

Dear Honorable Judges of the Appellate Division:

Please accept this letter brief in lieu of a more formal brief pursuant to Rule 2:6-2(b) in support of Defendant’s Motion for Leave to File an Interlocutory Appeal from the Law Division’s November 10, 2025 Order denying suppression of Mr. Higgins’ statements.

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**I. Statement of Facts**

On August 29, 2024, at approximately 8:19 p.m., Mr. Higgins was driving a motor vehicle along County Route 551 (Pennsville Auburn Road), near milepost 11.15, located in Oldmans Township, Salem County, New Jersey. According to reports, Mr. Higgins attempted to pass a motor vehicle and when he could not, entered back into the lane of travel and struck and killed two (2) bicyclists. Mr. Higgins' vehicle came to rest about a quarter mile from the scene. Mr. Higgins was standing outside of his vehicle as Sergeant Flanagan was responding to the scene. As Sgt. Flanagan passed Mr. Higgins, Mr. Higgins stated, "I hit em', I hit em', I hit 'em." In Tpr. Allonardo's Investigation Report, this detail is omitted. Tpr. Allonardo writes that "as Sgt. Flanagan approached the scene from the north, he made contact with the driver of the striking vehicle" and he "advised him to wait." (See Tpr. Allonardo's Investigation Report dated September 5, 2024, attached hereto, at Appendix. 1). Sgt. Flanagan arrived at the scene and approached the

victims, later identified as Matthew and John Gaudreau. Immediately after Sgt. Flanagan arrived on scene, Pedricktown EMS checked on the victims and determined them both to be deceased. At this point, Sgt. Flanagan radioed into dispatch and stated, “we have two fatalities.” After making the call to dispatch, Sgt. Flanagan was approached by a member of the Auburn Fire Department who stated to him, “Sir, there’s a truck right down here. He’s the one that struck ‘em” to which Sgt. Flanagan confirmed, “Yeah I stopped. He was down there. I just stopped and told him to stay where he is. Black Jeep?” The firefighter responded “yeah.” It should be noted that Sgt. Flanagan had been on scene for approximately three minutes and had already determined and confirmed the only suspect in the crash was Mr. Higgins and that both victims were deceased.

After Tpr. Allonardo arrived at the scene and was informed by Sgt. Flanagan as to the specifics of the accident, he proceeded to Mr. Higgins’ location. He was met by Mr. Higgins. Tpr. Allonardo asked him if the black Jeep was the “striking vehicle” to which Mr. Higgins responded “yes.” Tpr. Allonardo then asked Mr. Higgins if he was the driver, to which Mr. Higgins again responded “yes.” (See Appendix, at 4).

Before Tpr. Allonardo exited his vehicle, Tpr. Harding approached him and advised him that he had already spoken to a witness who informed him that the

driver of the black Jeep was “freaking out” and had admitted to her that he had been drinking. (See Appendix, at 5). Tpr. Allonardo had not yet spoken to Mr. Higgins and had already confirmed the make and color of his vehicle, that he was the driver, his direction of travel, and that he may have been drinking. Tpr. Allonardo had been on scene for approximately three minutes at that point.

Tpr. Allonardo asked Mr. Higgins what happened, to which he responded, “I was passing this Jeep on this, this road. I live in Laurel Hills. He swerved over to this lane. I went back in this lane. There’s bikers right on the side of the road. So the Jeep I pass or was trying to pass went over, like I thought he was trying to block me from passing him, and I cut back over into this lane and there was bikers.” (See Appendix, at 5).

Tpr. Allonardo began questioning Mr. Higgins. He asked Mr. Higgins again where he was coming from before ultimately asking how much he had to drink that day. Mr. Higgins responded, “I mean I’ve been drinking beers, but I haven’t had one in like two hours. So, since the accident, probably an hour or so.” Tpr. Allonardo, however, in his report only writes that Mr. Higgins stated, “I have been drinking beers” and fails to contextualize the entire response. (See Appendix at 5). Tpr. Allonardo then advised Mr. Higgins that he was going to have him perform the Standard Field Sobriety Tests.

