

PREPARED BY THE COURT

STATE OF NEW JERSEY

Plaintiff,

v.

PAUL J. CANEIRO

Defendant.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: CRIMINAL PART
MONMOUTH COUNTY

INDICTMENT No. 19-02-0283-I
CASE No. 18-4915

Order

THIS MATTER having been opened to the Court on April 8, 2025, by the State's motion to admit statements made by the Defendant pursuant to N.J.R.E. 104(c), and said hearing having been conducted on application of Raymond S Santiago, Monmouth County Prosecutor, by Christopher Decker, Deputy First Assistant Prosecutor, and Nicole Wallace, Assistant Prosecutor, for the State of New Jersey, upon notice to and in the presence of defendant Paul J. Caneiro, represented by Monica Mastellone, Esq. and Victoria Howard, Esq.; and the Court having heard testimony and reviewed all items marked into evidence during the hearing, and having incorporated all post-hearing written submissions into the record in accordance with Rule 2:6-1(a)(2), and for reasons stated in the written decision accompanying this order, and for good cause shown;

IT IS on this 6th day of May, 2025;

ORDERED that the State's Motion to admit Defendant's prior out of court statements is Granted; and it is further

ORDERED that the State must provide Defendant with written notice of the specific statements it seeks to admit by May 30, 2025, so that Defendant has adequate notice before trial.

ORDERED that a copy of this order shall be served upon all counsel of record via e-courts.



Hon. Marc C. Lemieux, A.J.S.C.

See Statement of Reasons dated May 6, 2025

Not for publication without approval from the committee on opinions

STATE OF NEW JERSEY

Plaintiff,

v.

PAUL J. CANEIRO

Defendant.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: CRIMINAL PART
MONMOUTH COUNTY

INDICTMENT No. 19-02-0283-I
CASE No. 18-4915

**MOTION TO ADMIT DEFENDANT'S
STATEMENTS UNDER N.J.R.E. 104(c)**

STATEMENT OF REASONS

Lemieux, A.J.S.C.

INTRODUCTION

The State of New Jersey moves to admit into evidence certain statements Defendant made on November 20, 2018, pursuant to N.J.R.E. 104(c). In support of its motion, the State presented testimony from Fire Marshal Craig Flannigan, Patrolman Daniel Marino, Patrolman Kevin Redmond, Patrolman Brendan Bernhard, and Sergeant Christopher Brady.

After hearing and evaluating the credible testimony of these witnesses and reviewing the relevant body-worn camera footage, the Court finds that the State has satisfied its burden of proof. The record establishes that Defendant's statements were made voluntarily and were not the product of custodial interrogation. Accordingly, for the reasons stated herein and pursuant to N.J.R.E. 104(c), the Court **GRANTS** the State's motion to admit the identified statements, subject to the instructions and limitations set forth in this decision and the accompanying order.

To maintain consistency with the transcripts, reports, and written summations filed in this case and admitted into evidence, the Court refers to Sergeant Brady as **Detective Brady**, reflecting the rank he held on the date in question. Pursuant to R. 2:6-1(a)(2), the Court incorporates the

parties' written summations into the record as if argued in open court and refers to them as appropriate.

RELEVANT FACTUAL BACKGROUND

At approximately 5:00 a.m. on November 20, 2018, a fire was reported at 27 Tilton Drive, Ocean Township, the residence Defendant shared with his wife and two adult daughters. Emergency responders arrived to find that Defendant had already evacuated his family and placed them in his wife's Porsche Cayenne, which he had moved from the garage and parked in the roadway in front of the residence. Responders observed an active fire at the rear of the residence and a smaller fire on the lower portion of the garage door. Nearby, they located a red gas can with a burnt spout and a charred rubber glove, situated close to Defendant's loaner Porsche Macan, which was parked in the driveway. The Macan displayed brown staining on its hood.

Approximately nine minutes after arriving at the scene, Patrolman Marino engaged Defendant and his family near their vehicle, which was parked on the street. During a three-minute exchange, Patrolman Marino collected pedigree information, asked whether anyone required medical assistance, and inquired into what had occurred. Defendant and his family provided basic identifying information and explained how they discovered the fire and exited the home. Defendant reported that he had exited the house barefoot, injured his hand, and suffered from asthma.

