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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: AM-000213-25

STATE OF NEW JERSEY, Plaintiff-Respondent,	:	CRIMINAL ACTION
	:	ON APPEAL FROM MOTION TO SUPPRESS STATEMENT IN THE SUPERIOR COURT OF NEW JERSEY CRIMINAL PART, SALEM COUNTY
v.	:	WARRANT NO: W-2025-109-1715
SEAN HIGGINS, Defendant-Appellant.	:	SAT BELOW: HON. MICHAEL J. SILVANIO, P.J.Cr.

BRIEF ON BEHALF OF THE STATE OF NEW JERSEY - RESPONDENT

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DEFENDANT IS CONFINED
Dated: December 23, 2025

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COUNTER STATEMENT OF PROCEDURAL HISTORY

On December 11, 2024, the Salem County Grand Jury returned Indictment 24-12-400-I charging the defendant with the following offenses: two counts of Reckless Vehicular Homicide (2nd Degree) in violation of N.J.S.A. 2C:11-5a; two counts of Aggravated Manslaughter (1st Degree) in violation of N.J.S.A. 2C:11-4(a)(1); one count of Tampering with Physical Evidence (4th Degree) in violation of N.J.S.A. 2C:28-6(1); and one count of Leaving the Scene of a Fatal Accident (2nd Degree) in violation of N.J.S.A. 2C:11-5.1.

On June 10, 2025, the defendant moved to suppress the statements he provided to the New Jersey State Police. The Honorable Michael J. Silvanio, P.J.Cr. heard testimony on October 29, 2025, and denied the motion via oral decision on November 10, 2025. In that decision, the Court found that the State's witnesses' testimony was consistent with its review of the applicable body worn cameras and found their testimony to be credible. The defendant now moves for leave to appeal this interlocutory order to the Appellate Division.

COUNTER STATEMENT OF FACTS[1]

Shortly after 8:00 pm on the night of August 29, 2024, three vehicles were driving northbound on Pennsville-Auburn Road (County Route 551) in Oldmans Township, Salem County. The defendant was the third car in line. The vehicles were traveling at approximately 55 miles per hour in a 50-mph zone. The defendant would slow down and then approach the middle vehicle at a high rate of speed. This occurred approximately three to four times. The defendant would also tailgate the middle vehicle.

The middle vehicle, driven by Jane Doe 1,[2] observed the lead vehicle apply its brakes and move towards the southbound lane of travel. Jane Doe 1 then observed two individuals riding bicycles. These individuals were subsequently identified as John and Matthew Gaudreau. Jane Doe 1 indicated that the Gaudreaus were operating their bicycles directly atop the fog line and were not in the lane of travel. Jane Doe 1 determined that she would also move left into the southbound lane to

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[1] The Statement of Facts is based on the record below as well as the record created in the Motion for Pre-Trial Detention which was the subject of an earlier appeal. The State included this information to demonstrate that there is other evidence beyond the defendant's statement on which the prosecution will proceed regardless of the outcome of the Motion for Leave to Appeal. An interlocutory appeal will not be dispositive of the outcome of the entire case and thus leave to appeal should be denied.

[2] The identities of all Jane Does are known. Names have been removed to protect their privacy due to the publicity of this case.

pass the bicycles. At this point, she observed the defendant suddenly pass her on the left at a high rate of speed. The defendant then swerved in front of her, striking the Gaudreaus and continued to pass the first vehicle on the right. Jane Doe 1 immediately pulled over, called 911 and attempted to render aid.

The lead vehicle was driven by Jane Doe 2. Jane Doe 2 advised that while traveling north she observed the bicyclists also traveling north in the shoulder. She moved partially into the southbound lane to pass the bicyclists. She then observed the defendant approaching her from behind at a high rate of speed. The defendant then moved right and attempted to pass her vehicle on the right side of the road. In order to complete the pass, about half of the defendant's vehicle exited the roadway and was traveling on the grass. As the defendant was passing the lead vehicle on the right, the occupants of the vehicle were able to observe the defendant strike the Gaudreau brothers. The defendant continued to travel northbound. Jane Doe 2 parked her vehicle, called 911, and attempted to render aid.

