t know if more air was going to be a problem” which Brady assumed referenced the garage door. (T:199-20 to 23). However, Brady made no efforts to clarify. (T:232-25 to 15). Brady also questioned Mr. Caneiro about the injury on his hand, which Brady had been told was a burn mark. (T:32-13 to 23).

Brady testified that at approx. 7:05 AM, the County Fire Marshall arrived on scene. (T:203-7 to 8; 234-18 to 24; 256-22 to 23). The Fire Marshall conducted a brief investigation and then informed Brady that he believed the fire was intentionally set. According to Brady, it was at this point that the fire scene was officially deemed a “crime scene.” (T:256-9 to 23). And, once the Fire Marshall reached this conclusion, MCPO and its forensic team was asked to respond to the scene. (T:204-23 to 205-5). Brady also confirmed MCPO was called to the scene because it had become a criminal investigation. (T:236-17 to 237-5). Brady noted that at this point, the Caneiro’s were able to “freely move about the scene.” (T:205-6 to 8).

At approx. 9:50 AM, Brady spoke with Mr. Caneiro a second time. (T:204-15 to 18; 205-12 to 16). This time, Brady spoke to Mr. Caneiro along with Det. Weisbrot from MCPO. (T:204-19 to 22). They asked for consent to search one of his vehicles, which Mr. Caneiro gave. According to Brady, Mr. Caneiro made a comment while they searched his car, to the effect of, “that door is making me nervous.” (T:205-17 to 207-18). Once again, Brady assumed that Mr. Caneiro was referring to the garage door, however, did not ask any follow-up questions or seek any clarification. (T:207-19 to 208-3). This quote was not contained in Brady’s notes; Brady somehow remembered it verbatim over 2 months later when he wrote his report. (T:245-5 to 248-8).

Thereafter, Brady had a third conversation with Mr. Caneiro, around 11:37 AM, to obtain consent to search Mr. Caneiro's DVR system. (T:209-9 to 210-13; 242-11 to 14). Brady testified that Mr. Canero stated he was having firewall or connectivity issues of some sort with his system and wasn't sure whether it was recording at the time of the fire. (T:210-14 to 21). With respect to these two consent forms, Brady acknowledged that he and Det. Weisbrot believed it was important to use them since the investigation had turned into a criminal investigation at that point. (T:243-5 to 14).

Shortly after that, Brady and Weisbrot asked Mr. Caneiro and his family to respond to the police station to give statements. (T:211-16 to 24). In response, Mr. Caneiro and his family made a request to first “go get cleaned up, go buy food.” Brady replied to the family that it was “imperative” for them to respond immediately and give statements as soon as possible so that their ‘memories would not be lost.’ (T:212-2 to 13; 250-16 to 25). The purpose was to “find out what happened . . . all the normal investigative questions.” (T:212-14 to 21). Brady confirmed that he never informed the

family that they had the right to refuse, or, at the very least, the right to “go get cleaned up” and “buy food” prior to responding. (T:252-16 to 18; 258-4 to 7).

Finally, once at headquarters, Det. Brady testified to various other comments made by Mr. Caneiro prior to being first Mirandized. According to Brady, Mr. Caneiro was not specifically a suspect until later that evening, at 7:25 PM, after they viewed two short surveillance clips – neither of which showed Mr. Caneiro committing any crimes. (T:258-16 to 269-25). Another 5 hours later, after having spent over 12 hours at the police station and never being told he could leave, he was arrested and charged with Arson related to the fire at his residence. (T:259-16 to 260-9).

LEGAL ARGUMENT

POINT I

MR. CANEIRO’S RESPONSES TO INVESTIGATORY QUESTIONS PERTAINING TO THE ONGOING CRIMINAL INVESTIGATION OF THE SUSPICIOUS FIRE WERE TAKEN IN VIOLATION OF MIRANDA.

No Miranda warnings were given to Mr. Caneiro when law enforcement obtained multiple statements from him on scene. These statements were obtained pursuant to law enforcement conducting a **criminal investigation** into what was deemed a suspicious, intentionally set fire inside of Mr. Caneiro’s home. Despite each witness denying repeatedly on the stand that Mr. Caneiro was a targeted suspect, they also acknowledged that they were looking for a suspect, nonetheless. Common sense dictates that the primary suspects of any intentionally set fire from within the home, as was the case here, are those who were home at the time the fire was set. Here, that included none other than Mr. Caneiro.