Mr. Higgins was deemed to have failed the Standard Field Sobriety Tests and was placed under arrest. He was read his Miranda rights by Tpr. Allonardo at 20:50:41.

Mr. Higgins was later transported to the State Police barracks where he was again read his Miranda rights and was interviewed. A copy of his transcribed statement is attached hereto at Appendix 15. After Mr. Higgins was read his Miranda rights, he gave a statement to the New Jersey State Troopers at the Barracks. Said statement started at approximately 12:03 A.M. on August 30, 2024.

Mr. Higgins initially answered questions without any request for counsel. However, about halfway through the interrogation, Mr. Higgins did invoke his right to counsel and same was ignored by the Troopers. Specifically, on page 42 of Appendix, Mr. Higgins states: “Should, should I actually have a lawyer? I don’t know. I feel like I need a lawyer.” All questioning should have stopped at that point. Instead, the Troopers continued to question Mr. Higgins for at least four pages of the transcribed statement before they decided to again question the Defendant as to his Miranda rights. (See pages 42-46 of Appendix).

Undersigned counsel filed a Notice of Motion to Suppress Mr. Higgins' statements. Oral testimony and oral argument was heard on October 29, 2025 and

November 10, 2025 when the trial court entered an Order Denying the Defendant's Motion (See attached at Appendix 64).

## **II. Procedural Posture and Standard of Review**

The trial court denied Defendant's Miranda/Suppression Motion despite overwhelming evidence demonstrating that: Custodial interrogation occurred prior to the administration of Miranda warnings, at a scene where multiple officers, activated emergency vehicles, road closures, and direct police control rendered any reasonable person not free to leave. Officers had already gathered probable cause *before* contacting Mr. Higgins, making Miranda warnings immediately required. Officers engaged in an unlawful "question-first, warn-later" interrogation sequence, expressly prohibited under Missouri v. Seibert. Mr. Higgins invoked his right to counsel, but the interrogation continued in violation of his rights. These errors directly affect Defendant's fundamental Fifth Amendment and Article I, Paragraph 10 rights, and require appellate intervention. The Court reviews interlocutory Appeals where the interests of justice require immediate review. (See *State v. Reldan*, 100 N.J. 187, 205 (1985); *Moon v. Warren Haven Nursing Home*, 182 N.J. 507, 509 (2005).)

### **III. Legal Argument**

#### **A. The Court was Incorrect in Denying the Defendant's Motion to Suppress Statements**

The Fifth Amendment privilege against self-incrimination, made applicable to the states through the Fourteenth Amendment, provides that “[n]o person ... shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend V. The United States Supreme Court clarified and secured this Constitutional right in Miranda v. Arizona, 384 U.S. 436 (1966). Miranda warnings must be given before a suspect’s statement made during custodial interrogation can be admitted into evidence. In Miranda, the United States Supreme Court defined “custodial interrogation” 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.” 384 U.S. at 444.

In order for an individual to be in custody for the purposes of Miranda, a reasonable person must have felt a “restraint on freedom of movement of the degree associated with formal arrest” in light of the totality of the objective circumstances attending the questioning. State v. Smith, 374 N.J. Super. 425, 430 (2005) (citing Yarborough v. Alvarado, 541 U.S. 652 (2004)). Miranda warnings must be given prior to interrogation if the person has been arrested or physically detained. Furthermore, it is clear that custody in the Miranda sense does not

