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July 23, 2025

Via E-Courts
Honorable Michael J. Silvanio, P.J.Cr.
Gloucester County Justice Complex
70 Hunter Street
Woodbury, New Jersey 08096

Re: State v. Sean M. Higgins
N.J. Superior Court – Salem County
Indictment No.: 24-12-400-I

Dear Judge Silvanio:

Please be reminded of my representation as co-counsel with Richard F. Klineburger, III, Esquire for the defendant, Sean M. Higgins, in the above-referenced matter. Please accept this letter brief in lieu of a more formal brief in support of the defendant's Motion to Suppress the Defendant's Statements.

COUNTER STATEMENT OF FACTS / PROCEDURAL HISTORY

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 Flanegan was responding to the scene. As Sgt. Flanegan passed Mr. Higgins, Mr. Higgins stated, "I hit em', I hit em', I hit 'em." (See Exhibit "A", Sergeant Flanegan's body-worn camera footage, attached hereto, at 20:32:54). In Tpr. Allonardo's Investigation Report, this detail is omitted. Tpr. Allonardo writes that "as Sgt. Flanegan approached the scene from the north, he made contact with the driver of the striking vehicle" and he "advised him to wait." (See Exhibit "B" Tpr. Allonardo's Investigation Report dated September 5, 2024, attached hereto, at 4). Sgt. Flanegan arrived at the scene and approached the victims, later identified as Matthew and John Gaudreau. (See Exhibit "A", at 20:26:50). Immediately after Sgt. Flanegan arrived on scene, Pedricktown EMS checked on the victims and determined them both to be deceased. (See Exhibit "A", at 20:29:10). At this point, Sgt. Flanegan radioed into dispatch and stated, "we have two fatalities." (See Exhibit "A", at 20:29:28). After making the call to dispatch, Sgt. Flanegan 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. Flanegan 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." (See Exhibit "A", at 20:29:40). It should be noted that Sgt. Flanegan 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.

Sgt. Flanegan was then approached by two officers from the Carneys Point Police Department. They advised him that they shut down the road at "Stumpy" and to let them know if there was anything they could do to assist. Sgt. Flanegan advised the officers that "fatal and crime scene already notified." (See Exhibit "A", at 20:32:25).

Tpr. Allonardo next arrived and made contact with Sgt. Flanegan. (See Exhibit "A", at 20:33:28). Sgt. Flanegan advised him that he passed Mr. Higgins on his way to the scene and that Mr. Higgins told him that he "hit 'em" in reference to the victims. He stated that he told Mr. Higgins to wait with his vehicle. (See Exhibit "A", at 20:33:35). Tpr. Allonardo and Sgt. Flanegan then discussed what to do with the witnesses who were standing outside at the crime scene. Tpr. Allonardo said that the witnesses should get taken back to the station as well as "the one that hit 'em." (See Exhibit "A", at 20:33:54). Tpr. Allonardo's report does not mention the specifics of the conversation between the two officers. The only mention of this conversation is summarized as "Sgt. Flangan advised me that the driver of the motor vehicle involved in the crash was located further north on Pennsville Auburn Road. " (See Exhibit "B", at 4). Importantly, at this point, a fire truck was on scene with its emergency lights activated, an ambulance was on scene with its emergency lights activated, two paramedic SUVs were on scene with their emergency lights activated, and multiple police vehicles had their emergency lights activated blocking off the road in both northbound and southbound directions.

After Tpr. Allonardo arrived at the scene and was informed by Sgt. Flanegan 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 Exhibit "B", at 4and Exhibit "C", Tpr. Allonardo's body-worn camera footage, attached hereto, at 20:35:29).

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 Exhibit "B", at 5) (See

Exhibit "C", at 20:36:25). 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.

At 20:36:48, Tpr. Allonardo and the unknown officer made contact with Mr. Higgins. (See Exhibit "C"). 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 Exhibit "B", at 5 and Exhibit "C", at 20:36:50). Tpr. Allonardo then walked over to the front of Mr. Higgins' vehicle where there were two additional officers who were inspecting the front bumper damage. (See Exhibit "C", at 20:37:30). As Tpr. Allonardo turned around, an additional officer was directly behind him, making it four officers in close proximity to Mr. Higgins and two New Jersey State Police Vehicles with their emergency lights activated. (See Exhibit "C", at 20:37:30). Tpr. Allonardo asked Tpr. Harding if he could stand with Mr. Higgins for a moment and he agreed to do so.

For purposes of context, Tpr. Harding arrived on scene at 20:34:57 and immediately made contact with one person who witnessed the crash. (See Exhibit "D", Tpr. Harding body-worn camera footage, attached hereto). The witness advised Tpr. Harding that she was turned around because of the accident. She then stated, "There is a car right here. See it to the left. The guy is freaking out. No headlights on. He's on the left. He's bugging out. He said he went to go pick up his taco bell. He has been drinking he said. He's 'schizing' out. He said he, what happened, he was coming down the road, he went to pass a car that was turning, and he hit the

people. I said, 'well have you been drinking?' and he said 'yeah.'" (See Exhibit "D", at 20:34:56). The witness continued and stated, "I'm just telling you what he told me. It's an SUV down there. He's bugging out. He's obviously regretting what he did." (See Exhibit "D", at 20:35:28). As this was said, another witness interjected and stated that Mr. Higgins was "really bad" referencing the state in which he appeared to be. (See Exhibit "D", at 20:35:40).

Tpr. Harding arrived, approached Tpr. Allonardo who was just stepping out of his vehicle, and as mentioned above, immediately stated, "Hey. Real quick, this is gonna be him." (See Exhibit "C", at 20:36:25). Tpr. Allonardo responds affirmatively, and Tpr. Harding continued stating, "The lady in front, I told her to stand by, she said she talked to him and said that he was freaking out. Said he has been drinking a little bit. Went to go get his Taco Bell." (See Exhibit "D" at 20:36:28). As Tpr. Allonardo was talking with Mr. Higgins, Tpr. Harding and another officer were at the front of the striking vehicle inspecting the damaged bumper. Tpr. Harding said to this unknown officer that the witness told him that she had already spoken to Mr. Higgins and he was allegedly freaking out. (See Exhibit "D", at 20:37:10). The unknown officer responded, "who this guy?" to which Tpr. Harding confirmed that Mr. Higgins was the driver who struck the victims. (See Exhibit "D", at 20:37:16). Tpr. Harding then repeated almost verbatim what the witness told him, detailing Mr. Higgins' direction of travel, his driving just prior to passing the vehicles, his admission of drinking, and his admission of ultimately hitting the two victims. (See Exhibit "D" at 20:37:44). Again, it must be emphasized that Tpr. Harding had knowledge of what happened leading up to and during the crash, and he had not spoken to Mr. Higgins at this point in time.

Tpr. Harding stood with Mr. Higgins as Tpr. Allonardo made a phone call at 20:39:20. (See Exhibit "D"). Mr. Higgins stated that he had just had knee surgery the previous Friday and

that was why he is "gimping" around a little bit. (See Exhibit "D", at 20:39:38). Tpr. Harding then asked Mr. Higgins, "So what, you hit people? Were they on bikes? Were they just walking?", to which Mr. Higgins responded, "Last I saw, was a bunch of bikers. That's probably why the Jeep in front of me blocked me from passing them. So I passed them, I went back into this lane, right into bikers." (See Exhibit "D", at 20:40:10). Tpr. Harding again followed up with questions regarding the direction of travel of Mr. Higgins and the bikers. (See Exhibit "D", at 20:40:32).

Tpr. Allonardo returned from his patrol car and 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. (See Exhibit "C", at 20:42:08). 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." (See Exhibit "C". at 20:42:18). 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 Exhibit "B" at 5). Tpr. Allonardo then advised Mr. Higgins that he was going to have him perform the Standard Field Sobriety Tests. (See Exhibit "C", at 20:42:30).

Mr. Higgins was deemed to have failed the Standard Field Sobriety Tests and was placed under arrest. (See Exhibit "C", at 20:49:17) He was read his Miranda rights by Tpr. Allonardo at 20:50:41. (See Exhibit "E", unknown officer body-worn footage, attached hereto). It is important to note that while Mr. Higgins was being searched, handcuffed, and read his Miranda rights, visible in the background are multiple sets of flashing lights blocking the entire lane of traffic and flashing lights in the other direction indicating that both lanes of travel were blocked off to thru traffic. (See Exhibit "E", at 20:50:54).

On December 11, 2024, Mr. Higgins was indicted by a Salem County Grand Jury on two counts of Reckless Vehicular Homicide, second degree, a violation of N.J.S.A. 2C:11-5a; two counts of Aggravated Manslaughter, first degree, a violation of N.J.S.A. 2C:11-4a(1); one count of Tampering with Physical Evidence, fourth degree, a violation of N.J.S.A. 2C:28-6(1); and one count of Leaving the Scene of a Fatal Accident, second degree, a violation of N.J.S.A. 2C:11-5.1.

LEGAL ARGUMENT

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. Alvardo, 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.).

A. 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. (See Exhibit "B", at 20:35:29 & 20:36:25) (See Exhibit "C", at 20:34:56). 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)[1], 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,"

[1] Pursuant to Rule 1:36-3, copies of the opinion are attached and provided to all other parties and no known contrary unpublished opinions were found.

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.

B. MR. HIGGINS' STATEMENTS PRIOR TO HIS ARREST MUST BE SUPPRESSED AS THE TOTALITY OF THE CIRUMSTANCES 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)[2], 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)[3], 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

[2] Pursuant to Rule 1:36-3, copies of the opinion are attached and provided to all other parties and no known contrary unpublished opinions were found.

[3] Pursuant to Rule 1:36-3, copies of the opinion are attached and provided to all other parties and no known contrary unpublished opinions were found.

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.

C. 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 attempts 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.

CONCLUSION

It is respectfully submitted based upon the relevant case law and its application to the facts of the instant matter that the Court must suppress the evidence.

Respectfully submitted,
Co-Counsel for Defendant, Sean M. Higgins

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EXHIBIT "A"

Sgt. Flanegan BWC Video

(Link to Video exhibits emailed to all parties)

EXHIBIT "B"

New Jersey State Police Investigation Report

A140-2024-00439

General Information

Station/Unit: WOODSTOWN
Code: A140
Area Code & Phone: (856)769-0775
Type of Premises: Highway
Date & Time: At 20:19 - 08/29/2024
County/Municipality: Salem / Oldmans Twp. - 1707
Division Case Number: A140-2024-00439
Prosecutor's Case Number:
Weather: Clear - Moon Lit Night
Crime/Incident Location: 63 PENNSVILLE AUBURN RD

No. Arrested : 1 **Adult:** 1 **Juvenile:** 0 **No. Summoned:** 0 **Adult:** 0 **Juvenile:** 0
Crime Status: Cleared By Arrest
Case Status: Court
Weapons / Tools: N/A
Drinking Driving Case Number: A140-2024-00062D
Accident Case Number: A140-2024-00547C

Person Reporting Crime/Incident

Name: D[redacted] K[redacted] **Phone:** [redacted]
Address: [redacted] **Date & Time:** 08/29/2024 - 20:19

Crime/Incident Charge(s) & Statute(s)

(SP:1-39) - Motor Vehicle Crash-Death
(2C:11-5) - Vehicular Homicide

Modus Operandi / How Committed

The accused, who was arrested on scene for DUI, struck and killed two (2) pedalcyclists while operating his vehicle in a reckless manner.

Victims (Individuals)

Victim Name (First, Middle, Last): JOHN M GAUDREAU **Phone:**
Complete Address: [redacted]
S.S.N [redacted] **D.O.B** [redacted] **Sex** Male **Race** 1B
Victim's Employer, City, State: Self-employed **Phone:**

Victim Name (First, Middle, Last): MATTHEW R GAUDREAU **Phone:**
Complete Address: [redacted]
S.S.N [redacted] **D.O.B** [redacted] **Sex** Male **Race** 1B
Victim's Employer, City, State: Self-employed **Phone:**

Victims (Businesses)

N/A

Complainants (Individuals)

Name: TPR. M E ALLONARDO **Phone:** (856) 769-0775 ext. 0
Complete Address: 769 40 HWY , PILESGROVE, NJ 08098

Complainants (Businesses)

N/A

New Jersey State Police Investigation Report

A140-2024-00439

Other Persons Involved

Witness Name (First, Middle, Last): D [redacted] K [redacted]
DL Number: [redacted] **Area Code & Phone:** [redacted]
State:
S.S.N.:
Address:

D.O.B	Age	Sex	Race
[redacted]	55	Female	1B

Witness Name (First, Middle, Last): C [redacted] D [redacted]
DL Number: [redacted] **Area Code & Phone:** [redacted]
State:
S.S.N.:
Address:

D.O.B	Age	Sex	Race
[redacted]	23	Female	1B

Witness Name (First, Middle, Last): R [redacted] D [redacted]
DL Number: [redacted] **Area Code & Phone:** [redacted]
State:
S.S.N.:
Address:

D.O.B	Age	Sex	Race
[redacted]	22	Female	1B

Witness Name (First, Middle, Last): D [redacted] G [redacted]
DL Number: [redacted] **Area Code & Phone:** [redacted]
State:
S.S.N.:
Address:

D.O.B	Age	Sex	Race
[redacted]	62	Female	1B

Witness Name (First, Middle, Last): A [redacted] P [redacted]
DL Number: [redacted] **Area Code & Phone:** [redacted]
State:
S.S.N.:
Address:

D.O.B	Age	Sex	Race
[redacted]	18	Female	2B

Other Name (First, Middle, Last): J [redacted] G [redacted]
DL Number: [redacted] **Area Code & Phone:** [redacted]
State:
S.S.N.:
Address:

D.O.B	Age	Sex	Race
[redacted]	58	Male	1B

Vehicle Information

Year: 2018 **Make & Model:** Jeep 1989 To Pr - Grand Cherokee **Body Type:** Hatchback, 4 Door
Color: Black **Registration No. & State:** [redacted] - New Jersey
Vehicle Status: Suspect **V.I.N. or Distinguishing Marks:** [redacted]

Stolen/Recovered Property & Values

Currency Amount:	$0.00
Jewelry Amount:	$0.00
Fur Amount:	$0.00
Clothing Amount:	$0.00
Motor Vehicle Amount:	$0.00
Miscellaneous Amount:	$0.00
Total Amount Stolen:	$0.00
Total Amount Recovered:	$0.00

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Evidence, Alarm, and Report Status

Chemical Lab Number:		Evidence:		Arrest Report Pending:	Yes
Ballistics Lab Number:		NJSP - S&TS:	Yes	Prop. / Veh. Report Pending:	No
Alarm Number/Year:		Retained:	Yes	Alarm Pending:	No
Alcohol Involved:	Not Applicable	Returned:	No	Evidence Pending:	Yes
Other Drugs Involved:	Not Applicable	Destroyed:	No	Bias Incident:	No
VCCB Information and Phone Number Provided (1-800-242-0804):	Not Applicable	Co-Op:	No	Domestic Violence:	No