As the testimony revealed, the fire investigation at Mr. Caneiro’s home quickly turned into a criminal investigation once police and fire investigators determined that the fire was intentionally set. According to Marino, the fire investigation began transitioning into a criminal investigation at approx. 5:30 AM. Marino recalled that shortly after that time, he began using crime scene tape. By 5:45 AM, Det. Brady from the MCPO was called to the scene once ‘they realized what they had’ i.e. a ‘suspicious fire.’ Likewise, the County Fire Mashall was called to the scene because the fire was deemed to be a ‘suspicious’ and an ‘intentionally set’ fire. As a result of receiving this call, the County Fire Marshall arrived on scene at 7:05 AM. According to Brady, it was at this time (approx. 7 AM) that the fire scene was deemed an official crime scene. Due to this development, Brady and Weisbrot made sure to use consent to search forms, twice, when seeking permission from Mr. Caneiro to search his property. During this time, the scene had been blocked off, which included Mr. Caneiro’s vehicle, as countless officers, fire trucks, and other emergency personnel responded to the scene. Additionally, Mr. Caneiro did not even have shoes on when questioned.

Accordingly, while the initial efforts to get pedigree information from Mr. Caneiro on scene were not in violation of Mr. Caneiro’s rights (the statements made to Marino), any statements taken after 5:30 AM, when the fire scene was transitioning into a criminal investigation, were

taken in violation of Miranda. At the very least, the statements taken by Brady, beginning at 7 AM when the scene was deemed an ‘official crime scene,’ were taken in clear violation of Miranda.

As both our New Jersey and United States Supreme Courts have long recognized, determining whether a suspect is “in custody” for Miranda purposes does not require a formal arrest or the use of physical restraints. See State v. Brown, 352 N.J. Super. 338, 346 (App. Div. 2002). “[N]either formal arrest, handcuffs nor physical restraints in a police station is necessary to conclude that a suspect is in custody for purposes of the Miranda requirement; indeed ‘custody may occur in a suspect’s home or a public place.’” Id. at 352 (quoting State v. Godfrey, 131 N.J. Super. 168, 175 (App.Div.1974)). 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. Stott, 171 N.J. 343, 265 (2002); State v. P.Z., 152 N.J. 86, 103 (1997).

“Those circumstances include the duration of the detention, the place and time of the interrogation, the nature of the questions and the language employed by the interrogator, the conduct of the police, the status of the interrogator, the status of the suspect, **and any other relevant circumstances.**” Brown, 352 N.J. Super. at 352. (Emphasis added). Whether the individual is in custody is an objective inquiry focusing on “how a reasonable [person] in the suspect’s position would have understood his situation[.]” State v. Hubbard, 222 N.J. 249, 267 (2015) (citing Berkemer v. McCarty, 468 U.S. 420, 442 (1984); P.Z., supra, 152 N.J. at 103). Our higher courts recognize that “it is not always easy to discern when a suspect is ‘in custody.’” Brown, 352 N.J. Super. at 352. Therefore, using the totality of the circumstances test, “[e]ach case must be decided on its own set of facts.” Ibid.

Here, the facts clearly establish that Mr. Caneiro was in custody, or, its “functional equivalent.” Hubbard, 222 N.J. at 267 (“Miranda safeguards come into play whenever a person in custody is subjected to either express questioning **or its functional equivalent.**”) (quoting Rhode Island v. Innis, 446 U.S. 291, 300–01 (1980)) (emphasis added). First, the sheer scale and presence of law enforcement at the scene was “chaotic,” overwhelming, and police dominated. The scene included numerous responding personnel from Ocean Twp. Police dept., MCPO, two fire departments, and the County Fire Marshall, which resulted in countless police vehicles, fire trucks, and other emergency response vehicles on scene. Second, the area, including the location where Mr. Caneiro’s vehicle was parked only two houses down, was blocked off and traffic could not get through. Third, Mr. Caneiro – in the middle of a cold November morning – did not even have shoes on while he was on scene and being questioned by 3 police officers, 2 detectives (one from MCPO), and 1 Fire Marshall. Objectively, no reasonable person in Mr. Caneiro’s position would have felt free to leave. In fact, Brady stated that Mr. Caneiro was able to “freely move about **the scene.**” At no point, however, would a reasonable person feel free to walk away – barefooted– from this scene altogether, under these circumstances. Truly, Brady’s statement is analogous to stating, ‘the suspect was able to freely move about his jail cell.’ Just because one is larger does not

make it equivalent to ‘freedom.’ Clearly, there was a significant deprivation of Mr. Caneiro’s freedom of action based on the objective circumstances. Stott, supra. at 265; P.Z., supra. at 103.