The defendant's vehicle sustained significant damage and became inoperable approximately ¼ of a mile down the road. The defendant initially called his friend, A.T., prior to calling 911. He then placed a second call to A.T. where he told her, "I'm done, I'm done. I might as well just fucking kill myself now."

At approximately 8:19 pm troopers from the New Jersey State Police-Woodstown Barracks were dispatched in response to the 911 calls placed by Jane

Doe 1 and Jane Doe 2. Seargent Flanegan was the first to arrive. He observed the defendant outside of his vehicle and appeared to be frantic. Flanegan asked if he was okay and the defendant responded, "I hit them, I hit them." Flanegan told the defendant to wait for the next trooper and continued to the accident scene to attempt to assist the Gaudreaus.

At the hearing, he testified that the defendant was approximately ¼ of a mile down the road and the accident scene was not visible from where the defendant was located. Flanegan did not exit his troop car when interacting with the defendant. Flanegan arrived at the accident scene roughly the same time as the EMTs and paramedics. It was immediately determined that the incident resulted in fatalities. Judge Silvanio found that at that time, Flanegan was treating the incident "as a traffic crash and did not anticipate criminal charges" and was performing his responsibilities as a member of the State Police conducting an accident investigation when he instructed the defendant to remain on scene so that additional information could be gathered.

Trooper Allonardo was the next officer to make contact with the defendant. The defendant was out of his vehicle, pacing back and forth and talking on his cellular phone. He terminated the phone call. Allonardo inquired whether the defendant's Jeep was the "striking vehicle" and the defendant responded, "yes". Allonardo then asked the defendant if he was the driver and the defendant responded

that he was the driver.

Flanegan advised Allonardo that the accident resulted in fatalities and witnesses were on scene, but the witnesses were not interviewed until after Flanegan spoke with Allonardo. Allonardo testified that when he made contact with the defendant, he was aware that there were fatalities but did not know anything about how the accident occurred. He also confirmed that the defendant was approximately ¼ of a mile away from the accident scene and he was not visible from the accident scene.

Allonardo asked the defendant what happened.[3] The defendant indicated that he was attempting to pass two northbound vehicles by utilizing the southbound lane. When that vehicle moved into the southbound lane, the defendant re-entered the northbound lane striking Matthew and John. Allonardo testified that this statement alone did not constitute probable cause to believe that a crime had been committed. However, the defendant appeared nervous and smelled of alcohol. Allonardo correctly testified that the odor of alcohol alone is not enough to arrest someone for DUI. Allonardo requested that the defendant provide his credentials which he did. The defendant continued to pace around and Allonardo did not restrict the defendant's movement.

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[3] Allonardo testified this was standard questions based on his 50+ accident scene investigations.

At this time, multiple troopers are beginning to arrive on scene.[4] Trooper Harding informed Allonardo that he had made contact with Jane Doe 3. She indicated that she saw the defendant and had stopped and asked if he was okay. She indicated the defendant responded, "no" was "freaking out" and that he admitted to her that he had been drinking.[5]

While Allonardo was checking the credentials in his vehicle, Trooper Harding stood with the defendant and asked him general questions about the accident.

When Allonardo returned, he confirmed the defendant's version of events and asked him if he had been drinking. He confirmed he had been drinking at which point the troopers had the defendant perform field sobriety tests. The defendant failed the tests and was then arrested for DUI and advised of his Miranda rights which he acknowledged and indicated that he understood. Allonardo testified that he was initially placed under arrest for DUI only as the witnesses had not yet been interviewed and the police were still trying to ascertain exactly what transpired at

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[4] While multiple troopers were involved "on scene" the Court found that, other than when the defendant performed the field sobriety test, he was never engaged by more than one trooper at a time and that they constituted multiple brief encounters. The Court further found that the troopers were more concerned about the scene and determining what occurred and collecting as much information as they could concerning the accident itself.