Technicians Involved

N/A

Assisting Troopers

Badge #:	Name:
7742	SGT. K M FLANEGAN
7864	DET. II A E GAROFALO
8394	DET. S A BRODZIK
8397	TPR. J P CALTABIANO
8348	DET. T M REPOSE
8592	TPR. A J FRANCESCO
8607	TPR. A L HOFFMAN
8876	TPR. A N CRESPO
9164	TPR. Z L HARDING
9168	TPR. L J INGRAM
9283	TPR. O D DEJESUS
9295	TPR. R L FLANAGAN

Other Supporting Agencies

N/A

Related Cases

Case Number(s): A140-2024-00062D, A140-2024-00547C

MV Summons/Warnings & Statutes

#1715E24000834 (39:4-50) - Operating Under Influence Of Liquor Or Drugs, #1715E24000836 (39:4-51A) - Consumption Of Alcohol While Operating A Vehicle, #1715E24000837 (39:4-51B) - Open Container Of Alcohol In Motor Vehicle, #1715E24000838 (39:4-85) - Improper Passing, #1715E24000839 (39:4-88B) - Unsafe Lane Change, #1715E24000835 (39:4-96) - Reckless Driving

Suspects/Summoned

N/A

Persons Arrested

SEAN M HIGGINS

Address: [redacted]

S.S.N.:	D.O.B	Age	Sex	Race	Criminal Complaint Warrant/Summons No.
[redacted]	[redacted]	43	Male	1B	1715W2024000109

Narrative

08/29/2024 (Thursday, 8:19 PM)

On the above date, the Operational Dispatch Unit advised Woodstown Troopers of a motor vehicle crash in the area of 63 Pennsville Auburn Road (County Road 551 - mile post 11.15), Oldmans Township, Salem County. Further

information provided by a 911 caller detailed that an SUV had struck two (2) pedalcyclists and continued traveling north on Pennsville Auburn Road. Furthermore, the 911 caller proceeded to assess the victims and advised the Operational Dispatch Unit that one victim sustained facial injuries and one victim sustained arm and leg injuries; both of whom were unconscious. Lastly, it was reported that both victims were on the side of the roadway and breathing.

Sgt. K. Flanegan #7742 was the first Trooper to arrive on scene. As Sgt. Flanegan approached the scene from the north, he made contact with the driver of the striking vehicle (Driver Higgins) in the area of 38 Pennsville Auburn Road (County Road 551 - mile post 11.4). The driver was advised to wait for the next responding Trooper and Sgt. Flanegan continued south on Pennsville Auburn Road toward the scene of the crash to render aid and assess the injured victims. In the area of 63 Pennsville Auburn Road (County Road 551 - mile post 11.15), Sgt. Flanegan and EMS personnel observed two (2) severely injured pedalcyclists and made the determination that they had succumbed to their injuries. Shortly thereafter, I arrived on scene. As I approached the scene of the crash from the south, I observed multiple emergency response vehicles in the roadway. I further observed EMS personnel placing white sheets over the bodies of the two (2) victims, who were later identified as John M. Gaudreau (Pedalcyclist J. Gaudreau) and Matthew R. Gaudreau (Pedalcyclist M. Gaudreau). In the area of the deceased, which were located in the grass adjacent to the northbound lane of Pennsville Auburn Road, I observed two (2) severely damaged bicycles. At this time, Sgt. Flanegan advised me that the driver of the motor vehicle involved in the crash was located further north on Pennsville Auburn Road. As a result of the motor vehicle crash, Pedalcyclist J. Gaudreau and Pedalcyclist M. Gaudreau had sustained fatal injuries and were pronounced deceased by Dr. Britton of Inspira Medical Center - Woodbury at 2037 hours via telemetry. Sgt. Flanegan made notification to next of kin, James Gaudreau (father).

In the area of 38 Pennsville Auburn Road (County Road 551 - mile post 11.4), I observed a black Jeep Grand Cherokee at final rest in the grass shoulder adjacent to the northbound lane of travel. I further observed a white male who appeared to be talking on his cellular telephone. As I drove up to the white male, I pointed at the black Jeep Grand Cherokee and asked him if that was the striking vehicle. The male stated "yes," at which time I asked if he was the driver, to which the male also replied, "yes." I identified the vehicle as a black in color Jeep Grand Cherokee bearing NJ Registration: [redacted] (Higgins Jeep) and relayed the information to the Operational Dispatch Unit.

As I exited my Troop Car to speak with the driver, Tpr. Z. Harding

#9164 advised me that he had just spoke to a witness, later identified as D[redacted] G[redacted]. Ms. G[redacted] advised Tpr. Harding that she had observed a middle-aged white male standing next to a black SUV, which had visible front-end damage. Ms. G[redacted] recalled that she asked the male if he was alright, to which the male stated "no." Furthermore, Ms. G[redacted] recalled that the male appeared to be "freaking out" and that he stated he "had been drinking." Tpr. Harding then proceeded toward my location and Tpr. L. Ingram #9168 obtained a more detailed statement from Ms. G[redacted], which was recorded on his body worn camera.

I then asked Driver Higgins how the motor vehicle crash occurred. He explained that he was traveling north on Pennsville Auburn Road and that he was behind two vehicles that were traveling "forty (40) to thirty (30)" miles per hour and "really slow." Driver Higgins stated that as he attempted to pass what he believed was a Jeep, the Jeep simultaneously entered the southbound lane of travel. Driver Higgins advised that he thought the Jeep was trying to prevent him from passing so he "cut back" into the northbound lane, at which time he struck the pedalcyclists who were traveling northbound in the northbound lane of travel along the white fog line. I then examined the Higgins Jeep and observed severe damage to the front passenger side of the vehicle. Specifically, the front passenger side headlight was completely detached, the vehicle's windshield was cracked, and I observed what appeared to be biological matter affixed to the front passenger side bumper. Driver Higgins advised me that he had just left Taco Bell and was returning to his residence on [redacted].

While conversing with Driver Higgins, I observed his demeanor to be extremely anxious. More specifically, Driver Higgins was observed to take several audible deep breaths and frequently paced back and forth while speaking with Troopers. In addition, I detected the strong odor of an alcoholic beverage emanating from the breath of Driver Higgins. I asked Driver Higgins how much he had to drink today, to which he stated, "I've been drinking beers." I then administered Standardized Field Sobriety Tests, which Driver Higgins failed. As a result, he was placed under arrest for Driving Under the Influence (39:4-50). For further information, see A140-2024-00062D. He was handcuffed (doubled-locked), searched incident to arrest (negative), and secured in the rear of Troop Car 195A. Tpr. A. Crespo #8876 then transported Driver Higgins to the NJSP Woodstown Station, reference processing. Tpr. Harding remained on scene with the Higgins Jeep, which was ultimately towed, impounded, and secured at the NJSP Woodstown Station pending a search warrant for the same. It should be noted that in the immediate area of the motor vehicle crash, D[redacted] K[redacted], C[redacted] D[redacted], and R[redacted] D[redacted] were identified as witnesses. As such, it was requested that they go to the NJSP Woodstown Station to provide a formal statement. In addition,

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A[redacted] P[redacted] was identified as a witness of the motor vehicle crash. However, Ms. P[redacted] was extremely distraught as a result of witnessing the accident and was transported back to her residence by EMS personnel after providing a brief statement to Sgt. Flanegan. Conditionally, Ms. P[redacted] agreed to respond to the NJSP Woodstown Station on Friday, August 30th, to provide a formal statement. For further information regarding the same, reference the Supplemental Investigations Report submitted by Det. T. Repose #8348.

Due to the severity of this crash, the NJSP Fatal Accident Investigation Unit and Crime Scene Investigation Unit were requested to respond and assist in this investigation. Det. II A. Garofalo #7864 of the Crime Scene Investigation Unit, Tpr. W. Pope #8651and Det. S. Brodzik #8394 of the Fatal Accident Investigation Unit, all responded and assisted with the processing of the scene. Det. T. Repose #8348 and Tpr. J. Caltabiano #8397 of the Criminal Investigation Office also responded to the NJSP Woodstown Station to assist with the investigation. Following the on-scene investigation, the Higgins Jeep and both bicycles were transported to the Woodstown Station and secured in the sallyport. For further information of the on-scene crash investigation, see the Supplemental Investigation Report by Tpr. W. Pope #8651.

Once at the NJSP Woodstown Station, Driver Higgins was assisted from the rear of the Troop Car, escorted into the station, and secured to the processing room bench by Tpr. Crespo. Tpr. Crespo then interviewed witnesses who responded to the NJSP Woodstown Station to provide a formal statement. The interview was audio and visually recorded in its entirety on the interview room camera and has been uploaded to the Axon Evidence Management System. I viewed the interview by Tpr. Crespo and the following information was learned regarding the motor vehicle crash:

Time of Interview: 9:23 PM

Interview of:
D[redacted] K[redacted]
Date of Birth: [redacted]
Address: [redacted]
Telephone Number: [redacted]

C[redacted] D[redacted]
Date of Birth: [redacted]
Address: [redacted]
Telephone Number: [redacted]

R[redacted] D[redacted]

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Date of Birth:
Address:
Telephone Number:

D K was operating a Ford Bronco (K Bronco) in the northbound lane of travel and traveling north on Pennsville Auburn Road. C D (front passenger seat) and R D (rear passenger seat) were also occupants of the K Bronco. Ms. K advised that she observed the pedalcyclists traveling north on the shoulder of Pennsville Auburn Road. Specifically, Ms. K recalled that the leading pedalcyclist did not have a shirt on and the rear pedalcyclist had flowered shorts on. Conditionally, Ms. K maneuvered the K Bronco partially into the southbound lane of travel to give the pedalcyclists space as she passed them. As she maneuvered the K Bronco partially into the southbound lane of travel, Ms. K stated that she observed a vehicle approaching from the rear at what appeared to be a high rate of speed. At this time, R. D stated that a vehicle approached the K Bronco from behind and attempted to pass the K Bronco on the right side. R. D detailed that as the vehicle passed the K Bronco, approximately half of the passing vehicle exited the roadway and was traveling on the grass adjacent to the northbound lane of travel on Pennsville Auburn Road. As the vehicle proceeded northbound and partially on the grass adjacent to the northbound lane of travel, the occupants of the K Bronco recalled observing the front of the vehicle strike the pedalcyclists, thus ejecting them from the bicycles. Furthermore, the vehicle then continued to travel north, in the northbound lane of travel on Pennsville Auburn Road. Ms. K then parked the K Bronco in the grass adjacent to the southbound lane of travel on Pennsville Auburn Road, at which time she called 911. At the direction of the 911 dispatcher, Ms. K advised that she exited her vehicle to check on the victims and relayed her observations of the injuries to the Operational Dispatch Unit. The occupants of the K Bronco advised that prior to departing the scene, they observed a vehicle approximately one half mile north on Pennsville Auburn Road with the vehicle's hazard lights on. Soon after, when they departed the scene, the occupants of the K Bronco advised that they observed a black Jeep (Higgins Jeep) with significant front end damage, parked on the grass adjacent to the northbound lane of travel on Pennsville Auburn Road.

While Tpr. Crespo conducted the above mentioned interview, I contacted Assistant Prosecutor Brooke Harley of the Salem County Prosecutor's Office and petitioned for a telephonic search warrant to obtain the blood of Driver Higgins for toxicology analysis. The request was approved by the

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Honorable Judge Robert Malestein on a recorded telephone line at 9:39 PM. Driver Higgins was then transported to Inspira Medical Center - Mannington where the telephonic search warrant was executed.

At approximately 10:05 PM, Registered Nurse R[redacted] A[redacted] was provided with the Search Warrant for the blood of Driver Higgins. RN R[redacted] A[redacted] was then provided with a New Jersey State Police Blood Draw Kit and I observed him draw two (2) vials of Driver Higgins' blood at approximately 10:24 PM (MA03). As Registered Nurse A[redacted] sealed the second vial of blood, he made mention that the seal in one of the vials may be defective. Resultantly, I retrieved an additional New Jersey State Police Blood Draw Kit from my Troop Car and presented the same to Registered Nurse A[redacted]. At approximately 10:31 PM, I observed him draw an additional two (2) vials of Driver Higgins' blood (MA04). In total, the four (4) glass vials of blood were then packaged in to their respective biological hazard boxes and labeled accordingly. Tpr. Crespo transported Driver Higgins back to the NJSP Woodstown Station; I transported the biological hazard boxes containing the blood of Driver Higgins in Troop Car 7928 back to the NJSP Woodstown Station where they were secured in the NJSP Woodstown Station evidence refrigerator. The below listed items of evidentiary value were logged in LIMS, to be sent to the NJSP South Lab to test for blood alcohol content and the presence of narcotics:

-One (1) blood kit, belonging to Sean Higgins, marked "MA03."
-One (1) blood kit, belonging to Sean Higgins, marked "MA04."

Det. T. Repose #8348 and I then escorted Driver Higgins to the interview room located within the Woodstown Station. During this time, a formal interview was conducted. The interview was audio and visually recorded in its entirety and has been uploaded to the Axon Evidence Management System. The following is a synopsis of the interview with Driver Higgins:

Time of Interview: 12:03 AM (Friday, August 30th, 2024)

Interview of:
Sean M. Higgins
Date of Birth: [redacted]
Address: [redacted]
Telephone Number: [redacted]

Prior to any questioning, Driver Higgins was read his Constitutional Rights, as per Miranda. Driver Higgins verbally acknowledged his rights and signed a Miranda card at 12:03 AM. I then asked Driver Higgins to explain the series of events that led up to the motor vehicle crash. Driver Higgins stated that he had just left the Taco Bell located in Pennsville (462

N Broadway, Pennsville, New Jersey 08070) and was returning to his residence in Pilesgrove. On his way home, Driver Higgins detailed that he was detoured off of US 40 in Carneys Point due to construction, which led him to Pennsville Auburn Road. While on Pennsville Auburn Road, Driver Higgins stated that there were two (2) cars directly in front of him. Driver Higgins recalled that that two (2) cars were traveling at a speed of approximately twenty (20) to thirty (30) miles per hour and acknowledged that his "impatience" led him to make the decision to pass them. After passing the first car, Driver Higgins stated that the second car, which he described as a "Bronco" or "Jeep," started "creeping into the left lane" (southbound lane). Driver Higgins then stated to the effect that he thought the aforementioned vehicle entering the southbound lane of travel was a counter action to prevent him from passing. As a result, Driver Higgins advised that he then "ducked back into the right lane," at which time he struck the pedalcyclists. I then asked Driver Higgins if he could recall how fast he was traveling at the time he passed the first car, to which he replied, "I couldn't have been going that fast because I had to speed up and my car is not that powerful." Driver Higgins then estimated he was traveling approximately forty (40) miles per hour at the time he re-entered the right (northbound) lane of travel and struck the pedalcyclists. I then asked Driver Higgins if upon re-entering the northbound lane of travel his intention was to continue trying to pass the vehicle that had maneuvered partially into the southbound lane of travel. Driver Higgins emphatically stated that he was not trying to pass on the right and that his intention was to "figure out what this Jeep guy was doing." Furthermore, Driver Higgins stated, "I ducked over because I didn't know what that person was doing and I was being impatient."