Roughly fifteen minutes later, Patrolmen Redmond and Weinkofsky spoke with Defendant and his family for approximately two and a half minutes while they remained outside. Patrolman Redmond questioned Defendant about the gas can found near the garage, and Defendant stated that he typically stored his gas cans in his shed. While simultaneously speaking with Defendant's wife and daughter, Patrolman Weinkofsky asked, "Did the fire alarm start going off first?"

Defendant answered, "Yeah," and shortly thereafter added, "There was smoke coming through the vents."

Patrolman Bernhard conducted two brief interactions with Defendant. During the first, lasting about 42 seconds, Defendant sat in the driver's seat of his car with his daughter in the passenger seat. Patrolman Bernhard asked Defendant about the location and operational status of his DVR. During the second, approximately ten-second interaction, Bernhard asked whether the DVR was a white box while Defendant and his daughter stood nearby.

Between approximately 5:30 a.m. and 6:30 a.m., Fire Marshal Craig Flannigan conducted a fire scene investigation. He spoke with Defendant twice—once after inspecting the home's perimeter and again after examining the interior. During the first encounter, which lasted less than fifteen minutes, Flannigan asked routine preliminary questions and inquired about the partially melted gas can. Although Flannigan could not recall Defendant's precise responses due to the passage of time, he prepared a 2018 report. During their second interaction, Flannigan sat in the passenger seat of Defendant's vehicle due to rain. Again, Flannigan could not recall the content of that conversation without consulting his report/notes.

Detective Brady arrived on scene at approximately 6:15 a.m. and engaged Defendant and his wife at about 7:00 a.m. on a neighbor's porch, in the presence of the neighbor. Defendant stated that he awoke to fire alarms and observed smoke coming through the vents. He alerted his family and exited the home. Defendant explained that he re-entered the house, backed a vehicle out of the garage, and closed the garage door because he was unsure whether more air would exacerbate the fire. When questioned about an injury to his left hand, Defendant said he struck it on a door or doorknob while exiting the residence. He declined first aid.

Detective Brady subsequently learned from Monmouth County Fire Marshal Tuberion that the fire appeared incendiary in nature. He notified the Monmouth County Prosecutor's Office. Detective Weisbrot arrived on scene, and at approximately 9:50 a.m., Detectives Brady and Weisbrot approached Defendant near his driveway to request consent for Fire Marshal Tuberion to examine the Porsche Macan, which exhibited signs of fire damage. Detective Weisbrot read the consent form aloud. Defendant granted permission and asked to be present during the inspection. While the examination occurred, Defendant made the unsolicited remark, "That door is making me nervous."

At approximately 11:37 a.m., Detectives Brady and Weisbrot again met with Defendant in the front yard and requested consent to search his Q-See DVR. Defendant reviewed and signed the consent form. He noted that the DVR had experienced connectivity issues and had recently been offline.

Between approximately 11:37 a.m. and 12:00 p.m., the detectives asked Defendant and his family to come to the Ocean Township Police Department to provide witness statements. The family requested time to clean up and eat before proceeding. The detectives explained the importance of timely statements to preserve accurate memories. Defendant and his family agreed to travel to headquarters on their own.

Upon arrival, the Caneiro family waited in the lobby. Defendant was wearing shoes, although the circumstances under which he acquired them remained unclear. During this time, detectives began reviewing footage from the DVR. Around the same time, Detective Brady learned of a second fire at Defendant's brother's residence in Colts Neck. Concerned that a larger coordinated incident was unfolding, Detective Brady moved the family to a private conference

room in the detective bureau to ensure privacy and security. The family kept their cell phones during this time.

Defendant and his family had by then become aware of the Colts Neck fire. Defendant requested that police conduct a welfare check on his parents in New York. Detective Brady complied, confirmed their wellbeing, and informed Defendant accordingly. Defendant then asked police to avoid alerting his parents to the existence of the fires.

Defendant also showed Detective Brady four text messages from his brother, Keith, which he received during the overnight hours. He expressed concern about their content. Defendant's wife and daughters gave formal statements at approximately 2:35 p.m. Prior to any formal questioning of Defendant, at approximately 7:25 p.m., Detective Brady read Defendant his Miranda rights. Defendant invoked his right to remain silent and requested an attorney. At approximately 12:15 a.m. on November 21, 2018, authorities charged Defendant with one count of arson.

STATE'S CONTENTIONS

The State asserts that all of Defendant's statements at the scene of the fire are admissible because Defendant was never in custody at any point during that time. The State identifies several factors relevant to a custody determination: (1) the time, location, and duration of the detention; (2) the physical surroundings; (3) the nature and degree of pressure used to detain the individual; (4) the language used by law enforcement officers; and (5) objective indications that the person questioned was a suspect. The State maintains that Defendant did not experience a significant deprivation of freedom under the totality of the objective circumstances, a critical component in determining whether custody existed.