require a formal arrest, 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. Orozco v. Texas, 394 U.S. 324 (1969) (defendant was in custody for Miranda purposes when he was arrested and not free to leave when he was questioned by the police in his bedroom at 4 a.m.); State v. Mason, 164 N.J. Super. 1 (App. Div. 1979). The test for determining whether a person is “in custody” is known as the “objective reasonable man test.” Berkemer v. McCarty, 468 U.S. 420 (1984); State v. Coburn, 221 N.J. Super. 586 (App. Div. 1987). Custody exists if the action of the interrogating officers and surrounding circumstances, fairly construed, would reasonably lead a suspect to believe that he could not leave freely. Minnesota v. Murphy, 465 U.S. 420 (1984); State v. Pierson, 223 N.J. Super. 62 (App. Div. 1988) (the determinative consideration is whether a reasonable innocent person in such circumstances would conclude that after brief questioning he would or would not be free to leave.). The totality of the circumstances must be examined by the judge in deciding whether the suspect was in custody. State v. Brown, 352 N.J. Super. 338 (App. Div. 2002). Pertinent factors include but are not limited to the duration of the detention, whether the suspect was told that he was free to leave (see, e.g., State v. Stott, 171 N.J. 343 (2002)), the nature and degree of the pressure applied to detain the suspect, the



physical surroundings of the questioning and the language used by the officer in summoning the individual (State v. Pierson, 223 N.J. Super. 62 (App. Div. 1988)).

Roadside questioning during an ordinary traffic stop does not generally constitute custodial interrogation unless the police officer subjects the motorist to treatment that renders him in custody “for practical purposes.” Berkemer, *supra*; State v. Ebert, 377 N.J. Super. 1 (App. Div. 2005) (Miranda did not apply to the preliminary questions asked by the officer concerning whether the defendant after reporting her car stolen had been drinking because her speech was slurred and she had an odor of alcohol on her breath); State v. Nemesh, 228 N.J. Super. 597 (App. Div. 1988) (an initial inquiry by an officer upon his arrival at the scene of an accident as to who was operating the vehicles involved in the accident is not custodial interrogation.).

**1. MR. HIGGINS’ STATEMENTS PRIOR TO HIS ARREST MUST BE SUPPRESSED BECAUSE THEY WERE THE PRODUCT OF CUSTODIAL INTERROGATION CONDUCTED WITHOUT MIRANDA WARNINGS, AFTER OFFICERS HAD ALREADY GATHERED SUFFICIENT FACTS TO ESTABLISH PROBABLE CAUSE AT THE SCENE OF A FATAL ACCIDENT.**

The instant matter was not an “ordinary traffic stop.” As mentioned above in the “Counter Statement of Facts,” there were three officers from the New Jersey State Police who were spearheading the investigation on the night of August 29, 2024; Sergeant Flanegan, Trooper Allonardo, and Trooper Harding. All three

officers, prior to any contact with Mr. Higgins, had confirmed his whereabouts just prior to the accident, the make of the striking vehicle, the color of the striking vehicle, the direction in which he was traveling, that Mr. Higgins was the driver of the striking vehicle, and that he had been drinking prior. All three officers had established probable cause that there was a fatal motor vehicle accident within minutes of arriving on scene.

The Appellate Division addressed this issue in State v. Edwards, No. A-3184-22 (App. Div. 2024), finding that once “a reasonable police officer would have believed he . . . had probable cause to arrest defendant . . . and would not have permitted defendant to leave,” and “a reasonable person in defendant’s position . . . would not have believed that he was free to leave,” for purposes of Miranda, a defendant is in custody.” Id. at 21-22. Even more telling is that in Edwards, like we have in the instant matter, the defendant admitted to the illegal activity almost instantly. The court found that when the officer in Edwards “inquired as to whether defendant possessed drugs” the “defendant was not subject to custodial interrogation under Miranda.” Id. at 21. However, once the defendant admitted to possessing the illegal drugs, the officer had probable cause to arrest, “therefore . . . he was in custody for purposes of Miranda” and the officer was “required” to administer the warnings. Additionally, the questions being asked of

the defendant in Edwards after he had admitted to possessing the narcotics were “specifically targeted” at the defendant and not “spontaneous and open-ended” showing that the officers were not just inquiring in a general nature. Id. at 22.