Next, the overall time frame of detention was 7 hours on scene (5 AM to approx. 12 noon) and then an additional 12 hours at the police station (12 noon until 12:15 AM when finally charged). Thus, Mr. Caneiro was detained well beyond an ‘extended’ period of time. The scene itself included a reported fire, which both law enforcement and fire personnel deemed suspicious and intentionally set, at the residence belonging to Mr. Caneiro. The fire was reported to be coming from the basement, and soon thereafter confirmed to have originated from the basement. The ‘suspicious, intentionally set fire’ therefore, was lit from the inside of the home. Law enforcement quickly ascertained that the only people inside of the home at the time of the fire were: Mr. Caneiro, his wife, and his two adult daughters. Obviously, at the very least, all four members of the household, including Mr. Caneiro, were ‘likely suspects’ because they were the only ones who had access to the home at the time of the fire. It defies logic to suggest otherwise. Indeed, further demonstrating the custodial nature of the circumstances, Brady was not willing to permit the family to “get cleaned up” or “go buy food.” Instead, Brady insisted the family immediately give statements so as to avoid ‘memories fading,’ despite the fact that Brady himself waited over 2 months writing his report containing these unrecorded statements. (T:212-2 to 13; 250-16 to 25; 227-4 to 228-20). Regardless, this was once again a significant deprivation of freedom of action based on the objective circumstances. Stott, supra. at 265; P.Z., supra. at 103.

Importantly, Miranda warnings must be administered prior to any interrogation-oriented questioning, which 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, supra, at 301) (emphasis added). Here, in the context of the police and fire personnel questioning Mr. Caneiro pursuant to their investigation into the ‘suspicious, intentionally set’ fire that originated from inside of his home while he was home, the questions posed were unmistakably “likely to elicit an incriminating response.” Mr. Caneiro was repeatedly questioned by multiple law enforcement officers, which were not casual or spontaneous conversations. Nor were they brief, typical on-the-scene questions posed to ascertain general information. Rather, officers and detectives approached him—sometimes at the direction of superiors—to elicit specific information about the suspicious gas can, the injury to his hand, his timeline of events, and his home DVR surveillance system, and also to search his personal property. The officers’ questions were intentionally focused, pointed, and investigatory in nature.

As a prime example, Redmond conceded that by the time he spoke to Mr. Caneiro, his “suspicions were already raised” about this fire being an “intentional fire.” His purpose in speaking to Mr. Caneiro was to inquire, specifically, about the suspicious gas can that was observed, and, more specifically, to ascertain whether it was his or someone else’s gas can. (T:143-21 to 144-12; 155-3 to 156-22). Redmond agreed that the reason he brought the gas can to Mr.

Caneiro's attention is because "he found it to be suspicious" and "wanted to inquire further." (T:143-21 to 144-1). Redmond further acknowledged that he asked Mr. Caneiro where he keeps his gas cans for the purpose of investigating the suspicious fire (T:143-21 to 144-10) and "to see if there was one missing." (T:155-12 to 156-2).

Likewise, Brady conceded that he was called to the scene once "they realized what they had" i.e. "a suspicious fire," (T:221-5 to 13), and that his specific purpose was to play an investigatory role in the context of a criminal investigation – specifically, to ascertain "how the fire started" and "who did it." (T:232-17 to 24; 235-24 to 237-5). Relevant here, one way by which he conducted his criminal investigation was to question Mr. Caneiro. As he explained, he questioned Mr. Caneiro not just one, not twice, -- but 4-5 times total. All of these questions occurred after the fire scene was deemed a crime scene, after the County Fire Marshall deemed the fire intentional, and after MCPO responded to officially investigate and process this crime scene further. There is no question that, under these circumstances, Miranda warnings were necessary: Mr. Caneiro was in the functional equivalent of police custody and these targeted questions were designed to elicit, or at the very least were likely to elicit, incriminating responses. Indeed, Brady and Wesibrot utilized a consent to search form twice in light of the ongoing criminal investigation.