The State further argues that the police and fire officials treated Defendant and his family as victims of a house fire. According to the State, law enforcement never considered Defendant a suspect between the time of their initial arrival at 5:00 a.m. and the family's voluntary departure for the Ocean Township Police Department around 12:00 p.m.

To support its position, the State emphasizes that law enforcement did not seize Defendant's phone or car keys; did not separate him from his family against his will; did not restrain him physically or instruct him to remain at the scene; and in fact, allowed him to move about freely. Defendant returned to his vehicle multiple times and visited a neighbor's home. The State characterizes Defendant's cooperation as voluntary, not compelled.

Regarding Defendant's presence at the police station, the State notes that Defendant drove himself there, remained with his family, and retained possession of his cell phone. The State contends that he was not in custody before officers advised him of his Miranda rights, and that all his statements were voluntary and unsolicited, not the result of formal questioning or its functional equivalent.

The State also maintains that Defendant voluntarily interacted with Fire Marshal Flannigan and that Flannigan did not conduct his interview with the pressures associated with custodial police questioning or in the presence of law enforcement.

DEFENDANT'S CONTENTIONS

Defendant contends that once officers began to suspect the fire was intentional, the entire property at 27 Tilton Drive became a crime scene and law enforcement effectively placed him in custody. While he concedes that Patrolman Marino's initial contact of collecting pedigree information shortly after the first patrol car arrived did not constitute a custodial interrogation, he argues that conditions changed once the formal investigation began around 5:30 a.m.

Defendant highlights the cumulative impact of the scene's circumstances: his lack of footwear, the overwhelming presence of emergency vehicles, the closure of Tilton Drive, the establishment of a perimeter, and the use of crime scene tape. He asserts that these factors, taken together, significantly deprived him of his freedom. He argues that a reasonable person in his position would have understood that they were not free to leave and were functionally in custody. Though officers did not physically restrain him, Defendant analogizes his ability to walk around the scene to walking within the confines of a jail cell—limited in space, but not truly free.

Defendant also emphasizes the extended duration of law enforcement's presence and engagement: approximately seven hours on scene and an additional seven hours at the police station, all before officers read him his Miranda rights. He claims that during this time, law enforcement denied his request to clean up or obtain food, further evidencing his custodial status.

Regarding the questioning, Defendant asserts that law enforcement did not limit themselves to brief, general inquiries. Instead, he claims that officers asked targeted, investigative questions designed to elicit incriminating responses during an active crime scene investigation. He argues that growing suspicion among officers shaped the nature of this questioning, and that while officers' subjective beliefs may not always define custody, the circumstances made their suspicions evident. He contends that a reasonable person in his position would have perceived those questions as accusatory and felt compelled to comply.

Finally, Defendant argues that his statements were not voluntary but rather compelled by the totality of the circumstances. He further challenges the reliability of Fire Marshal Flannigan's and Detective Brady's testimony, noting that neither interaction was audio- or video-recorded and that both witnesses relied on notes and recollections dating back nearly seven years. Defendant

concludes that the absence of corroboration undermines the credibility of the claimed statements, and the court should not admit them.

LAW

N.J.R.E. 104(c) governs the admissibility of a defendant's statement at trial. This rule mandates that courts hold a hearing to assess the voluntariness, and thereby the admissibility, of the defendant's statement, even if the defendant does not move to suppress it. See State v. W.B., 205 N.J. 588, 602 n.3 (2011); State v. Miller, 76 N.J. 392, 404–05 (1978); State v. Scott, 398 N.J. Super. 142, 153 (App. Div. 2006), aff'd o.b., 193 N.J. 227 (2008); State v. Pillar, 359 N.J. Super. 249, 273 (App. Div.), certif. denied, 177 N.J. 572 (2003). At such a hearing, the State bears the affirmative burden of proving beyond a reasonable doubt that the defendant's statement was voluntary and, if the statement was made during custodial interrogation, that the defendant knowingly, voluntarily, and intelligently waived his rights. W.B., 205 N.J. at 602 n.3.