In the instant matter, Mr. Higgins stated to Sgt. Flanegan immediately that he had hit the victims. Sergeant Flanegan then relayed this information to Tpr. Allonardo who was the next State Police Officer on scene. Tpr. Allonardo, with the information that Mr. Higgins was the driver of the striking vehicle, proceeded up the road to contact Mr. Higgins but was approached by Tpr. Harding. Tpr. Harding informed Tpr. Allonardo that had already spoken to a witness who provided that she had spoken with Mr. Higgins. She stated that he was freaking out, he admitted to hitting the victims, and he admitted to drinking. At this moment, probable cause for a vehicular homicide offense has been established and Miranda is *required*. Instead, both Tpr. Allonardo and Tpr. Harding continued to probe and investigate, eliciting responses from Mr. Higgins about whether he had been drinking and how much he had been drinking. These responses, if he had been advised of his Miranda rights, may not have been elicited.

The State counters that both Tpr. Allonardo and Tpr. Harding were asking “general questions” regarding the accident. As stated numerous times above, before Sgt. Flanegan, Tpr. Allonardo, or Tpr. Harding contacted Mr. Higgins, they

had more than a general understanding of the accident, they had specific and pointed details from eyewitnesses. This was not a routine roadside stop and never was. This was a crime scene from the moment the officer's arrived and should have been treated as such. This falls squarely under the purview of the Edwards court and Miranda should have been given to Mr. Higgins.

**2. MR. HIGGINS' STATEMENTS PRIOR TO HIS ARREST MUST BE SUPPRESSED AS THE TOTALITY OF THE CIRCUMSTANCES LED MR. HIGGINS TO BELIEVE HE WAS NOT FREE TO LEAVE AND WAS SUBJECT TO CUSTODIAL INTERROGATION.**

At the time Mr. Higgins was questioned by law enforcement on August 29, 2024, the totality of the circumstances clearly indicated that he was in custody for purposes of Miranda. He had just been involved in a fatal collision that resulted in the deaths of two cyclists, and responding officers immediately identified him as the sole driver involved. Mr. Higgins was physically surrounded by officers, subjected to field sobriety tests, and interrogated about his alcohol consumption, all without being advised of his right to remain silent. Under these facts, a reasonable person in Mr. Higgins' position would not have felt free to leave. As such, the totality of the circumstances established that Mr. Higgins was in custody for Miranda purposes when the questioning began.

New Jersey courts have repeatedly held that most roadside encounters, such as ordinary traffic stops or preliminary DWI investigations, do not constitute custodial settings requiring Miranda warnings. See State v. Baum, 224 N.J. 147, 168 (2016); State v. Legette, 227 N.J. 460, 470–71 (2017). However, the facts in those cases are materially distinguishable from the present matter and do not apply where the stop escalates beyond its investigatory nature into a full custodial detention.

Unlike a temporary or exploratory stop, Mr. Higgins was detained at the scene of a double fatality where officers had already collected sufficient facts to establish probable cause. He was the only driver involved, he remained at the scene surrounded by multiple officers, and he was immediately subjected to field sobriety testing and direct questioning about his alcohol use. Officers did not treat Mr. Higgins as a witness or a motorist being evaluated for potential impairment; they treated him as a suspect in a criminal investigation into a fatal crash.