Det. Repose then asked Driver Higgins if he could better describe the two vehicles that were in front of him, prior to the motor vehicle crash. Driver Higgins stated the first car he had passed was a sedan and that the other car, which had pulled into the left lane to make way for the bikers, was either a Wrangler or Bronco. When questioned about the position of the Bronco as he approached it from behind, Driver Higgins stated that the Bronco was "hugging the center line" and "inching more toward the left lane." Driver Higgins stated that he did not visually observe the pedalcyclists prior to striking them; however, he noted that he heard the sound of the impact and was originally unsure of what he had struck. I then asked Driver Higgins if he could recall the position of the Bronco at the time he heard the impact of the collision with the pedalcyclists. Driver Higgins stated, "I honestly don't remember. As soon as I felt the impact, I felt like I was side by side with that Bronco." Furthermore, Driver Higgins then held both of his hands up, positioned parallel with one another, and stated, "they were here, and I came here, and I think that's when the impact happened." Given the fact that Driver Higgins advised he was side by side with the Bronco at the time of the

collision, I asked him if it was safe to say his intentions were to pass the Bronco on the right. Driver Higgins stated, "yeah, probably" and went on to explain that he re-entered the right lane because he didn't know what the vehicle in the left lane was doing.

Driver Higgins then detailed the moments following the motor vehicle accident. He again reiterated that he had no idea what he had struck but felt the collision was too impactful to be a deer. It should be noted that Driver Higgins made a number of contradicting statements regarding the operation of his motor vehicle after the collision. Specifically, Driver Higgins stated multiple times that the entire vehicle "went dead," and noted that he could not brake or steer the vehicle. However, Driver Higgins further stated that he continuously pressed on the gas pedal, his engine was puttering, and as a result, his vehicle kept "spurting forward." Driver Higgins recalled realizing that he had traveled "pretty far" from the scene of the accident and stated he does not know what he was thinking or why he did that. Once his vehicle came to a final rest, Driver Higgins recalled exiting his vehicle and acknowledged that he was in a state of panic. Lastly, Driver Higgins stated that he realized he had struck bikers after a female passerby asked him if he was ok, pointed to the crash scene, and stated there were "bikes back there."

Det. Repose then asked Driver Higgins about his itinerary earlier in the day, prior to the motor vehicle crash. Driver Higgins stated that he worked from home and finished his last meeting between the hours of 2 PM and 3 PM. Correspondingly, Driver Higgins stated that at this time he started drinking and proceeded to drink around five (5) or six (6) beers before going to Taco Bell around 6 PM. Given the fact that Driver Higgins stated he departed his residence for Taco Bell at approximately 6 PM and Troopers were dispatched to the motor vehicle accident at approximately 8:19 PM, I inquired as to what else Driver Higgins did during this period of time. Driver Higgins replied by stating that he was driving around and recalled that he had talked to his mother on the phone. I then asked Driver Higgins if he was drinking in the car, to which he stated, "I did have a couple beers in the car." When asked if they (the beers) were still in the car, Driver Higgins stated, "I don't believe so." Driver Higgins went on to explain that he had consumed two (2) beers while driving his car and that after the accident he was "petrified" and "panicking" so he threw the consumed Miller Lite beer cans out the car window. Furthermore, Driver Higgins acknowledged that there was also a twelve (12) pack of Miller Lite that he also discarded into a farm field prior to the arrival of Troopers on scene. Notably, Driver Higgins stated that the twelve (12) pack was old and from the day before, but he removed it from his vehicle because he was freaking out. Lastly, Driver Higgins advised Det. Repose and I that all of the beer he removed from his vehicle was located in a farm field;

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more specifically in the area that the Higgins Jeep came to a final rest.

At the onset of the interview, Driver Higgins advised that he recently had surgery on his right knee. In addition, I observed medical stitches on Driver Higgins' right knee. When questioned about his knee, Driver Higgins advised that post surgery, he was prescribed Percocets. He stated that he last took his pain medication on the evening of Wednesday, August 28th, and only takes the medication at nighttime in order to sleep.

I then asked Driver Higgins if he believed his drinking had any bearing on the motor vehicle crash. Driver Higgins audibly sighed and stated, "it had a bearing on me being impatient and trying to pass these folks, sure." Driver Higgins then stated that his beer consumption did not affect his driving and went on to explain that his conversation with his mother and talking to a friend of his made him upset today. In addition, he stated, "I get impatient, I had beer in my system, now my life is ruined." Furthermore, Driver Higgins stated, "My impatience- not wanting to wait around, wait for two (2) cars going thirty (30) miles an hour on Pennsville Auburn Road [redacted]. That's literally what this is all about. My impatience and reckless driving."

Driver Higgins was then asked to provide Det. Repose and I with additional information regarding the conversation he had with his mother, prior to departing his residence; and the conversation he had with his friend, while driving his vehicle. He stated that the argument with his mother was a result of her being upset that she wasn't going to see her granddaughter on her birthday. Driver Higgins advised that the argument with his mother initiated him calling his friend A[redacted] (A[redacted] T[redacted]), prior to him going to Taco Bell. Moreover, Driver Higgins had a particularly difficult time recalling the times of the aforementioned conversations, which were deemed useful in establishing a timeline of the events preceding the motor vehicle crash. Resultantly, I presented Driver Higgins with a New Jersey State Police Consent to Search Form. At this time, Driver Higgins asked if he should obtain a lawyer because he felt uncomfortable regarding the request to look at his cellular telephone. Det. Repose advised Driver Higgins that the decision to obtain a lawyer was strictly personal and that we cannot offer him advice on the same. In addition, given his mention of a lawyer, Det. Repose asked Driver Higgins if he wished to continue speaking with us, without a lawyer present. Driver Higgins stated that he would continue speaking to us without a lawyer present. Det. Repose then explained to Driver Higgins that we would fill out the Consent to Search Form in its entirety, present him with the same, and he would have the option to either consent to the search or deny it. Driver Higgins agreed to the parameters. Furthermore, I then re-read Driver Higgins his Constitutional Rights, as per Miranda, to which he verbally acknowledged.

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Driver Higgins signed the additional Miranda card at 12:31 AM.

I then filled out a New Jersey State Police Consent to Search Form for one (1) iPhone, black in color, serial #[redacted]. I then read the form out loud to Driver Higgins and presented him with the same. Driver Higgins signed and acknowledged the Consent to Search Form and subsequently granted Det. Repose and I consent to search his iPhone at 12:36 AM.

As a result of the Consent to Search, the following information was ascertained:

-4:37 PM (Thursday, August 29th, 2024) -Incoming call from telephone number [redacted], listed as "MOM CELL," which lasted approximately nine (9) minutes. Driver Higgins acknowledged the captioned phone call was the disagreement he had with his mother regarding seeing his daughter on her birthday. Furthermore, Driver Higgins stated that the phone call with his mother made him upset, which prompted him to leave his residence and start driving to clear his mind.

-5:25 PM (Thursday, August 29th, 2024) -Outgoing call to telephone number [redacted], listed as "A[redacted] T[redacted]," which lasted approximately two (2) hours eleven (11) minutes. Driver Higgins advised that he was driving for the duration of this phone call and hung up with Ms. T[redacted] when he arrived at the Taco Bell parking lot. In addition, Driver Higgins recalled that after leaving Taco Bell, he stopped at Roman Pantry (447 Harding Highway, Penns Grove, New Jersey 08069), to purchase cigarettes prior to the motor vehicle crash.

-8:16 PM (Thursday, August 29th, 2024) -Outgoing call to telephone number [redacted], listed as "A[redacted] T[redacted]," which lasted approximately one (1) minute. Driver Higgins advised that after the motor vehicle crash, he called Ms. T[redacted], 911, and his wife, respectively. Driver Higgins estimated the time of the motor vehicle crash to be 8:15 PM.

Det. Repose then presented Driver Higgins with a blank piece of lined paper and asked him to draw the series of events (positioning of vehicles and pedalcyclists), during the motor vehicle accident. The drawing by Driver Higgins was signed, dated, and has been uploaded to the case file. At the conclusion of the interview, Driver Higgins was temporarily secured in a station holding cell prior to being fingerprinted and photographed.

While the interview was taking place, given the information provided by Driver Higgins about removing beer cans from his vehicle, Tpr. A. Francesco #8592 and Tpr. O. DeJesus #9283 returned to the scene in order to locate same. Tpr. Francesco observed one (1) beer box containing five (5) unopened beer cans (MA05), approximately eight (8) feet into the cornfield adjacent to the area where the Higgins Jeep came to final rest. In addition,

Tpr. Francesco further observed one (1) empty beer can (MA06), in the area of the beer box. The aforementioned items of evidentiary value were transported back to the NJSP Woodstown Station.

I then contacted Assistant Prosecutor Brooke Harley of the Salem County Prosecutor's Office and apprised her with the details of the captioned investigation. Assistant Prosecutor Harley recommended charging Driver Higgins with two (2) counts of Death by Auto (2C:11-5A) on a Complaint Warrant. Correspondingly, I contacted the Honorable Judge Martin Whitcraft who approved the aforementioned charges, which were placed on Complaint Warrant #1715W2024000109. Prior to his transport to the Salem County Correctional Facility, Driver Higgins was asked the questions on the Salem County Correctional Facility Medical Questionnaire. Driver Higgins stated that he had thoughts of suicide. Resultantly, Tpr. Crespo and Tpr. Ingram transported Driver Higgins to Inspira Medical Center - Mannington, reference Crisis evaluation. At approximately 5:47 AM, after being physically and psychologically cleared for incarceration, Driver Higgins was lodged in the Salem County Correctional Facility on the strength of the warrant.

I then logged the following items in InfoShare, to be sent to the Salem County Prosecutor's Office as evidence:

-One (1) grey "Cervelo" damaged bicycle, marked "MA01."
-One (1) blue and black "Trek" damaged bicycle, marked "MA02."
-One (1) paper bag, further containing a beer box filled with five (5) unopened beer cans, marked "MA05."
-One (1) paper bag, further containing one (1) empty beer can, marked "MA06."
-One (1) plastic bag, further containing two (2) Miranda Warning cards, belonging to and signed by Sean Higgins, marked "MA10."

In addition, the below listed items were collected as evidence and later returned to the family of the victims. See the New Jersey State Police Property Receipt for further details.

-One (1) iPhone in a green case, marked "MA07."
-One (1) Smart Watch (cracked), marked "MA08."
-One (1) bracelet and ring, marked "JG."
-One (1) wedding ring, marked "MG."

In furtherance of this investigation, I then authored a Search Warrant (RD-SLM-6562-SW-24) for the Higgins Jeep (black Jeep Grand Cherokee bearing New Jersey Registration: [redacted]); specifically, to obtain evidence contained within the vehicle to include mechanically stored information or data relating to the status of the vehicle prior to and post collision, etc. Additionally, any sources of intoxicating substances, blood, DNA,

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fingerprints, or other physical evidence that would aid in this investigation. The search warrant was reviewed by Assistant Prosecutor Brooke Harley and ultimately approved by the Honorable Judge Russel DePersia on Friday, August 30th, 2024. Additionally, DSG. J. Pasqua #7242 authored a Search Warrant (RD-SLM-6563-SW-24) to retrieve Driver Higgins' iPhone which was stored as property at the Salem County Correctional Facility. The search warrant was reviewed by Assistant Prosecutor Brooke Harley and ultimately approved by the Honorable Judge Russel DePersia on Friday, August 30th, 2024. As a result, one (1) iPhone belonging to Sean Higgins was retrieved from the Salem County Correctional Facility and is currently stored in the NJSP Woodstown Evidence Room, pending a search warrant to retrieve additional information that may be deemed relevant to the captioned investigation. A copy of the search warrant and a receipt for the phone were left in Driver Higgins' property at the Salem County Correctional Facility.

This case should remain active pending additional investigative tasks, to include the search of the Higgins Jeep Grand Cherokee.

Active Investigation.

	1st. Approval:	2nd. Approval:
Report Date: 09/03/2024	Date: 09/03/2024	Date: 09/04/2024
TPR. M E ALLONARDO #8847	DSG J L HALL #7315	DSG J M PASQUA #7242
Signature:	Signature:	Signature:

EXHIBIT "C"

Trooper Allonardo BWC Video

(Link to Video exhibits emailed to all parties)

EXHIBIT "D"

Trooper Harding BWC Video

(Link to Video exhibits emailed to all parties)

EXHIBIT "E"

Miranda Warning BWC Video

(Link to Video exhibits emailed to all parties)

PURSUANT TO RULE 1:36-3- COPIES OF THE OPINIONS REFERENCED IN FOOTNOTES OF THE DEFENSE BRIEF ARE ATTACHED AND PROVIDED TO ALL OTHER PARTIES AND NO KNOWN CONTRAY UNPUBLISHED OPINIONS WERE FOUND

State v. Edwards

Superior Court of New Jersey, Appellate Division

October 2, 2024, Argued; November 12, 2024, Decided

DOCKET NO. A-3184-22

Reporter
2024 N.J. Super. Unpub. LEXIS 2789 *

STATE OF NEW JERSEY, Plaintiff-Respondent, ***v.*** DALE ***EDWARDS***, Defendant-Appellant.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

Subsequent History: Certification denied by ***State v. Edwards***, 2025 N.J. LEXIS 245 (N.J., Mar. 11, 2025)

Prior History: **[*1]** On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Indictment ***No***. 22-07-0635.

Counsel: Ashley Brooks, Assistant Deputy Public Defender, argued the cause for appellant (Jennifer N. Sellitti, Public Defender, attorney; Ashley Brooks, of counsel and on the briefs).

Ian C. Kennedy, Assistant Prosecutor, argued the cause for respondent (Mark Musella, Bergen County Prosecutor, attorney; Ian C. Kennedy, of counsel and on the brief).

Judges: Before Judges Currier, Paganelli and Torregrossa-O'Connor.

Opinion

PER CURIAM

Defendant, Dale ***Edwards***, appeals from a February 3, 2023 order denying his motion to suppress his statements and derivative evidence obtained during a motor vehicle stop. We vacate and remand for further proceedings.