If the State meets this burden at a N.J.R.E. 104(c) hearing, the court may admit the statement at trial under N.J.R.E. 803(b), notwithstanding constitutional protections such as Miranda or other privileges. See State v. Gore, 205 N.J. 363, 382 (2011). N.J.R.E. 803(b) creates a hearsay exception that allows the introduction of a party-opponent's own out-of-court statement, provided the statement was made in an individual or representative capacity. The totality of the circumstances determines whether a defendant made the statement voluntarily. This inquiry focuses on the interaction between law enforcement conduct and the individual's susceptibility to coercion. See Scott, 398 N.J. Super. at 154.

Courts consider multiple factors when analyzing voluntariness, including the defendant's age, education, and intelligence; whether officers advised the defendant of his rights; the length, repetition, and nature of the questioning; and whether law enforcement used physical punishment

or caused mental exhaustion. See Miller, 76 N.J. at 402. Courts may also consider the defendant's prior experiences with the justice system. See State v. Puchalski, 45 N.J. 97, 101 (1965).

New Jersey law distinguishes between a failure to administer Miranda warnings and a violation of the privilege against self-incrimination after a suspect invokes those rights. See State v. Knight, 183 N.J. 449, 461 (2005) (quoting State v. Burris, 145 N.J. 509, 520 (1996)). When the State seeks to introduce a defendant's statements under N.J.R.E. 803(b), and those statements fall within the scope of Miranda, the State must prove both the voluntariness of the statement and that the defendant received proper warnings and waived them knowingly, voluntarily, and intelligently. See Gore, 205 N.J. at 382.

The Fifth Amendment to the U.S. Constitution, N.J.S.A. 2A:84A-19, and N.J.R.E. 503 guarantee the right against self-incrimination. See State v. S.S., 229 N.J. 360, 381 (2017). To protect this right, authorities must advise individuals in custody, before questioning, that they have the right to remain silent, that anything they say can be used against them in court, that they have the right to counsel, and that the court will appoint counsel if they cannot afford one. See Miranda v. Arizona, 384 U.S. 436, 478–79 (1966). Miranda protections attach only when custodial interrogation occurs. Id. at 444.

Custody occurs either when officers arrest a person or when a reasonable person in the same situation would believe they are not free to leave. See State v. Brown, 352 N.J. Super. 338, 352 (App. Div. 2002). Custody does not require physical restraint or questioning at a police station. See State v. Godfrey, 131 N.J. Super. 168, 175 (App. Div. 1974), aff'd, 67 N.J. 267 (1975). Nor does a person's presence at a police station automatically establish custody. See State v. Erazo, 254 N.J. 277, 299 (2023). Instead, courts evaluate custody using a holistic test, which considers: (1) the time, location, and duration of the detention; (2) the physical surroundings; (3) the nature and

degree of pressure law enforcement used; (4) the language officers used; and (5) objective signs that law enforcement considered the person a suspect. See State v. Smith, 374 N.J. Super. 425, 431 (App. Div. 2005). The key question is whether the individual experienced a significant deprivation of freedom. See Erazo, 254 N.J. at 298–99 (quoting State v. P.Z., 152 N.J. 86, 103 (1997)). Like voluntariness and waiver, custody requires courts to apply a totality-of-the-circumstances test. See P.Z., 152 N.J. at 102; Stansbury v. California, 511 U.S. 318, 322 (1994); State v. Pierson, 223 N.J. Super. 62, 67 (App. Div. 1988).

Interrogation includes any questioning initiated by law enforcement, or any statements or actions that law enforcement should reasonably expect to elicit an incriminating response. See Brown, 352 N.J. Super. at 351; State v. Hubbard, 222 N.J. 249, 267 (2015) (quoting Rhode Island v. Innis, 446 U.S. 291, 301 (1980)). Courts must also determine whether officials or other individuals acted in a law enforcement capacity. See State v. Helewa, 223 N.J. Super. 40, 53–54 (App. Div. 1988); State v. Flower, 224 N.J. Super. 208 (Law Div. 1987), aff'd, 224 N.J. Super. 90 (App. Div. 1988). When a defendant is not in custody, interrogation—even by law enforcement—does not constitute a Miranda violation. See P.Z., 152 N.J. at 103.

Miranda protections apply only when the defendant is both in custody and subject to interrogation or its functional equivalent. Therefore, a Miranda violation does not occur when a defendant makes unsolicited, spontaneous statements that do not result from questioning or its equivalent. See State v. Tiwana, 256 N.J. 33, 45 (2023) (quoting State v. Ward, 240 N.J. Super. 412, 418 (App. Div. 1990)); Innis, 446 U.S. at 300–01. Even when an officer poses a question to a defendant in custody who has received but not waived Miranda rights, the defendant's answer may be admissible if the question did not constitute interrogation. For example, in State v. Ramos, 217 N.J. Super. 530, 537 (App. Div. 1987), the court admitted a defendant's response to a routine

question, “where are your glasses?” because it was asked only to assist the defendant, not to elicit an incriminating response.