In Baum, for example, the New Jersey Supreme Court found no custody where the defendant was questioned in a non-coercive hospital setting, not yet under arrest, and not the sole target of a criminal inquiry. Similarly, in State v. Emili, No. A-5195-15T1 (App. Div. 2018), the court found the roadside questioning non-custodial because the defendant was not physically restrained, the

interaction was brief, and there was no indicia of coercion. Finally, in State v. Catarra, No. A-2416-08T4 (App. Div. 2009) the court found that the circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police because the typical traffic stop is public and usually conducted by one or two police officers. In contrast, Mr. Higgins was detained in the middle of a death investigation, subjected to a structured series of sobriety and evidentiary procedures, and was not told he was free to leave. The fatal nature of the crash alone heightened the stakes and the coerciveness of the setting, pushing this encounter far outside the bounds of a Terry-style stop. Additionally, officers from the New Jersey State Police and surrounding townships had the road blocked off to coming traffic. The scene was no longer public.

When courts apply the totality-of-circumstances test, they look beyond formality and labels. The relevant question is whether a reasonable person in the suspect's position would have felt at liberty to terminate the encounter and walk away. Stansbury v. California, 511 U.S. 318, 325 (1994); State v. Stott, 171 N.J. 343, 364 (2002). On these facts, no reasonable person in Mr. Higgins's position—standing in the middle of a police-controlled death scene, questioned about alcohol, while officers conducted physical tests—would have believed they could leave.

The roadside setting does not insulate law enforcement from Miranda obligations once the encounter becomes custodial in effect.

**3. MR. HIGGINS POST-MIRANDA STATEMENTS MUST ALSO BE SUPPRESSED UNDER MISSOURI V. SEIBERT BECAUSE THEY WERE THE PRODUCT OF A CONTINUOUS, TWO-STEP INTERROGATION.**

The State attempted to rely on Mr. Higgins’ post-Miranda waiver to salvage his subsequent statements. Under Missouri v. Seibert, 542 U.S. 600 (2004), suppression is still required. When law enforcement intentionally engages in a “question-first, warn-later” strategy, any statements obtained after a belated Miranda warning may be inadmissible if they are part of a continuous custodial interrogation. In such cases, the warning is not effective, and any subsequent waiver is not truly voluntary, knowing, or intelligent.

In Seibert, the United States Supreme Court suppressed post-warning statements where the police had obtained admissions during an initial unwarned custodial interrogation, then issued Miranda warnings and immediately re-elicited the same information. The Court found that such a tactic rendered the warning ineffective and the waiver invalid, particularly because the suspect had already “let the cat out of the bag” and would likely view the warnings as a meaningless formality.

New Jersey courts have acknowledged and applied the Seibert framework. In State v. Nyhammer, 197 N.J. 383, 401 (2009), the Court reaffirmed that a valid Miranda waiver must be truly informed and voluntary, and that any coercive or deceptive tactics used by police, particularly those that lead a suspect to believe there is no point in remaining silent, can undermine the validity of that waiver. In State v. A.M., 237 N.J. 384, 397-99 (2019), the Court again emphasized the totality-of-circumstances test, including the suspect's understanding, police conduct, and the sequence of questioning.

Here, Mr. Higgins was interrogated at the scene of a fatal crash without being advised of his Miranda rights. He was asked direct, incriminating questions about his alcohol consumption and behavior, and gave statements during that initial unwarned exchange. Only afterward, once critical admissions had already been made, was he advised of his rights and asked to continue speaking. This sequence closely resembles the two-step strategy condemned in Seibert, and there is no indication that any curative measures were taken to distinguish the two phases of questioning. The post-warning interrogation involved the same officers and directly followed the earlier unwarned statements. The break between the two was not sufficient to eliminate the taint of the initial Miranda violation.



Accordingly, the Court should find that the later waiver was not the product of a meaningful or informed choice, but rather the natural consequence of a continuous, coercive interrogation. As in Seibert, the suspect here would reasonably believe that remaining silent was futile, and that the only option was to continue speaking. The State attempts to justify the officer's actions because they gave Mr. Higgins Miranda warnings throughout the night. This is irrelevant to the argument. Because Mr. Higgins was not Mirandized immediately when he was supposed to, it is of no consequence the officers gave him multiple warnings. The damage was done. Because the post-warning statements were not made pursuant to a valid waiver, they too must be suppressed.