I.

We glean the facts and procedural history from the record. In the afternoon of April 16, 2022, Officer Steven Oliver (Officer Oliver) observed a motor vehicle make an illegal U-turn on Route 46 in South Hackensack, N.J. Officer Oliver "activate[d the] lights [on his patrol car] to perform [a] motor vehicle stop." The motor vehicle stopped in the parking lot of a nearby business. Officer Oliver exited his vehicle and approached the driver's side of the stopped motor **[*2]** vehicle. He activated his body worn camera (BWC) when he reached the driver's side door.[1]

Officer Oliver observed defendant, who was the driver, and a passenger, who was in the front passenger seat of the motor vehicle. The officer requested defendant's driver's license, and the vehicle's registration and insurance card.

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[1] Officer Oliver explained that when the BWC is turned on, "[t]he first [thirty] seconds of the video [does not] have audio." He ***stated*** he should have activated the BWC when he activated the patrol car's lights. Also, he admitted to muting the audio "throughout" the stop. He ***stated*** he deactivated the BWC's audio when he discussed things with other officers. He acknowledged he should have ***stated*** why he was deactivating the BWC before muting the audio.

Defendant produced "a Montana driver's license" and a "temporary registration for the motor vehicle," but ***no*** insurance card.

Officer Oliver observed: (1) "that [defendant] was extremely nervous, shaking"; (2) defendant avoided eye contact; and (3) when defendant and he made eye contact, defendant's "pupils were extremely constricted."

The officer explained that "[t]hrough [his] training and experience [extremely constricted pupils] usually [were] indicative of someone being under the influence or in possession of narcotics." Further, he indicated that he had been involved in arrests related to narcotics, including "people under the influence or using those substances."

Officer Oliver returned to his patrol car and "ran [defendant's] driver's license" through the records system. The officer learned that defendant had a "non-extraditable" warrant out of Montana.

Officer Oliver **[*3]** returned to the motor vehicle and "asked [defendant] to step out of the vehicle." When defendant did so, Officer Oliver again observed that defendant was "extremely nervous and shaking and his eyes were still extremely constricted."

Officer Oliver asked if defendant wanted to tell him about the "trouble back home." Defendant explained "different choices[2] "—"drugs."

Officer Oliver asked defendant if he would consent to a search of the motor vehicle. Defendant advised "it's not my car," so he could not consent to the search. Officer Oliver gave defendant three options: (1) consent to a search of the motor vehicle; (2) he could "get a canine"; or (3) defendant "could just tell [him] where the drugs were in the car." "[U]ltimately, [defendant] just told [him] there were drugs in the car."[3]

In response to Officer Oliver's inquiry—do you want to show me where—defendant directed Officer Oliver to the driver's side compartment where the officer located "three plastic red containers." Two of the containers were empty and "[o]ne contained a crystal-like substance, suspected to be methamphetamine."

Officer Oliver questioned defendant about whether the drugs were his or the passenger's. Defendant initially **[*4]** indicated the drugs were "not mine" but then admitted the drugs were his. Officer Oliver also questioned defendant about the last time he used methamphetamine and defendant ***stated*** "last night." Officer Oliver placed defendant "under arrest for the methamphetamine." Defendant was searched, handcuffed, and placed in the back of Officer Oliver's patrol car.

Thereafter, the police searched defendant's motor vehicle and discovered: (1) "a New Hampshire driver's license with [defendant's] picture on it but with" a different name; (2) "a social security card" with the different name on it; and (3) a "loaded nine-millimeter handgun."

A grand jury returned a five-count indictment charging defendant with: (1) third-degree possession of methamphetamine, N.J.S.A. 2C:35-10(a)(1); (2) fourth-degree possession of a counterfeit New Hampshire Driver's License, N.J.S.A. 2C:21-2.1(d); (3) second-degree possession of a handgun without first having a permit to carry same, N.J.S.A. 2C:39:5b(1); (4) fourth-degree possession of a defaced firearm, N.J.S.A. 2C:39-3(d); and (5) second-degree certain persons not to have a weapon, N.J.S.A. 2C:39-7(b)(1).[4]

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[2] We use the words from the transcript of the suppression hearing. Our review of the BWC video reveals defendant ***stated***, "stupid choices."

[3] The transcript of the suppression hearing indicates "(Inaudible)" for a number of defendant's responses to Officer Oliver's questions. However, where the parties recite the responses as depicted on the BWC footage, we do the same.

[4] Officer Oliver also issued motor vehicle summonses to defendant for: (1) making an illegal U-turn, N.J.S.A. 39:4-125; (2) careless driving, N.J.S.A. 39:4-97; (3) obstructing the passage of other vehicles, N.J.S.A. 39:4-67; and (4) delaying traffic, N.J.S.A. 39:4-56.

Defendant moved to suppress his statements, verbal and nonverbal, made at the scene of the stop and the physical evidence seized thereafter. The motion judge held a suppression hearing. Officer Oliver **[*5]** was the only witness to testify at the hearing.

In an oral decision issued after the hearing, the judge found Officer Oliver was a credible witness. She noted "[h]e answered questions in a responsive manner" and "[t]here were ***no*** inconsistent responses." She "also f[ound] . . . his demeanor and affect were appropriate." In addition, she found Officer Oliver's "testimony and the facts to which he testified were supported by . . . the audio and video recording taken from" his BWC.

The motion judge found the "initial stop of [d]efendant's vehicle was permissible" because Officer Oliver "witnessed [d]efendant make an illegal U-turn." Thus, the judge concluded, Officer Oliver "had a reasonable and articulable suspicion that [d]efendant committed a traffic violation."

The judge noted that *Miranda* ***v***. *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), requires that "when a [person] is subjected to a custodial interrogation they must be provided information regarding their rights, including their right to remain silent and their right to counsel." She also explained "[c]ustodial interrogation w[as] . . . defined by the *Miranda* [C]ourt as questioning initiated by law enforcement officers after a person ha[d] been taken into custody or otherwise deprived of his **[*6]** freedom of action in any significant way."

However, the judge also noted "[t]he protections of *Miranda* . . . d[id] not apply when detention and questioning [we]re part of an investigatory procedure," citing ***State*** ***v***. *Timmendequas*, 161 N.J. 515, 737 A.2d 55 (1999); and "the roadside questioning of a motorist [wa]s not transformed into a custodial interrogation that must be proceeded by *Miranda* warnings simply because a police officer['s] questioning [wa]s accusatory in nature or designed to elicit incriminating evidence," citing ***State*** ***v***. *Hickman*, 335 N.J. Super. 623, 631, 763 A.2d 330 (***App***. ***Div***. 2000).

In distinguishing between "a custodial interrogation" or an "investigatory procedure," the motion judge explained the court must "view[] objectively the totality of the circumstances, . . . includ[ing] . . . the length of a detention, the time and place of the questioning or interrogation, and the conduct of the police officers."

Considering the totality of the circumstances—as they related to Officer Oliver's questions and defendant's statements—the motion judge ***stated***:

> Officer Oliver noticed [d]efendant appeared to have pinhole pupils, rambling speech, nervous behavior, trembling. Officer Oliver's questions to [d]efendant came about as a result of his reasonable suspicion that . . . [d]efendant was under the influence of narcotics, **[*7]** thereby justifying a more intrusive line of questioning than may be warranted in an ordinary traffic stop.
> Here the questions were being asked outside the car, both the officer and [defendant] were standing outside the vehicle. [I]t was daylight. It was a busy street with motorists going by and [a passenger] still seated in the passenger seat of the automobile and the entire exchange occurred in mere minutes.
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> None of these circumstances could have . . . overborne [d]efendant's will. This was not a situation where [defendant] was in custody and where *Miranda* would have been implicated. Rather, these were questions . . . as a result of suspicions raised regarding [defendant's] driving while under the influence and are appropriate in the context of an ordinary traffic stop.
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> Regarding the ownership of the drugs when Officer Oliver asked who the drugs belonged to . . . [d]efendant could have answered by attributing possession to ***no*** one, to anyone . . . citing ***State*** ***v***. *Sessions*, 172 N.J. Super. 558, 412 A.2d 1325 [(***App***. ***Div***. 1980)].
> Therefore, for those reasons [d]efendant's statements on the scene were voluntary, not obtained in violation of any rights and accordingly [we]re admissible.

As to the search of the motor vehicle and the seizure of the physical evidence, the **[*8]** motion judge determined the search "was not . . . based upon [defendant's] consent." Instead, the judge found that defendant—in response

to Officer Oliver's three options for searching the motor vehicle—"told Officer Oliver . . . that there were drugs in the car and showed him where the drugs were, thereby providing probable cause for [the] search of the automobile."

The judge explained, that "[o]nce there was probable cause" the matter "squarely f[e]ll[] under . . . the automobile exception to the warrant requirement," citing ***State v.*** *Witt*, 223 N.J. 409, 126 A.3d 850 (2015). Therefore, the judge concluded "Officer Oliver's search of [d]efendant's vehicle did not violate . . . [d]efendant's rights to be free from unreasonable searches and seizures and accordingly the items seized from the vehicle [were] admissible at trial."

II.

On appeal, defendant argues:

POINT I.

THE POLICE PROLONGED THE DETENTION AND REQUESTED CONSENT TO SEARCH WITHOUT REASONABLE SUSPICION, REQUIRING SUPPRESSION.

POINT II

BECAUSE [DEFENDANT'S] CONFESSION WAS INVOLUNTARY, BOTH THE CONFESSION AND THE DERIVATIVE EVIDENCE SHOULD BE SUPPRESSED.

POINT III

SUPPRESSION OF [DEFENDANT'S] RESPONSES TO OLIVER'S QUESTIONS IS REQUIRED BECAUSE [DEFENDANT] WAS IN CUSTODY WHEN THE POLICE **[*9]** QUESTIONED HIM WITHOUT FIRST ADVISING HIM OF HIS RIGHTS.

A. [Defendant] Was in Custody When the Police Told Him that They Would Get Drug Dogs Unless He Consented to a Search or Confessed and Therefore the Police Were Required to Advise Him of His Rights.

B. At the Latest, [Defendant] Was in Custody Once Oliver Obtained Probable Cause for an Arrest, Not Only After Police Formally Arrested Him.

POINT IV

IF THIS COURT DOES NOT ORDER SUPPRESSION OF ALL OF THE EVIDENCE, IT SHOULD REMAND FOR ANOTHER SUPPRESSION HEARING. (Not raised below).

III.

"Our scope of review in this matter is limited." ***State v.*** *Ahmad*, 246 N.J. 592, 609, 252 A.3d 968 (2021). "[A]n appellate court reviewing a motion to suppress must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." *Ibid.* (quoting ***State v.*** *Elders*, 192 N.J. 224, 243, 927 A.2d 1250 (2007)). Our "deference to those findings [is] in recognition of the trial court's 'opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy.'" *Ibid.* (quoting *Elders*, 192 N.J. at 244). "A trial court's legal conclusions, however, 'and the consequences that flow from established facts,' are reviewed de novo." *Ibid.* (quoting ***State v.*** *Hubbard*, 222 N.J. 249, 263, 118 A.3d 314 (2015)).

IV.

Defendant does not challenge **[*10]** the lawful traffic stop, but contends that "[b]ecause the police unlawfully prolonged the detention and sought consent to search without reasonable suspicion of criminal activity . . . all of the evidence must be suppressed." We disagree.

"Article I, Paragraph 7 of the New Jersey Constitution and the Fourth Amendment of the United ***States*** Constitution guarantee that '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.'" *Witt*, 223 N.J. at 421-22 (quoting *N.J. Const.* art. I, ¶ 7; *U.S. Const.* amend. IV).

"A lawful roadside stop by a police officer constitutes a seizure under both the Federal and New Jersey Constitutions." ***State v.*** *Dunbar*, 229 N.J. 521, 532, 163 A.3d 875 (2017). Therefore, "[i]n order to justify such a

seizure, 'a police officer must have a reasonable and articulable suspicion that the driver of a vehicle, or its occupants, is committing a motor-vehicle violation or a criminal or disorderly persons offense.'" *Id.* at 533 (quoting ***State*** ***v.*** *Scriven*, 226 N.J. 20, 33-34, 140 A.3d 535 (2016)).

"During an otherwise lawful traffic stop, a police officer may inquire 'into matters unrelated to the justification for the traffic stop.'" *Ibid.* (quoting *Arizona* ***v.*** *Johnson*, 555 U.S. 323, 333, 129 S. Ct. 781, 172 L. Ed. 2d 694 (2009); and then citing ***State*** ***v.*** *Dickey*, 152 N.J. 468, 479, 706 A.2d 180 (1998) ("[T]he reasonableness of [a] detention is not limited to investigating the circumstances of the traffic stop."). "Beyond determining whether to issue a traffic ticket, an officer's mission includes 'ordinary **[*11]** inquiries incident to [the traffic] stop.'" *Rodriguez* ***v.*** *United* ***States***, 575 U.S. 348, 355, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015) (quoting *Illinois* ***v.*** *Caballes*, 543 U.S. 405, 408, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005)) (alteration in original). Ordinarily, such inquiries—as happened here—include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Ibid.* When, "as a result of the initial stop or further inquiries, 'the circumstances give rise to suspicions unrelated to the traffic offense, an officer may broaden [the] inquiry and satisfy those suspicions.'" *Dunbar*, 229 N.J. at 533 (quoting *Dickey*, 152 N.J. at 479-80) (alteration in original) (internal quotation marks omitted).

"An officer's ability to pursue incidental inquiries, however, is not without limitations." *Ibid.* "A lawful traffic stop can transform into an unlawful detention 'if its manner of execution unreasonably infringes' on constitutionally protected interests." *Ibid.* (quoting *Caballes*, 543 U.S. at 407). Therefore, "the incidental checks performed by a police officer may not be performed 'in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.'" *Id.* at 533-34 (quoting *Rodriguez*, 575 U.S. at 355; and then citing *Dickey*, 512 N.J. at 476-79 (noting that detention can become unlawful if longer than needed to diligently investigate suspicions)). **[*12]**

"In determining whether reasonable suspicion exists, a court must consider 'the totality of the circumstances -- the whole picture.'" ***State*** ***v.*** *Nelson*, 237 N.J. 540, 554, 206 A.3d 408 (2019) (quoting ***State*** ***v.*** *Stovall*, 170 N.J. 346, 361, 788 A.2d 746 (2002)). We must "not engage in a 'divide-and-conquer' analysis by looking at each fact in isolation." *Id.* at 555 (quoting *District of Columbia* ***v.*** *Wesby*, 583 U.S. 48, 61, 138 S. Ct. 577, 199 L. Ed. 2d 453 (2018)). Therefore, "[t]he reasonable suspicion inquiry . . . considers the officers' background and training, and permits them 'to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.'" *Ibid.* (quoting *United* ***States*** ***v.*** *Arvizu*, 534 U.S. 266, 273, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002)) (internal quotation marks omitted).