Each case requires a fact-sensitive inquiry. Courts may find no Miranda violation when a defendant makes spontaneous statements in response to routine questions or incidental interactions during booking. See Tiwana, 256 N.J. at 45. Conversely, in State in Interest of A.A., 240 N.J. 341, 357–58 (2020), the court found a Miranda violation where police allowed the defendant’s mother to speak with him in custody, knowing she was likely to elicit incriminating responses.

A suspect validly waives Miranda rights when the waiver is knowing, intelligent, and voluntary under the totality of the circumstances. See State v. Presha, 163 N.J. 304, 313 (2000). A waiver is knowing and intelligent when the suspect understands that they are not required to speak, comprehends the consequences of speaking, and knows they have a right to consult an attorney before answering questions. See State v. A.M., 237 N.J. 384, 397 (2019) (quoting State v. Nyhammer, 197 N.J. 383, 402 (2009)). A waiver is voluntary when police coercion does not induce it. See Presha, 163 N.J. at 313.

ANALYSIS

This court finds, based on the totality of the circumstances, that Defendant made all statements at the scene of the fire voluntarily. The court also finds, using the same totality of the circumstances analysis, that Defendant was not in custody before he and his family drove themselves to Ocean Township police headquarters. Therefore, Defendant was not subject to custodial interrogation requiring Miranda warnings. As a result, all of Defendant’s statements made before arriving at Ocean Township police headquarters are admissible.

Both the State and Defendant agree that Defendant was not in custody when Patrolman Daniel Marino first arrived at Defendant’s home, nor did any officer physically restrain him.

Defendant contends, however, that when police began treating the area as an “official crime scene” between 5:30 a.m. and 7:00 a.m., he effectively entered custody. Defendant argues that, from that moment forward, a reasonable person would have believed they were not free to leave. He supports this position with several points: the scene was “chaotic” and “police dominated,” with cordoned-off areas and officers maintaining a presence; his vehicle was within the restricted zone and blocked by emergency vehicles; he remained shoeless for most of the morning; he and his family remained within the scene’s boundaries for about seven hours before being told to go to police headquarters; and officers’ conversations revealed their suspicions about him, suggesting a coercive atmosphere. Defendant also points out that Detective Brady allegedly refused to let him or his family clean up or eat before driving to the station. However, for the reasons below, the testimony and video footage provided by the State show, beyond a reasonable doubt, that none of these factors, individually or collectively, amount to custody.

A. Police Presence and Defendant’s Freedom of Movement

Courts have long held that a person’s presence at a crime scene, even in a police-dominated environment, does not automatically mean they are in custody. While a strong police presence can feel coercive, courts have distinguished between police merely being present and actively impeding an individual’s ability to leave. For instance, even during a home search, police do not create a custodial setting if they focus on securing the scene rather than restricting a suspect’s movement. State v. Keating, 277 N.J. Super. 141, 147 (App. Div. 1994).

Here, the officers maintained a presence to prevent interference with firefighting efforts, not to confine Defendant or his family. Patrolman Marino’s bodycam footage shows officers taping off areas to protect firefighters, referring to the tape casually. Patrolman Weinkofsky’s footage

further shows officers using the term “caution tape,” reinforcing that they managed the scene for safety, not for detainment.

Officers did not monitor Defendant closely. They approached him one or two at a time to ask brief questions, then returned to their duties. No officer surrounded or confined Defendant. Similarly, although emergency vehicles congested the area, they did not prevent movement. No one confined Defendant or his family to their vehicle, and they freely entered and exited it. His daughters left the area in another vehicle, and he and his wife spent time at a neighbor’s house. No credible evidence suggests that anyone attempted to leave and the police prevented them.

B. Defendant’s Lack of Shoes

Defendant’s claim that being shoeless amounted to coercion lacks merit. The question is not whether Defendant felt uncomfortable, but whether officers caused or exploited that discomfort. Courts have held that Miranda safeguards protect against police overreach, not against general inconvenience. In State v. Smith, officers questioned a defendant who was in boxer shorts, but the court found no coercion because police simply responded to the situation as they found it.