**4. MR. HIGGINS POST-MIRANDA STATEMENTS MADE AT THE BARRACKS MADE AFTER HE ASKED FOR AN ATTORNEY MUST ALSO BE SUPPRESSED.**

As previously stated, after the Defendant was read his Miranda rights, he gave a statement to the New Jersey State Troopers at the Barracks. Said statement is attached hereto as Exhibit "B" and started at approximately 12:03 A.M. on August 30, 2024.

The Defendant initially answered questions without any request for counsel. However, about halfway through the interrogation, the Defendant did invoke his right to counsel and same was ignored by the Troopers. Specifically, on page 27

Defendant's statement attached hereto as Exhibit "B" he says: "Should, should I actually have a lawyer? I don't know. I feel like I need a lawyer." All questioning should have stopped at that point. Instead, the Troopers continued to question the Defendant for four more pages and before they decided to again question the Defendant as to his Miranda rights. (See pages 27-31 of Defendant's statement attached as Exhibit "B" hereto).

However, re-reading Miranda warnings after such an invocation is not the law of this State. At the moment the Defendant said "Should, should I actually have a lawyer? I don't know. I feel like I need a lawyer." all questioning must cease.

That is, the New Jersey Supreme Court set the threshold at whether a suspect's statement arguably amounted to an assertion of Miranda rights, and held that in those circumstances, the officer must clarify with the suspect in order to correctly interpret the statement. The line of cases reaching this result began with the New Jersey Supreme Court's consideration of the corollary right to remain silent. In State v. Bey II, 112 N.J.123, 135 (1988) the Court cautioned that "[a]ny words or conduct that reasonably appear to be inconsistent with defendant's willingness to discuss his case with the police are tantamount to an invocation of the privilege against self-incrimination." Id. at 136.

This Court thereafter explained the general rule to be that “a suspect need not be articulate, clear, or explicit in requesting counsel; any indication of a desire for counsel, however ambiguous, will trigger entitlement to counsel.” State v. Reed, 133 N.J.237, 253 (1993).

Once the Defendant brought up “needing” an attorney, it triggered his entitlement of counsel and all questioning should have ceased.

Therefore, anything the Defendant said after he made the statement “Should, should I actually have a lawyer? I don’t know. I feel like I need a lawyer” must be properly suppressed. This is a bright line rule and any decision to the contrary to is a direct and blatant disregard for the law of this State.

**B. Interlocutory Review Is Necessary to Prevent Irreparable Harm**

The suppressed statements constitute a central component of the State’s case, and an erroneous admission at trial: Cannot be cured by a post-trial appeal; Will cause prejudice impossible to “un-ring”; and Implicates constitutional protections that demand immediate review. Under Rule 2:2-4, interlocutory appeal is appropriate where (1) substantial constitutional questions exist, (2) the decision affects the integrity of the proceedings, and (3) review after final judgment would be inadequate. All such factors are present here.

### **C. The Legal Issues Presented Are of Public Importance**

This appeal presents substantial questions regarding: The definition and boundaries of Miranda custody at fatal accident scenes under modern New Jersey jurisprudence; Application of the Seibert “two-step” doctrine outside stationhouse interrogations; and, Obligations of officers when faced with an arguably ambiguous invocation of counsel under New Jersey’s expanded constitutional protections. These issues arise frequently in cases involving serious motor vehicle accidents, and clarification by the Appellate Division will benefit trial courts statewide.

### **IV. Conclusion**

For the foregoing reasons, Defendant respectfully requests that the Appellate Division: Grant leave to Appeal; Accept the proposed Interlocutory Appeal filing; and, Stay Trial proceedings pending review.

Dated: November 30, 2025

/S/ Richard F. Klineburger, III  
RICHARD F. KLINEBURGER, III, Esquire  
/S/ Matthew V. Portella  
MATTHEW V. PORTELLA, Esquire