Applying these legal principles, the totality of the circumstances: (1) Officer Oliver's observation that defendant's "pupils were extremely constricted"; (2) Officer Oliver's training and experience that informed him that someone with "extremely constricted pupils" was usually "under the influence or in possession of narcotics"; (3) defendant's extreme nervousness, shaking, and avoiding eye contact; and (4) defendant's outstanding warrant; provided Officer Oliver with reasonable suspicion to prolong the stop and to broaden his inquiry into his suspicions that defendant possessed **[*13]** or was under the influence of illegal drugs.

Given that Officer Oliver had reasonable suspicion regarding defendant's drug possession or use, his request that defendant consent to a search of the motor vehicle and the suggestion that he could bring a canine to sniff the motor vehicle were appropriate in these circumstances. *See* ***State*** ***v.*** *Carty*, 170 N.J. 632, 647, 790 A.2d 903 (2002) (consent searches of motor vehicles are justified based on "reasonable and articulable suspicion to believe that an errant motorist or passenger has engaged in, or is about to engage in, criminal activity."); *see also Dunbar*, 229 N.J. at 540 ("if an officer has articulable reasonable suspicion independent from the reason for the traffic stop that a suspect possesses narcotics, the officer may continue a detention to administer a canine sniff.").

Therefore, under these circumstances, we conclude that ***no*** suppression of any evidence was required.

V.

Defendant contends that Officer Oliver had "**no** reasonable suspicion to prolong the" stop and therefore the officer's suggestions that: (1) defendant could consent to a search of the motor vehicle; (2) defendant could just tell the officer where the drugs were in the motor vehicle; or (3) the officer could get a canine to sniff the motor vehicle, **[*14]** "threaten[ed] . . . an unjustified course of conduct" and coerced defendant's admission—there were drugs in the motor vehicle—and therefore, the admission and all derivative evidence must be suppressed. We disagree.

"[T]he **State** shoulders the burden of proving beyond a reasonable doubt that a defendant's confession was actually volunteered and that the police did not overbear the will of the defendant." **State v.** *Hreha*, 217 N.J. 368, 383, 89 A.3d 1223 (2014). The reviewing court must "assess 'the totality of the circumstances, including both the characteristics of the defendant and the nature of the interrogation.'" *Ibid.* (quoting **State v.** *Galloway*, 133 N.J. 631, 654, 628 A.2d 735 (1993)). The New Jersey Supreme Court "has instructed that factors relevant to that analysis include 'the suspect's age, education and intelligence, advice concerning constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature, and whether physical punishment and mental exhaustion were involved.'" *Ibid.* (quoting *Galloway*, 133 N.J. at 654).

The motion judge's findings that Officer Oliver and defendant were outside, in the daylight, along a busy street with motorists, and the entire exchange occurred in mere minutes, are sufficiently supported in the record and support the judge's conclusion that defendant's **[*15]** will was not overborne.

In addition, our review of the BWC video depicts a scene where: (1) only Officer Oliver and defendant were interacting; (2) Officer Oliver and defendant maintained a reasonable physical distance between one another; and (3) Officer Oliver's tone was calm and not aggressive or threatening. Our observations similarly convince us that defendant's admission was voluntary.

As **stated** above, Officer Oliver had a reasonable suspicion of defendant's illegal drug possession or being under the influence of illegal drugs. Therefore, the officer could extend the stop to satisfy his suspicions and could request consent to search defendant's motor vehicle or advise defendant a canine sniff could be conducted. Thus, Officer Oliver's actions did not "coerce [defendant] to confess by engaging in and threatening to engage in an unjustified course of conduct."

Therefore, under these circumstances, we conclude that **no** suppression of any evidence was required.

VI.

Defendant contends "[t]he trial court erred in only suppressing the statements made after the police formally arrested" him. Instead, defendant argues, "[t]he trial court should have . . . suppressed [defendant's] responses **[*16]** to the questions asked earlier by [Officer] Oliver because the responses were obtained in violation of *Miranda*."

"The right against self-incrimination is guaranteed by the Fifth Amendment to the United **States** Constitution and this **state**'s common law, now embodied in statute, N.J.S.A. 2A:84A-19, and evidence rule, N.J.R.E. 503." **State v.** *Bullock*, 253 N.J. 512, 532, 292 A.3d 503 (2023) (quoting **State v.** *Nyhammer*, 197 N.J. 383, 399, 963 A.2d 316 (2009)).

In *Miranda*, the United **States** Supreme Court held "if a person in custody is to be subjected to interrogation, he [or she] must first be" warned of certain rights. *Miranda*, 384 U.S. at 467-68. When "warnings were required but not given, the unwarned statements must be suppressed." *Hubbard*, 222 N.J. at 265.

"Nonverbal responses to questioning are treated in the same way as are verbal responses." **State v.** *Mason*, 164 N.J. Super. 1, 4, 395 A.2d 536 (**App. Div.** 1979) (citing **State v.** *Simmons*, 52 N.J. 538, 247 A.2d 313 (1968)). "The privilege against self[-]incrimination extends to all acts intended to be of a testimonial or communicative character, whether in verbal or other form." *Ibid.*

"By custodial interrogation, [the Court] means questioning initiated by law enforcement officers after a person ha[d] been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444.

"[P]ersons temporarily detained pursuant to [ordinary traffic stops] are not 'in custody' for the purposes of *Miranda*." *Berkemer* ***v.*** *McCarty*, 468 U.S. 420, 440, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984). However, "[i]f a motorist who has been detained pursuant to a traffic stop thereafter is subjected to **[*17]** treatment that renders him [or her] 'in custody' for practical purposes, he [or she] will be entitled to the full panoply of protections prescribed by *Miranda*." *Id.* at 440.

"[C]ustody 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." *Hubbard*, 222 N.J. at 266 (quoting ***State*** ***v.*** *P.Z.*, 152 N.J. 86, 103, 703 A.2d 901 (1997)) (internal quotation marks omitted). "On the other hand, [i]f the questioning is simply part of an investigation and is not targeted at the individual because she or he is a suspect, the rights provided by *Miranda* are not implicated." *Ibid.* (quoting *Timmendequas*, 161 N.J. at 614-15) (internal quotation marks omitted).

"Whether a suspect has been placed in custody is fact-sensitive and sometimes not easily discernible." ***State*** ***v.*** *Stott*, 171 N.J. 343, 364, 794 A.2d 120 (2002). "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, including the time and place of the interrogation, the status of the interrogator, the status of the suspect, and other such factors." *P.Z.*, 152 N.J. at 103. The circumstances are viewed from the perspective of "how a reasonable [person] in the suspect's position would **[*18]** have understood his [or her] situation." *Hubbard*, 222 N.J. at 267 (quoting *Berkemer*, 468 U.S. at 442).

"[T]he term 'interrogation' under *Miranda*, refers to express questioning and any words or actions by the police that they 'should know are reasonably likely to elicit an incriminating response from the suspect.'" *Rhode Island* ***v.*** *Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980).

Thus, in *Sessions*, we concluded defendant was not subject to interrogation when the officer's:

> question was spontaneous and open-ended, not asked in the context of an interrogation, and was not specifically directed to [defendant]. It was the only question that was asked and [defendant] was under ***no*** compulsion to answer. The single question asked was not an essential part of the investigation which led to [defendant's] arrest, nor was it one of a series of investigatory queries. It was not the type of question that centered blameworthiness on [defendant]. [Defendant] could have attributed possession to anyone, or ***no*** one, in answer to a question which was not even specifically directed to him.
>
> [*Sessions*, 172 N.J. Super. at 563.]

Under the circumstances presented in *Sessions*, we concluded defendant's statement was admissible despite the absence of the *Miranda* warning. *Ibid.*

Here, we are required to determine when defendant was subjected to custodial interrogation and thus entitled to *Miranda* warnings. **[*19]** Defendant argues he was in custody for *Miranda* purposes when Officer "Oliver made clear that he was not going to let [defendant] leave even after completing the tasks related to the motor vehicle stop." Defendant contends "the officer made clear that [he] was not free to leave . . . unless he consented to a search or confessed" and therefore, Officer Oliver "needed to read [him] his *Miranda* rights."

Alternatively, defendant argues he was in custody "after [Officer] Oliver obtained probable cause for an arrest." Defendant asserts that "[a]fter [he] indicated that there were in fact drugs in the car, the police had probable cause for an arrest and were required to read [defendant] his *Miranda* rights prior to asking him incriminating questions."

The ***State*** contends defendant was in custody for *Miranda* purposes "when Officer Oliver told defendant that he was going to be under arrest."

The motion judge concluded all of defendant's pre-arrest statements were admissible under *Sessions*. We are not convinced. Officer Oliver had a reasonable suspicion defendant was in possession of or under the influence of illegal drugs. Therefore, within a reasonable period, Officer Oliver had the authority to inquire without providing *Miranda* warnings. **[*20]** *Hubbard*, 222 N.J. at 266. Thus, when Officer Oliver inquired as to whether defendant possessed drugs defendant was not subject to custodial interrogation under *Miranda*. Consequently, his admission was not subject to suppression.[5]

However, once defendant admitted to possessing illegal drugs, "a reasonable police officer would have believed he [or she] . . . had probable cause to arrest defendant . . . and would not have permitted defendant to leave." ***State v.*** *O'Neal*, 190 N.J. 601, 616, 921 A.2d 1079 (2007). "Similarly, a reasonable person in defendant's position . . . would not have believed that he was free to leave." *Ibid.* Therefore, after defendant admitted to possession of illegal drugs he was in custody, for purposes of *Miranda*, and Officer Oliver was required to administer the *Miranda* warnings to defendant.

Moreover, Officer Oliver's subsequent questions—whether defendant wanted to show him where the drugs were in the car; to whom the drugs belonged; where he got the drugs and the last time he did drugs—"targeted" defendant as a suspect. *Hubbard*, 222 N.J. at 266. The officer's questions were not "spontaneous and open-ended." *Sessions*, 172 N.J. Super. at 563. Instead, Officer Oliver's questions were "specifically directed to" defendant. *Ibid.* Therefore, the motion judge misapplied *Sessions* by failing to distinguish between Officer Oliver's questions **[*21]** before and after defendant admitted to possession of illegal drugs.

Thus, we conclude, defendant's post-admission responses should have been suppressed under *Miranda*.

VII.

Defendant argues we "should remand to the trial court for a new suppression hearing where the trial court should reconsider its findings, including credibility findings regarding [Officer] Oliver, after applying the rebuttable presumption created by [Officer] Oliver's failure to record [with] the BWC."

Under N.J.S.A. 40A:14-118.3(a), "every uniformed ***State***, county, and municipal patrol law enforcement officer shall wear a [BWC] that electronically records audio and video while acting in the performance of the officer's official duties, except" in certain limited statutorily defined circumstances.

The statutory framework requires that:

> the video and audio recording functions of a [BWC] shall be activated whenever the officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between an officer and a member of the public, in accordance with applicable guidelines or directives promulgated by the Attorney General . . . . The [BWC] shall remain activated until the encounter has fully concluded **[*22]** and the officer leaves the scene.
> [N.J.S.A. 40A:14-118.5(c)(1).]

However,

> [t]he video and audio recording functions of a [BWC] may be deactivated, consistent with directives or guidelines promulgated by the Attorney General, . . . while the officer is participating in a discussion pertaining to criminal investigation strategy and planning, provided that the discussion is not conducted in the immediate

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[5] The motion judge correctly determined defendant's admission provided probable cause and thus the search of the motor vehicle was justified under the automobile exception under *Witt*, 223 N.J. at 422.

> presence of a civilian and further provided that the officer is not actively engaged in the collection of physical evidence.
> [N.J.S.A. 40A:14-118.5(c)(2)(c).]

According to the New Jersey Attorney General's BWC policy, "[w]hen an officer de-activates a BWC pursuant to this Section, the officer shall narrate the circumstances of the de-activation (e.g., 'I am now turning off my BWC to discuss investigative strategy with my supervisor.')." Off. of the Att'y Gen., *Body Worn Camera Policy* § 6.5 (Rev. 2022) ("De-Activation During Criminal Investigation Strategy/Planning Discussions").

Under N.J.S.A. 40A:14-118.5(q)(2):

> If a law enforcement officer . . . fails to adhere to the recording . . . requirements . . . or intentionally interferes with a [BWC]'s ability to accurately capture audio or video recordings:
> . . . .
>
> there shall be a rebuttable presumption that exculpatory evidence **[*23]** was destroyed or not captured in favor of a criminal defendant who reasonably asserts that exculpatory evidence was destroyed or not captured.

Officer Oliver admitted he did not timely activate his BWC and deactivated the audio on the BWC "throughout" the stop, without "narrat[ing] the circumstances of the deactivation."

Here, defendant argues, as did his motion counsel repeatedly during the hearing, that Officer Oliver's BWC failures diminished his credibility. However, the judge was aware of Officer Oliver's actions and admissions, and nonetheless, found him credible.

Moreover, defendant's attempts here to "reasonably assert[] that exculpatory evidence was destroyed or not captured," are unavailing. Defendant suggests, as did motion counsel, "the missing video and audio from the beginning of the stop could have revealed that [defendant] was stopped without reasonable suspicion of a motor vehicle violation." However, N.J.S.A. 40A:14-118.5(c)(1), required Officer Oliver to activate his BWC once he was "responding" to, not before or during, defendant's illegal U-turn. Therefore, it is unlikely the BWC would have recorded defendant's illegal U-turn.

In addition, defendant contends that the BWC "could have revealed **[*24]** . . . that the officers decided to prolong the detention [or] request consent to search without good (or based . . . on improper) reasons." However, this contention fails because it relies on conjecture, not a "reasonabl[e] assert[ion] that exculpatory evidence was destroyed or not captured." N.J.S.A. 40A:14-118.5(q)(2). Therefore, defendant has failed to establish any grounds for a new suppression hearing.

For the reasons ***stated***, we vacate the suppression order in part and remand for the court to suppress defendant's responses, verbal and non-verbal, after he admitted he possessed illegal drugs.

Vacated and remanded for proceedings in accordance with this opinion. We do not retain jurisdiction.

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State v. Emili

Superior Court of New Jersey, Appellate Division

January 17, 2018, Argued; March 8, 2018, Decided

DOCKET NO. A-5195-15T1

Reporter
2018 N.J. Super. Unpub. LEXIS 526 *

STATE OF NEW JERSEY, Plaintiff-Respondent, ***v.*** JOHN C. ***EMILI***, Defendant-Appellant.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: **[*1]** On appeal from Superior Court of New Jersey, Law Division, Bergen County, Indictment ***No.*** 14-03-0379.