374 N.J. Super. 425 (App. Div. 2005).

Here, no officer removed Defendant’s shoes, refused a request for them, or attempted to use his shoelessness as leverage. He eventually obtained shoes from an unknown source, and the record contains no evidence that police used his lack of footwear to gain a psychological advantage.

C. Time, Location, and Duration of Defendant’s On-Scene Presence

The court acknowledges that Defendant and his family spent several stressful hours at the scene. However, all credible evidence indicates that they did so voluntarily. Defendant chose to remain near his home to monitor the fire. While that decision was understandable, it was not

compulsory. A desire to remain at the scene—however uncomfortable—does not equate to being held there by law enforcement.

In Keating, the court rejected a claim of custody where the suspect wished to remain in his home, as there was no indication that officers restricted his movement or denied requests to leave. The same analysis applies here.

D. Police Suspicion

Defendant argues that officers' growing suspicions created a custodial environment. He notes the use of crime scene tape, references to a gas can and gasoline, and general conversations among personnel. However, a suspect's awareness of being under investigation only matters when police communicate that suspicion in a way that would cause a reasonable person to feel they could not leave.

Under Berkemer v. McCarty, 468 U.S. 420 (1984), and its application in State v. Smith, 374 N.J. Super. 425 (App. Div. 2005), a suspect's knowledge of officers' suspicions does not, by itself, trigger Miranda rights. Courts focus on objective circumstances. Unless officers explicitly communicate their suspicion to the suspect or act in a coercive manner, a person is not in custody for Miranda purposes.

Here, nothing in the officers' words or conduct signaled to Defendant that they considered him a suspect or that he could not leave. Officers asked routine questions, such as the location of security cameras and the timeline of the fire. These inquiries were investigative, not accusatory. No credible evidence shows that officers' conduct would have led a reasonable person to believe they were under arrest or subject to coercive questioning.

When Detective Brady instructed the family to go to the station, he did so with urgency but without coercion. His explanation, that it was important to take statements promptly, persuaded, but did not compel, their cooperation.

E. Voluntariness of Defendant's Statements

The court finds that Defendant's statements at the scene were voluntary. None of the circumstances above support a finding of coercion. Defendant answered questions about his home, his health, and other routine matters without pressure or inducement. Nothing in the record shows overbearing tactics or psychological manipulation. His background, intelligence, and calm demeanor further support a finding of voluntariness.

F. Statements at Police Headquarters

Defendant was not in custody when he made any statements at the police station before invoking his Miranda rights. Moreover, these statements were not the product of interrogation or its functional equivalent. Under State v. Tiwana, 256 N.J. 1 (2023), and Rhode Island v. Innis, 446 U.S. 291 (1980), unsolicited statements made before custodial interrogation do not trigger Miranda protections.

In State v. Erazo, 254 N.J. 277 (2023), the Supreme Court found that a suspect who gave a 90-minute interview, then spent five hours in an interview room, was not in custody. Like Erazo, Defendant remained with his family, retained access to his cell phone, and was never told he could not leave. The officers did not isolate or pressure him.

Defendant voluntarily made several statements, including a request for a wellness check on his parents and comments about text messages from his brother. These remarks were unsolicited and not the result of questioning. Courts have consistently upheld the admissibility of such statements. See Tiwana, 256 N.J. at 36; Ramos, 217 N.J. Super. at 537.

G. Unrecorded Statements

Defendant objects to the admission of statements supported only by testimony without bodycam footage. While the court does not weigh this issue under N.J.R.E. 104(c), it notes that testimony based on refreshed recollection remains admissible, even after the passage of time. Challenges to the freshness of recollection go to credibility, not admissibility. W.W. v. I.M., 231 N.J. Super. 495, 509 (App. Div. 1989).

CONCLUSION

For these reasons, the court finds, beyond a reasonable doubt, that Defendant was not in custody before arriving at the police station. All statements made by Defendant at 27 Tilton Drive and its surroundings are admissible. At the police station, officers did not subject Defendant to custodial interrogation before administering Miranda warnings. Even if Defendant had been in custody, his statements were spontaneous and unprompted. Accordingly, all statements made at Ocean Township police headquarters are admissible.

While Defendant challenges the admissibility of unrecorded statements testified to by Fire Marshal Flannagan and Detective Brady, this challenge concerns their weight and credibility, not their admissibility. The State must, however, provide Defendant with written notice of the specific statements it seeks to admit so that Defendant has adequate notice before trial.