Also importantly, although "the subjective views of either the police or the suspect" are generally not the relevant consideration, this is not always the case. Stansbury v. California, 511 U.S. 318, 323 (1994). "An officer's knowledge or belief may bear upon the custody issue if they are conveyed, by word or deed, to the individual being questioned. Those beliefs are relevant only to the extent they would affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her 'freedom of action.'" Id. at 325. Here, this factor is relevant because the officers did subjectively believe that a suspect existed with respect to this fire, and it was evident, through the questioning, that a reasonable person in Mr. Caneiro's position would have felt the targeted effect of those questions and would have felt compelled to comply with the investigation.

To be sure, there were objective indications that Mr. Caneiro was a possible suspect early in the investigation. As the Court emphasized in Stott, *supra*, "a reasonable person in the defendant's position would conclude from [being singled out and asked direct questions about criminal activity] that he was, or was becoming, a focus of a police investigation." 171 N.J. at 370. That is precisely what occurred here. Mr. Caneiro was singled out and questioned in a coordinated fashion by multiple officers, investigators, and detectives, with many interactions initiated by superior officers, and with the officers themselves acknowledging a rapidly evolving criminal investigation.

Likewise, "the status of the interrogator" and "the status of the suspect" are two other relevant factors for consideration. Brown, 352 N.J. Super. at 352. Here, these factors demonstrate

custody because not only was Mr. Caneiro questioned by first responding officers, but he was then further questioned by two **detectives** – one from Ocean Twp. Police Dept., and the other from the County Prosecutor’s Office. Juxtaposed with Mr. Caneiro’s status as the homeowner of the suspicious fire, a reasonable person in Mr. Caneiro’s position would have not have felt free to leave the active crime scene and would have felt further compelled to answer the detectives’ questions.

Significantly, “compulsion” i.e. when an individual being questioned by law enforcement feels he is “under compulsion to speak” is a critical part of the instant analysis. Miranda v. Arizona, 384 U.S. 436, 461 (1966). In fact, “**it is the compulsive aspect of custodial interrogation, and not the strength or content of the government's suspicions at the time the questioning was conducted**, which led the Court to impose the Miranda requirements with regard to custodial questioning.” Brown, 352 N.J. Super. at 353 (quoting Stansbury v. California, 511 U.S. 318, 323 (1994)) (emphasis added). Here, Mr. Caneiro was stuck on scene for 7 hours, where he was questioned 10+ times by 6+ investigators, in a chaotic, coercive, police-dominated environment where his freedoms were restrained – he had no shoes on in the cold, rainy mid-November weather and his car was blocked in by the numerous fire trucks, police cars, and other emergency response vehicles on scene. And, of course, his house was on fire. For these, and all the above-stated reasons, a reasonable person in Mr. Caneiro’s position would have felt **compelled** to cooperate and answer the questions posed to him by the various on-scene investigators. Thus, regardless of whether he was a suspect, he was nonetheless, objectively, entitled to Miranda warnings.

CONCLUSION

In sum, taken in their totality, the circumstances of this case establish that Mr. Caneiro was subject to custodial interrogation beginning at approx. 5:30 AM, and thus, should have been Mirandized prior to any questioning. At a minimum, by the time the scene was deemed an ‘official crime scene’ and Det. Brady, along with Det. Weisbrot, questioned Mr. Caneiro 4-5 times between 7 AM and 12 noon, Mr. Caneiro should have been Mirandized. By this point, the general on-the-scene questioning had been long over, and the investigation had shifted to searching for a criminal suspect. Because he was in the functional equivalent of police custody and not Mirandized at these critical stages of the investigation, his responses/ statements must be suppressed.

Sincerely,

/s/ Monika Mastellone

Monika Mastellone, Esq. 122942014

/s/ Victoria Howard

Victoria Howard, Esq. 021052012

CC: AP Chris Decker; AP Nicole Wallace