State v. Vanderweit, ***2018*** N.J. Super. Unpub. LEXIS 530 (***App.Div.***, Mar. 8, ***2018***)

Counsel: Alan L. Zegas argued the cause for appellant (Law Offices of Alan L. Zegas, attorneys; Alan L. Zegas and Judson L. Hand, on the brief).

Elizabeth R. Rebein, Special Deputy Attorney General/Acting Assistant Prosecutor, argued the cause for respondent (Dennis Calo, Acting Bergen County Prosecutor, attorney; Elizabeth R. Rebein, of counsel and on the brief).

Judges: Before Judges Hoffman, Gilson, and Mayer.

Opinion

PER CURIAM

On a Sunday morning in July 2012, defendant John C. ***Emili*** was driving to church with his girlfriend and another passenger. He cut off another vehicle and, thereafter, the two drivers began speeding down the parkway cutting in and out of lanes and in front of each other's vehicles. Defendant lost control of his vehicle, which hit a guardrail and repeatedly rolled over. The passenger was ejected and died as a result of her injuries.

A jury convicted defendant of second-degree vehicular homicide, *N.J.S.A.* 2C:11-5, and he was sentenced to six and one-half years in prison, subject to the ***No*** *Early Release Act (NERA), N.J.S.A.* 2C:43-7.2. Defendant appeals, seeking an acquittal or, alternatively, a reversal and remand. We affirm. **[*2]**

I.

On the morning of July 1, 2012, defendant was driving a gray Honda Pilot sports utility vehicle (SUV or Honda) with two passengers, his girlfriend and A.B.[1] Defendant had picked up A.B. and was giving her a ride to a church where defendant's father was the pastor.

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[1] We use initials for the victim to protect her privacy interests. *R.* 1:38-3(c).

As defendant pulled onto the Garden ***State*** Parkway, his SUV cut off a black Chevy Trailblazer driven by Thomas J. Vanderweit. Three witnesses, who also were traveling on the Garden ***State*** Parkway, testified that they saw the Honda and Trailblazer speeding along the parkway, repeatedly cutting back and forth between lanes to get in front of one another. Eventually, the Trailblazer suddenly slowed and began to exit the parkway. Defendant, driving just behind the Trailblazer, lost control of his vehicle. Defendant's Honda hit a guardrail, bounced across the lane, and repeatedly rolled over. As the Honda was flipping over, A.B., who had been sitting in the back seat of defendant's SUV, was ejected. The parties stipulated that A.B. died as a direct result of the injuries she suffered after being ejected from defendant's vehicle.

Shortly after the crash, multiple police and emergency personnel responded to the scene. Detective Mark **[*3]** Smith of the New Jersey ***State*** Police was the first ***State*** Police officer to arrive at the scene. After trying to "contain" the scene of the accident, Smith began to investigate the accident. Accordingly, Smith spoke separately with Vanderweit and defendant. Smith's conversations with both Vanderweit and defendant were recorded by a mobile audio and video recorder in Smith's police car.

Smith testified that when he spoke with Vanderweit and defendant on the roadside, he did not believe that he was at the scene of a crime. Smith then explained that when he spoke to defendant, defendant was not under arrest, appeared to be calm, did not indicate that he did not want to speak to Smith, and did not request to leave.

Defendant told Smith that he was the driver of one of the vehicles involved in the crash. Defendant then explained that he had picked up A.B. to go to church, that he was running late, and that he was speeding and lost control of his vehicle. When Smith asked defendant how fast he was going, defendant responded, "100 [miles per hour] maybe."

Another ***State*** Police officer, Trooper Russell Peterson, responded to the scene. Peterson separately spoke with defendant on the shoulder of **[*4]** the road. At a pretrial evidentiary hearing, Peterson testified that when he spoke with defendant, defendant was not under arrest, Peterson did not intend to arrest defendant, and Peterson did not have reason to believe that defendant had committed a crime. Peterson asked defendant what had happened. Defendant responded that he was speeding and as he was trying to exit the parkway, the vehicle in front of him applied its brakes, he then lost control of his vehicle, and his vehicle hit the guardrail, traveled back across the lane, and overturned.

Defendant and Vanderweit were then taken to a ***State*** Police barracks, where they were interviewed separately. Ultimately, a grand jury indicted defendant and Vanderweit for vehicular manslaughter.

Defendant and Vanderweit moved to suppress the statements they had given at the roadside and at the ***State*** Police barracks.

The trial court conducted two evidentiary hearings, and heard testimony from Trooper Peterson, Detective Smith, and Detective Christopher Kelly of the Bergen County Prosecutor's Office.[2] The court denied the motion to suppress the roadside statements, but granted the motion to suppress the statements given at the ***State*** Police barracks, **[*5]** because defendant and Vanderweit were not given their *Miranda*[3] warnings before their formal interviews.

In written opinions, the motion judge found both Trooper Peterson and Detective Smith to be credible. The judge then found that when Peterson and Smith spoke with defendant at the roadside, defendant was not in custody and not subject to a custodial interrogation. The judge based that finding on the facts that defendant was not under arrest, was not in handcuffs, was detained for less than an hour, and was not subject to coercive questioning.

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[2] Defendant and Vanderweit initially moved to suppress the statements they had given at the police barracks. Thereafter, they filed a second motion to suppress the statements they gave at the roadside.

[3] *Miranda* **v.** *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Instead, the judge found that both Peterson and Smith were trying to find out what had caused the accident, and defendant was questioned at the roadside, which was a public area. The judge also reasoned that although defendant was not free to leave because the police were investigating a fatal automobile accident, defendant never asked to leave and was calm and cooperative when questioned at the roadside.

Defendant and Vanderweit were tried separately. At defendant's trial, the ***State*** presented expert testimony from Detective Sergeant Derek DiStaso, a certified accident reconstructionist for the ***State*** Police. DiStaso was called to the scene of the **[*6]** crash and reconstructed the events by considering a variety of information, including his observations at the scene, tire marks left at the scene, a speed analysis, and statements made by defendant and Vanderweit. DiStaso opined that the crash occurred when Vanderweit applied his brakes, defendant swerved his vehicle to avoid Vanderweit's vehicle, defendant's vehicle then "serpentin[ed]" on the roadway, began to spin, struck a guardrail, spun back onto the roadway, struck Vanderweit's vehicle, and repeatedly rolled over. DiStaso went on to opine that A.B. was ejected from defendant's vehicle when the Honda spun off the guardrail.

At the close of evidence, the trial court conducted a charge conference. The court thereafter charged the jury and gave them a written copy of the instructions. With regard to the substantive charge of vehicular homicide, the trial court instructed the jury using the model jury charges. In that regard, the court explained, in relevant part:

> [I]n order for you to determine the defendant guilty of this crime, the ***State*** must prove the following three elements beyond a reasonable doubt:
> 1. That the defendant was driving a vehicle;
>
> 2. That the defendant caused the **[*7]** death of [A.B.]; and,
> 3. That the defendant caused such death by driving the vehicle recklessly.
> So in order to find the defendant caused [A.B.'s] death, you must find that [A.B.] would not have died but for defendant's conduct.
> . . . .
>
> Causation has a special meaning in the law. To establish causation, the ***State*** must prove two elements, each beyond a reasonable doubt:
> First, but for the defendant's conduct, the result in question would not have happened. In other words, without defendant's actions the result would not have occurred.
> Second, for reckless conduct that the actual result must have been within the risk of which the defendant was aware. If not, it must involve the same kind of injury or harm as the probable result and must also not be too remote, too accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his offense.
>
> Now in this case you may have heard evidence of the police questioning John ***Emili*** about whether or not [A.B.] was wearing a seatbelt. I instruct you that whether or not [A.B.] was wearing a seatbelt is not relevant to the causation issue.
>
> The issue of causation remains one that **[*8]** must be resolved by you, as instructed by the [c]ourt just earlier in my charge. However, the status of the seatbelt is not to be part of your consideration.

After being so instructed, the jury found defendant guilty of second-degree vehicular homicide, *N.J.S.A.* 2C:11-5.

II.

On this appeal, defendant makes seven arguments.

> POINT ONE — The Trial Court Erred By Denying The Defendants' Motion To Suppress Allegedly Inculpatory Statements Made By The Defendants To ***State*** Police Officers At The Roadside Shortly After The Crash

POINT TWO — The Trial Court Erred By Refusing To Charge The Jury On "But For" Causation, A Required Element Of Proof For Conviction On Vehicular Homicide Grounds And Instead Relied Upon A Confusing Stipulation Whose Scope Could Not Be Deciphered

POINT THREE — The Trial Court, Prosecutor And Expert Witness Erred By Repeatedly Telling The Jury That Mr. ***Emili*** Was Traveling 100 mph, When In Fact Each Of The Witness' Notes Indicated The Speed Was More Like 60-80. This 100 mph Theme Was Recited Repeatedly During The Trial Even Though There Was More Than A Reasonable Doubt Whether It Was Accurate

POINT FOUR — The Trial Court Erred In Not Granting Mr. ***Emili***'s Request To Be Permitted To Introduce **[*9]** Evidence Concerning the Circumstances Surrounding The Cause Of Death Of [A.B.] Whose Seatbelt Was Not Fastened 9 ***A-5195-15T1***

POINT FIVE — The Trial Court Erred By Permitting The ***State*** To Distribute Brochures That Had The Effect, Whether Subconsciously Or Not, Of Causing The Jury To Hear A Statement By Mr. Vanderweit That He And Mr. ***Emili*** Were Traveling About 100 mph On The Garden ***State*** Parkway

POINT SIX — The Trial Court Violated Mr. ***Emili***'s ***State*** And Federal Constitutional Rights In Its Sentencing Of Mr. ***Emili***, Its Misunderstanding Of Its Authority And Its Erroneous Consideration And Weighing Of The Mitigating And Aggravating Factors Relative To The Imposition Of Sentence.
POINT SEVEN — Even If Each Of The Above Arguments Were Individually Insufficient To Result In A Reversal And/Or Remanding Of The Ruling Below, The Cumulative Effect Of These Four Rulings So Tainted The Result That This Court Should Dismiss The Indictment On This Additional Ground

We are not persuaded by any of these arguments and we therefore affirm defendant's conviction and sentence. Points two and four are related. Accordingly, we will address defendant's arguments in six subsections.

1. Defendant's Roadside Statements **[*10]**

The Fifth Amendment of the United ***States*** Constitution guarantees all persons the privilege against self-incrimination. *U.S. Const.* amend. ***V***. This privilege applies to the ***states*** through the Fourteenth Amendment. *U.S. Const.* amend. XIV; *Griffin* ***v.*** *California*, 380 U.S. 609, 615, 85 S. Ct. 1229, 14 L. Ed. 2d 106 (1965). Moreover, in New Jersey, there is a common law privilege against self-incrimination, which has been codified in our statutes and rules of evidence. *N.J.S.A.* 2A:84A-19; *N.J.R.E.* 503; ***State*** ***v.*** *Reed*, 133 N.J. 237, 250, 627 A.2d 630 (1993). Accordingly, it has long been established that when a person is taken into custody or otherwise deprived of his or her freedom, that person is entitled to certain warnings before he or she can be questioned. *Miranda*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694.

The *Miranda* requirement is triggered by a "'custodial interrogation,' which is 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of . . . freedom of action in a significant way.'" ***State*** ***v.*** *Smith*, 374 N.J. Super. 425, 430, 864 A.2d 1177 (***App***. ***Div***. 2005) (quoting *Miranda*, 384 U.S. at 444). "[C]ustody exists if the action of the interrogating officers and the surrounding circumstances, fairly construed, would reasonably lead a detainee to believe he [or she] could not leave freely." ***State*** ***v.*** *Coburn*, 221 N.J. Super. 586, 596, 535 A.2d 531 (***App***. ***Div***. 1987) (citing ***State*** ***v.*** *Godfrey*, 131 N.J. Super. 168, 176 n.1, 329 A.2d 75 (***App***. ***Div***. 1974)). Under this objective test, courts consider the time, location, and duration of the detention, the nature of the questioning, and the conduct of the officers in evaluating the degree of restraint. *E.g., Smith*, 374 N.J. Super. at 431; ***State*** ***v.*** *Pierson*, 223 N.J. Super. 62, 67, 537 A.2d 1340 (***App***. ***Div***. 1988).

"*Miranda* is not implicated when the detention **[*11]** and questioning is part of an investigatory procedure rather than a custodial interrogation." Pierson, 223 N.J. Super. at 66. An investigatory procedure includes brief detention and questioning during a traffic stop or a field investigation. *See Berkemer* ***v.*** *McCarty*, 468 U.S. 420, 437-38, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984) (holding that a traffic stop is "presumptively temporary and brief" and "public, at least to some degree" and, thus, does not automatically trigger the *Miranda* requirement); *Terry* ***v.*** *Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) (holding that officers may briefly detain a person to investigate

circumstances that provoke reasonable suspicion). While a person in either context is detained, *Miranda* warnings are only required if, under the totality of the circumstances, the detention becomes "the functional equivalent of an arrest." *Smith*, 374 N.J. Super. at 431 (quoting *Berkemer*, 468 U.S. at 442); *see also* ***State*** ***v.*** *Nemesh*, 228 N.J. Super. 597, 606-07, 550 A.2d 757 (***App.*** ***Div.*** 1988) (holding that under *Berkemer*, "[i]t is obvious that an inquiry by an officer upon his [or her] arrival at the scene of an accident as to who was operating the involved vehicles is not custodial interrogation."). Thus, in the context of a field investigation or traffic stop, "[t]he question is whether a reasonable person, considering the objective circumstances, would understand the situation as a de facto arrest or would recognize that after brief questioning he or she would **[*12]** be free to leave." *Smith*, 374 N.J. Super. at 432.

When reviewing a motion to suppress statements, we generally defer to the factual findings of the trial court if they are supported by credible evidence in the record. *See* ***State*** ***v.*** *Hathaway*, 222 N.J. 453, 467, 120 A.3d 155 (2015) (citing ***State*** ***v.*** *Elders*, 192 N.J. 224, 244, 927 A.2d 1250 (2007)). Moreover, deference to a trial court's factual findings is appropriate because the trial court has the "opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy[.]" ***State*** ***v.*** *S.S.*, 229 N.J. 360, 374, 162 A.3d 1058 (2017) (quoting *Elders*, 192 N.J. at 244). We review de novo the trial court's legal conclusions that flow from established facts. ***State*** ***v.*** *Hamlett*, 449 N.J. Super. 159, 169, 155 A.3d 1038 (***App.*** ***Div.*** 2017).

Based on the testimony and evidence presented at the pretrial evidentiary hearings, the motion judge found that the roadside questioning of defendant was not custodial in nature and, thus, *Miranda* warnings were not required. That finding was premised on additional findings of fact, which included that defendant was not under arrest, was not placed in handcuffs, and was not subject to coercive questioning. Instead, defendant simply was asked to explain what happened.

The motion judge also recognized that defendant was not free to leave the scene because the police were investigating a motor vehicle accident. The judge found, however, that under the totality of the circumstances, **[*13]** defendant's detention did not become the functional equivalent of an arrest. All of the motion judge's factual findings are supported by credible evidence. Moreover, the judge's application of those facts to the law was correct. Accordingly, we find ***no*** error in the decision to deny the motion to suppress defendant's roadside statements. Moreover, the statements used at trial were properly admitted.

2. The Jury Instructions on Causation

Causation is one of three elements that the ***State*** must prove beyond a reasonable doubt for the jury to find a defendant guilty of second-degree vehicular homicide. *N.J.S.A.* 2C:11-5; ***State*** ***v.*** *Buckley*, 216 N.J. 249, 262, 78 A.3d 958 (2013). "Causation is a factual determination for the jury to consider, but the jury may consider only that which the law permits it to consider." ***State*** ***v.*** *Pelham*, 176 N.J. 448, 466, 824 A.2d 1082 (2003).

To find causation, the jury must engage in a multi-step analysis. *Buckley*, 216 N.J. at 263; *see N.J.S.A.* 2C:2-3. Initially, the jury must determine whether the ***State*** has established "but for" causation, by demonstrating that the event would not have occurred absent the defendant's conduct. *N.J.S.A.* 2C:2-3(a); *Buckley*, 216 N.J. at 263. Next, because the ***State*** also has to prove the mens rea of recklessness to establish vehicular homicide, the jury must conduct a "culpability assessment." *N.J.S.A.* 2C:2-3(c); *Buckley*, 216 N.J. at 263.

To find culpability in a vehicular homicide **[*14]** case, the jury must determine that "the actual result [either (1) was] within the risk of which the actor [was] aware or, . . . [(2)] involved the same kind of injury or harm as the probable result . . . ." *N.J.S.A.* 2C:2-3(c). Thus,

> the first prong of *N.J.S.A.* 2C:2-3(c) requires the jury to assess whether defendant was aware that his allegedly reckless driving gave rise to a risk of a fatal motor vehicle accident. . . . The second prong of *N.J.S.A.* 2C:2-3(c) . . . requires proof that the actual result -- in this case the victim's death -- "involves the same kind of injury or harm as the probable result" of the defendant's conduct.
>
> [*Buckley*, 216 N.J. at 264-65 (quoting *Pelham*, 176 N.J. at 461).]

"If the jury determines that the ***State*** has proven beyond a reasonable doubt that the defendant understood that the manner in which he or she drove created a risk of a traffic fatality, the element of causation is established under the first prong of *N.J.S.A.* 2C:2-3(c)." *Ibid.* (citing ***State v.*** *Martin*, 119 N.J. 2, 12, 573 A.2d 1359 (1990)). 15 ***A-5195-15T1***

The second prong requires "the jury to determine whether intervening causes or unforeseen conditions lead to the conclusion that it is unjust to find that the defendant's conduct is the cause of the actual result." *Pelham*, 176 N.J. at 461 (quoting *Martin*, 119 N.J. at 13). "'Intervening cause' is defined as '[a]n event that comes between the initial event in a sequence **[*15]** and the end result, thereby altering the natural course of events that might have connected a wrongful act to an injury.'" *Ibid.* (quoting Black's Law Dictionary (7th ed. 1999)); *see also Buckley*, 216 N.J. at 265 ("[An] 'intervening cause' denotes an event or condition which renders a result 'too remote, accidental in its occurrence, or dependent on another's volitional act' to fairly affect criminal liability or the gravity of the offense.").

In *Buckley*, our Supreme Court held that evidence that the deceased victim was not wearing a seat belt at the time of the motor vehicle accident "is irrelevant to both 'but for' causation under *N.J.S.A.* 2C:2-3(a)(1) and the jury's causation determination under the first prong of *N.J.S.A.* 2C:2-3(c)'s statutory test — whether defendant was aware that the manner in which he drove posed a risk of a fatal accident." *Buckley*, 216 N.J. at 255. Additionally, this court has held that "[even] [i]f the careless driving of another or the victim's failure to wear a seat belt also were contributing causes of the accident and resulting fatality, this would not absolve defendant of responsibility." ***State v.*** *Radziwil*, 235 N.J. Super. 557, 570, 563 A.2d 856 (***App. Div.*** 1989), (citing *N.J.S.A.* 2C:2-3(c)), *aff'd o.b.*, 121 N.J. 527, 582 A.2d 1003 (1990).

In *Pelham*, the Court held that the victim's removal from life support, five months after a motor vehicle accident, was not "an **[*16]** independent intervening cause capable of breaking the chain of causation triggered by defendant's wrongful actions." *Pelham*, 176 N.J. at 468. Accordingly, the Court held that the jury could not consider a victim's removal from life support to negate a defendant's criminal liability. *Id.* at 467.

Here, defendant raises two arguments regarding causation. First, he contends that the trial court effectively negated the jury instruction on "but for" causation, by instructing the jury on a factual stipulation in which the parties agreed that A.B. died as a direct result of being ejected from defendant's vehicle. Second, defendant argues that the trial court erred in denying his request to admit evidence that A.B. was not wearing a seat belt. Both these arguments lack merit and we reject them.

Initially, we note that defendant did not object to the causation charge given at trial. Therefore, we review the charge for plain error. *R.* 2:10-2. Regarding the exclusion of the seat belt evidence, we afford deference to the trial court's evidentiary rulings and, thus, review for an abuse of discretion. ***State v.*** *Scharf*, 225 N.J. 547, 572, 139 A.3d 1154 (2016).

In this case, the trial court followed the model jury charges for vehicular homicide. Indeed, those charges track the law as set forth in ***[*17]*** *Buckley*. Consequently, the jury was told that they had to determine causation by first determining that defendant's conduct caused A.B.'s death, and second that if the jury determined that defendant had acted recklessly, A.B.'s death must have been within the risk of which defendant was aware. Those instructions were accurate and were in accordance with the law. Consequentially, we find ***no*** error with the jury instructions on causation.

Given the facts of this case, the trial court also did not err in precluding evidence that A.B. was not wearing a seat belt. Whether A.B. was wearing a seat belt was not relevant to "but for" causation or the jury's culpability determination under the first prong of *N.J.S.A.* 2C:2-3(c). *Buckley*, 216 N.J. at 254. Moreover, because A.B. failed to secure her seat belt before defendant's reckless driving, that failure could not constitute an intervening cause under prong two of *N.J.S.A.* 2C:2-3(c). *See Pelham*, 176 N.J. at 461. In other words, A.B.'s failure to wear a seat belt did not come between defendant's reckless driving and A.B.'s death.

The trial court here also instructed the jury that "whether or not [A.B.] was wearing a seat belt is not relevant to the causation issue." That instruction was correct. In *Buckley*, the Court explained **[*18]** that if evidence of the victim not wearing a seat belt is admissible for another relevant purpose, the jury must be instructed on what the seat belt evidence is not relevant to prove. *Buckley*, 216 N.J. at 255.

3. Testimony and References to Defendant Driving at 100 Miles Per Hour

Next, defendant argues that the trial court, the prosecutor, and the ***State***'s expert witness erred by repeatedly telling the jury that defendant had been driving at 100 miles per hour just before the collision. The testimony and references to the speed at which defendant was traveling were based on a statement defendant gave to Detective Smith when he was questioned at the roadside of the accident. In that regard, Smith testified as to those statements during defendant's trial. Accordingly, defendant's argument concerning the references to the speed at which he was traveling is dependent on his argument that those statements should have been suppressed. As we have already held that the statements were admissible, this argument also fails.

4. The ***State***'s Use of a Transcript of the Audio Recording of the Statement Defendant Made at the Roadside

As previously noted, when Detective Smith questioned defendant at the roadside their conversation **[*19]** was recorded by a mobile recording device. Portions of the recording were inaudible because of the traffic and background noise on the roadside of the Garden ***State*** Parkway.

The court conducted a Rule 104 hearing in accordance with ***State v.*** *Driver*, 38 N.J. 255, 183 A.2d 655 (1962). *N.J.R.E.* 104. At that hearing, Detective Smith testified that he performed a pre-operational check of the audio and video equipment used to record defendant's roadside statement to ensure that they were functioning properly. He also testified that he reviewed the transcript of the audio recording prepared by the Prosecutor's Office and confirmed that it was consistent with the audio recording and his recollection of his conversation with defendant. The trial court found Smith's testimony to be credible. The trial court also found that the audio recording was sufficiently reliable to be played for the jury. To assist the jury, the court also allowed the ***State*** to provide the jury with a transcript of the recording for reference, although the transcript itself was not admitted into evidence.

Defendant contends that the trial court erred in allowing the ***State*** to use the transcript of defendant's roadside statements made to Smith. We disagree.

A trial court's ruling on the admissibility **[*20]** of evidence is "subject to limited appellate scrutiny." ***State v.*** *Buda*, 195 N.J. 278, 294, 949 A.2d 761 (2008). We accord considerable deference to a trial court's findings based on the testimony of witnesses. ***State v.*** *Elders*, 192 N.J. 224, 244, 927 A.2d 1250 (2007).

The standards for admissibility of an audio recording are set forth in ***State v.*** *Driver*, 38 N.J. at 287. An audio recording is admissible in a criminal trial if the speakers are identified and

> (1) the device was capable of taking the conversation or statement, (2) its operator was competent, (3) the recording is authentic and correct, (4) ***no*** changes, additions or deletions have been made, and (5) in instances of alleged confessions, that the statements were elicited voluntarily and without any inducement.
>
> [*Ibid.*]

A trial judge should listen to the recording outside of the presence of the jury and decide if it is "sufficiently audible, intelligible, not obviously fragmented, and . . . whether it contains any improper and prejudicial matter which ought to be deleted." *Id.* at 288.

Here, the trial court conducted a proper Driver hearing, made the appropriate determinations, and found that the recording itself was admissible. The court also allowed the ***State*** to use a transcript of the recording to assist the jury. In that regard, the trial court instructed the jury that they were **[*21]** to base their factual findings on the actual audio recording, which was admitted into evidence. Specifically, the trial court instructed the jury that if they determined there was a difference between the transcript and the audio recording, they were to rely on the

recording because the transcript was not in evidence and was merely "a guide." We discern ***no*** error or abuse of discretion in the court's decision to allow the use of the transcript.

5. The Sentence

Our review of sentencing decisions is "narrow and is governed by an abuse of discretion standard." ***State v.*** *Blackmon*, 202 N.J. 283, 297, 997 A.2d 194 (2010). We will affirm a sentence unless:

> (1) the sentencing guidelines were violated;
>
> (2) the aggravating and mitigating factors found by the sentencing court were not based upon competent and credible evidence in the record; or
>
> (3) "the application of the guidelines to the facts of [the] case make the sentence clearly unreasonable so as to shock the judicial conscience."
>
> [***State v.*** *Fuentes*, 217 N.J. 57, 70, 85 A.3d 923 (2014) (alteration in original) (quoting ***State v.*** *Roth*, 95 N.J. 334, 364-65, 471 A.2d 370 (1984)).]

Whether a sentence violates sentencing guidelines is a question of law that we review *de novo*. ***State v.*** *Robinson*, 217 N.J. 594, 604, 92 A.3d 656 (2014).

Defendant was convicted of second-degree vehicular homicide. He was sentenced to six and one-half years in prison, subject to NERA. In imposing **[*22]** that sentence, the sentencing judge provided a detailed analysis and made specific findings concerning the aggravating and mitigating factors. In that regard, the court found aggravating factors three (the risk of re-offense), nine (the need to deter), and twelve (victim over sixty years old). *N.J.S.A.* 2C:44-1(a)(3), (9), (12). The court then found mitigating factors three (strong provocation), six (restitution), seven (***no*** prior criminal record), eight (circumstances unlikely to reoccur), nine (good character), and ten (will respond well to probation). *N.J.S.A.* 2C:44-1(b)(3), (6) to (10). All of those factors were supported by evidence in the record with one exception. The exception is mitigating factor ten, which did not apply because defendant was being sentenced to incarceration. *See* ***State v.*** *Sene*, 443 N.J. Super. 134, 144-45, 128 A.3d 175 (***App. Div.*** 2015) (holding that mitigating factor ten is not applicable where defendant did not receive a probationary sentence).

The sentencing judge then found that the aggravating factors and mitigating factors were in equipoise. He went on to explain that if he had to "tip the scales" he might find that the mitigating factors "slightly outweigh[ed]" the aggravating factors. The judge also ***stated***, however, that he did not find that the mitigating factors substantially outweighed **[*23]** the aggravating factors. Accordingly, the judge imposed a sentence in the low range for a second-degree crime. *N.J.S.A.* 2C:43-6(a)(2) (setting forth the range for a second-degree crime of between five and ten years of incarceration).

Defendant contends that the sentencing judge erred by not imposing a sentence in the third-degree range. The record does not support such an argument. To sentence a criminal defendant in a lower range, the court must find that the mitigating factors substantially outweigh the aggravating factors and that there are unique circumstances warranting a departure from the sentencing guidelines. *See Sene*, 443 N.J. Super. at 145 (quoting *N.J.S.A.* 2C:44-1(f)(2)). Here, we find ***no*** abuse of discretion and ***no*** error in the application of the sentencing guidelines.

6. Whether There Were Cumulative Errors Warranting Reversal

Finally, defendant argues that if each of his arguments are insufficient to warrant a reversal, cumulatively, the errors should support a reversal. Here, however, we have found that there were ***no*** errors and, thus, there was ***no*** cumulative effect justifying a reversal of the jury verdict. Instead, although the record reflects that this was a tragic situation, defendant received a fair trial and the jury's verdict is supported **[*24]** by the evidence.

Affirmed.

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State v. Catarra

Superior Court of New Jersey, Appellate Division

May 28, 2009, Submitted; August 7, 2009, Decided

DOCKET NO. A-2416-08T4

Reporter
2009 N.J. Super. Unpub. LEXIS 2178 *

STATE OF NEW JERSEY, Plaintiff-Appellant, ***v.*** REYNA ***CATARRA***, Defendant-Respondent.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

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Prior History: **[*1]** On appeal from Superior Court of New Jersey, Law Division, Warren County, Indictment ***No.*** 08-02-85.

Counsel: Thomas S. Ferguson, Warren County Prosecutor, attorney for appellant (Dit Mosco, Assistant Prosecutor, of counsel and on the brief).

Yvonne Smith Segars, Public Defender, attorney for respondent (John A. Albright, Designated Counsel, on the brief).

Judges: Before Judges Payne and Waugh.

Opinion

PER CURIAM

By leave granted, the ***State*** appeals from an order of the trial court suppressing statements made by defendant, Reyna ***Catarra***, prior to being informed of her *Miranda* [1] rights.

On appeal, the ***State*** argues:

POINT I

THE DEFENDANT WAS NEITHER IN CUSTODY NOR INTERROGATED DURING INVESTIGATION AND *MIRANDA* WARNINGS WERE NOT REQUIRED.

The record discloses that, on September 25, 2007, at approximately 6:12 p.m., defendant was involved in a serious motor vehicle accident resulting in injury to the other driver, Josephine Forestiere. ***State*** troopers Bogdan and Savnik, together with emergency vehicles and personnel, were called to the scene. Upon the troopers' arrival, Bogdan was informed by Forestiere, who remained trapped in her vehicle, that ***Catarra*** **[*2]** had crossed the center line of the highway and had hit her. An independent witness confirmed Forestiere's version of the accident.

Bogdan then proceeded to the location of defendant's car, which was stopped approximately 500 feet from that of Forestiere. Damage to the front left corner of the car was visible, and a door from the Forestiere's vehicle was seen

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[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

beneath defendant's car. Defendant was seated on the grass by the side of the road being attended to by emergency medical personnel.

After defendant had been medically cleared, Bogdan asked her if she was all right and, then, what had happened. Bogdan responded that she did not remember what had taken place, and that she recalled only a loud bang, at which point the airbags deployed. Bogdan then asked defendant if she had had anything to drink, repeating the question three times, and then asking three times if she had consumed any alcohol. Defendant finally ***stated*** that she had drunk one martini. In response to a question by Bogdan, defendant also enumerated her various medications, but ***stated*** that she had not taken any of them since the prior night. Defendant's responses were slurred, and she was unable to stand without considerable **[*3]** assistance. A video camera recorded this aspect of the incident.

Shortly thereafter, Bogdan began administering sobriety tests on defendant at a location outside the range of the video camera, but within range of its microphone, which recorded defendant's evidently drunken comments to the police. Defendant was unable to perform any of the tests, and as a consequence, she was arrested. During the course of the drive to the police station, *Miranda* warnings were administered. At the station, defendant was unable to complete an Alcotest, never producing an adequate breath sample, despite multiple attempts to do so.

Defendant was charged with driving while intoxicated, *N.J.S.A.* 39:4-50; refusal to take a breath test, *N.J.S.A.* 39:4-50.2; failure to keep right, *N.J.S.A.* 39:4-82; and reckless driving, *N.J.S.A.* 39:4-96. Subsequently, on September 25, 2007, defendant was charged with the third-degree crime of assault by automobile while driving in an intoxicated ***state***. *N.J.S.A.* 2C:12-1c(2). Evidence disclosed that Forestiere had sustained a broken hand and multiple lacerations in the crash.

Following indictment, defendant moved for suppression of the statements made by her to the police. A hearing **[*4]** took place, at which Trooper Bogdan testified and the video of the incident was replayed. In a subsequent thoughtful written decision, the trial judge granted defendant's suppression motion, determining that the trooper was authorized to ask defendant what had happened, but that any further questioning regarding alcohol consumption that was likely to produce incriminating statements had to have been prefaced with *Miranda* warnings. In reaching this conclusion, the judge distinguished the circumstances presented from a routine traffic stop during which *Miranda* warnings are not required, noting that the troopers were instead "investigating a major traffic accident, one that could and did result in criminal charges." As a consequence of his determination that crucial *Miranda* warnings had not been given, the judge suppressed all testimonial responses by defendant to the trooper prior to being advised of her *Miranda* rights, as well as video evidence of those responses. He permitted "any non-testimonial recordation of the physical condition and activities of the defendant."

We granted the ***State***'s motion for leave to appeal. ***State*** ***v***. *Alfano*, 305 N.J. Super. 178, 190, 701 A.2d 1296 (***App***. ***Div***. 1997).

On appeal, **[*5]** the ***State*** argues that *Miranda* warnings are required only when the defendant is subjected to a custodial interrogation and, at the time Bogdan was questioning defendant, she was not "in custody." The ***State*** argues additionally that the questioning constituted an investigatory procedure, not an interrogation.

We address first whether defendant was in custody at the time that she was questioned by Bogdan. In its decision in *Miranda*, the Supreme Court held:

> [The] prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of [a] defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean 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.
>
> [*Miranda* ***v***. *Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694, 706 (1966).]

At the suppression hearing in this matter, the following exchange occurred between defense counsel and Trooper Bogdan:

> Q Turn your attention back to the very beginning of the video when you walked up and **[*6]** said, have you had a drink, yes or ***no***, if Ms. ***Catarra*** at that point had said, Trooper, I don't want to answer questions, I'm leaving now, would she have been free to leave?
>
> A ***No***, sir.

The issue before us is whether this lack of freedom, derived at least in part from the statute prohibiting defendant from leaving the scene of an accident, *N.J.S.A.* 2C:12-1.1, rendered defendant in custody for purposes of *Miranda*.

In a related context, the United ***States*** Supreme Court has held, as the trial judge recognized, that detention and questioning of a motorist during the course of a routine traffic stop does not constitute custodial interrogation requiring the administration of *Miranda* warnings, although the stop constitutes a "seizure" for Fourth Amendment purposes. *See Berkemer* ***v.*** *McCarty*, 468 U.S. 420, 435-43, 104 S. Ct. 3138, 3147-52, 82 L. Ed. 2d 317, 331-36 (1984); *see also Delaware* ***v.*** *Prouse*, 440 U.S. 648, 653, 99 S. Ct. 1391, 1396, 59 L. Ed. 2d 660, 667 (1979) (holding a traffic stop constitutes a seizure). In finding such questioning not to be sufficiently coercive to trigger *Miranda's* application, the Court noted that "the detention of a motorist pursuant to a traffic stop is presumptively **[*7]** temporary and brief" and thus different from a station house interrogation. *Berkemer, supra*, 468 U.S. at 437, 104 S. Ct. at 3149, 82 L. Ed. 2d at 333. Additionally, the Court observed that "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 policemen, and thus substantially less "police dominated" than the interrogations at issue in *Miranda*. *Id.* at 438-39, 104 S. Ct. at 3149, 82 L. Ed. 2d at 333-34. In those respects, the Court found that a usual traffic stop was more analogous to a *Terry* [2] stop, where "officers may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions," than a formal arrest. *Id.* at 439-40, 104 S. Ct. at 3150, 82 L. Ed. 2d at 334-35.

The *Berkemer* Court rejected concerns that exempting traffic stops from *Miranda's* purview would foster abuse by the police. It ***stated***:

> It is settled that the safeguards prescribed by *Miranda* become applicable as soon **[*8]** as a suspect's freedom of action is curtailed to a "degree associated with formal arrest." *California* ***v.*** *Beheler*, 463 U.S. 1121, 1125[, 103 S. Ct. 3517, 3520, 77 L. Ed. 2d 1275, 1279] (1983) (*per curiam*). If a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him "in custody" for practical purposes, he will be entitled to the full panoply of protections prescribed by *Miranda*, See *Oregon* ***v.*** *Mathiason*, 429 U.S. 492, 495[, 97 S. Ct. 711, 714, 50 L. Ed. 2d 714, 719] (1977) (*per curiam*).
>
> [*Berkemer, supra*, 468 U.S. at 440, 104 S. Ct. at 3150, 82 L. Ed. 2d at 335.]

Turning to the facts before it, the Court held that nothing indicated that the defendant should have been given *Miranda* warnings at any point prior to actual arrest, noting that he was not subjected to "restraints comparable to those associated with a formal arrest," only a short period of time elapsed, and defendant was never informed that his detention would be anything but temporary. *Id.* at 441-42, 104 S. Ct. at 3151, 82 L. Ed. 2d at 335-36. Significantly, the Court additionally observed:

> Although Trooper Williams apparently decided as soon as respondent stepped out of his **[*9]** car that respondent would be taken into custody and charged with a traffic offense, Williams never communicated his intention to respondent. A policeman's unarticulated plan has ***no*** bearing on the question whether a suspect was 'in custody' at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation.

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[2] *Terry* ***v.*** *Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

[*Id.* at 442, 104 S. Ct. at 3151, 82 L. Ed. 2d at 336.]

Further, the Court found nothing else in the facts suggesting that the defendant was exposed to a custodial interrogation, noting that a single police officer had asked the defendant "a modest number of questions," including whether he had been using intoxicants, and had "requested him to perform a simple balancing test at a location visible to passing motorists." *Ibid.* According to the Court, "[t]reatment of this sort cannot fairly be characterized as the functional equivalent of formal arrest." *Ibid.*

Our ***state*** courts have taken a similar approach to that of *Berkemer* in determining that a detainee need not be advised of his *Miranda* rights during the course of an ordinary traffic stop. *See* ***State*** ***v.*** *Baum*, 393 N.J. Super. 275, 291, 923 A.2d 276 (***App***. ***Div***. 2007) (driver, isolated **[*10]** from passengers and subjected to questioning that included whether drugs were in the car, was not subjected to custodial interrogation requiring *Miranda* warnings), *aff'd and modified on other grounds*, 199 N.J. 407, 972 A.2d 1127 (***2009***); ***State*** ***v.*** *Hickman*, 335 N.J. Super. 623, 631, 763 A.2d 330 (***App***. ***Div***. 2000) ("Roadside questioning of a motorist is not transformed into 'custodial interrogation' that must be preceded by *Miranda* warnings simply because a police officer's questioning is accusatory in nature or designed to elicit incriminating evidence."); *cf.* ***State*** ***v.*** *Green*, 209 N.J. Super. 347, 349-54, 507 A.2d 743 (***App***. ***Div***. 1986) (holding *Miranda* does not apply to field sobriety testing).

We find of particular significance in this regard our decision in ***State*** ***v.*** *Toro*, 229 N.J. Super. 215, 551 A.2d 170 (***App***. ***Div***. 1988), *certif. denied*, 118 N.J. 216, 570 A.2d 973 (1989), *overruled on other grounds,* ***State*** ***v.*** *Velez*, 119 N.J. 185, 574 A.2d 445 (1990). In that case, defendant was stopped in a routine manner for suspected driving under the influence. However, after the stop had occurred, the police observed a package that they surmised contained narcotics. Defendant was then ordered out of the car, patted down and questioned regarding the contents of the package. When he admitted **[*11]** it contained cocaine, defendant was arrested. On appeal from his conviction for drug offenses, we sustained the admissibility of defendant's statement, despite the absence of *Miranda* warnings. In doing so, we discussed the Supreme Court's decision in *Berkemer*, concluding that, in a roadside stop context, "the police may conduct general on-the scene questioning of a suspect, as authorized by *Terry* ***v.*** *Ohio*, without giving *Miranda* warnings." 229 N.J. Super. at 220. We then found that any questioning of defendant prior to ordering him from the car would have been permissible under *Berkemer's* principles. However, we found that the stop departed from the routine when the police, having observed the package at defendant's feet, ordered him from the car and patted him down. While we recognized that defendant's freedom of movement was at that point "restricted in a more substantial manner than in a routine motor vehicle stop," we held that "his freedom of action was not 'curtailed to a "degree associated with formal arrest."'" *Toro, supra*, 229 N.J. Super. at 221 (quoting *Berkemer, supra*, 468 U.S. at 440, 104 S. Ct. at 3150, 82 L. Ed. 2d at 335, quoting *Beheler, supra*, 463 U.S. at 1125, 103 S. Ct. at 3520, 77 L. Ed. 2d at 1279). **[*12]** We ***stated***:

> Defendant was not told that he was under arrest, he was not handcuffed and he was not subjected to any search beyond a patdown for weapons. Furthermore, defendant was detained only briefly before he was asked about the contents of the package, and the police questioning consisted of only a few, noncoercive questions. "Treatment of this sort cannot fairly be characterized as the functional equivalent of formal arrest." *Berkemer* ***v.*** *McCarty, supra*, 468 U.S. at 442, 104 S. Ct. at 3152[, 82 L. Ed. 2d at 336].
>
> [*Toro, supra*, 229 N.J. Super. at 221.]

In light of the precedent that we have discussed, we conclude that, in the present case, defendant was not in custody at the time that she was questioned by Trooper Bogdan. In this regard, we are satisfied that defendant was not subjected to "restraints comparable to those associated with a formal arrest," *Beheler, supra*, 463 U.S. at 1125, 103 S. Ct. at 3520, 77 L. Ed. 2d at 1279. That defendant looked to be drunk and thus was likely to be arrested was not material in the circumstances because, as in *Berkemer*, the trooper never communicated to defendant his intention to arrest her.

What is determinative in this context is whether a reasonable **[*13]** person in defendant's circumstances would conclude that, after a brief period of questioning, she would be free to leave. ***State*** ***v.*** *Pierson*, 223 N.J. Super. 62,

67, 537 A.2d 1340 (**App**. **Div**. 1988). As we held in *Pierson*, an evaluation of whether a person has been sufficiently deprived of her freedom to trigger *Miranda* requires a case-by-case analysis, considering factors such as "the duration of the detention, the nature and degree of the pressure applied to detain the individual, the physical surroundings of the questioning and the language used by the officer in summoning the individual." *Ibid.* Here, the detention was relatively short, its duration having been extended primarily by defendant's inability to cooperate, not the trooper's questions, which were relatively few. **No** pressure was exerted on defendant to detain her, per se, although she was required to undergo field sobriety testing. The detention occurred outdoors and in the presence of other, disinterested individuals.

And the language used by the trooper, albeit firm, was in **no** manner coercive, harassing or intimidating.

As the United **States** Supreme Court held in a case involving voluntary station house questioning:

> [P]olice officers are not **[*14]** required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because . . . the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody." It was *that* sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited.
>
> [*Mathiason, supra*, 429 U.S. at 495, 97 S. Ct. at 714, 50 L. Ed. 2d at 719.]

In the present case, the restraints placed on defendant were less than those existing in *Toro*, where we found custodial interrogation to be absent. We thus conclude, despite the trooper's admission that defendant in fact was not free to leave, she was not "in custody" at the time he questioned her. A "significant deprivation of [defendant's] freedom of action" was not demonstrated in this case. **State v**. *Stott*, 171 N.J. 343, 365, 794 A.2d 120 (2002); **State v**. *P.Z.*, 152 N.J. 86, 103, 703 A.2d 901 (1997).

Additionally, we are satisfied that the limited questioning of defendant by Trooper Bogdan as to what had occurred and whether defendant had been drinking did not constitute interrogation, but rather the **[*15]** type of field inquiry permitted by *Berkemer*. *See also Toro, supra*, 229 N.J. Super. at 220.

Reversed.

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