[5] Allonardo indicated that he put limited weight on the statement by Jane Doe 3 as he had not talked to her and her statement that the defendant said he had been drinking could have meant anything from "a sip of beer to five beers"—and the amount the defendant actually consumed was unknown to Allonardo.

the accident scene.[6] Allonardo also testified that if the defendant had passed the field sobriety tests he would not have been arrested at that time.[7] After he was placed under arrest and read his rights, the defendant asked, "What happened back there, is everybody okay?" He was advised they would talk about it at the station.

He was then transported back to Woodstown Barracks. The length of time between Allonardo's initial contact with the defendant and his ultimate arrest was approximately 14 minutes. The troopers testified that this was handled like any other motor vehicle accident that resulted in fatalities.

The Court below found that the defendant's conversations, on the side of the road, were clear and lucid. The defendant was not confused and understood his surroundings. The Court also found that the troopers did not exert undue pressure on the defendant that resulted in him feeling compelled to give a statement. "He freely and voluntarily conversed with the troopers on the roadside."

Shortly thereafter, he was transported to Inspira Hospital-Mannington to have his blood drawn. While waiting for the procedure to be completed, the defendant briefly conversed with Trooper Crespo concerning some injuries the defendant had and asked Crespo to call his wife. Crespo asked him if he had already called his

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[6] The Court found that the troopers testified candidly that they did not suspect that criminal charges would be filed until after the defendant failed the field sobriety tests.

[7] Charges would have still ultimately have been issued based upon the statements by the witnesses were not obtained until after the field sobriety tests were administered.

wife and what he had told her. The blood draw indicated a BAC of .087%.

After the blood draw was completed,[8] the defendant was transported back to Woodstown Barracks where the defendant was again advised of his Miranda rights, which he again acknowledged, indicated he understood, signed the Miranda card and indicated he waived his rights and would talk with the troopers. Prior to the interview beginning, he was allowed to use the restroom; additionally he was provided with water. At this point, he was interviewed by Allonardo and Detective Repose. The statement began at 12:03 a.m. on August 30 and lasted approximately one hour. At no point during the interview did the defendant appear tired or uncomfortable and he was provided with water to drink. Allonardo indicated that the defendant did not ask to take a break, but if he had they would have taken a break.

The defendant's statements to the New Jersey State Police were internally inconsistent and were contradicted by the statements of the other two drivers. The defendant indicated that the other vehicles were traveling at 30 mph and that he was impatient. He felt the first vehicle pulled into the southbound lane to block him from passing her. He then moved back into the northbound lane and struck the Gaudreau brothers. He indicated that his pass was conducted at around 40 mph. He further

[8] Allonardo testified the blood draw took approximately 50 minutes from 10:00-10:50 p.m.

indicated that the Gaudreaus were in the northbound lane of travel. Of note, the other drivers have the vehicles traveling slightly above the 50-mph speed limit and the Gaudreaus on the fog line or in the shoulder. While he initially denied attempting to pass the lead vehicle, he ultimately confirmed the vehicles were side by side when he hit the Gaudreaus and was therefore attempting to pass the lead vehicle on the right. The defendant admitted to consuming five to six beers after concluding work at 3 pm and consuming two beers while driving around for two hours prior to the incident. He further admitted to attempting to hide the beer cans after he had struck the Gaudreaus. He stated, "I get impatient, I had beer in my system, now my life is ruined…That's literally what it was all about. My impatience and reckless driving." (Ma32).

About halfway through the interview, Repose asked for permission to look through the defendant's phone to clarify some of the information he had provided concerning the timeline. The defendant indicated that he was not sure and queried whether he should get a lawyer first. However, the defendant made it clear that it was the access to the phone that he was concerned about and he was still willing to talk to the police "regardless of the phone." (Ma42). Before asking any additional questions, the officers advised the defendant that they cannot give him advice as to whether he should retain an attorney and clarified what part of the phone she was seeking to look at and why she was doing so and asked him if he still wanted to

speak with them. The defendant responded that he wanted to continue with the interview. To make sure there was not any confusion, Allonardo reread the defendant his Miranda rights (for now the third time) as well as the permission to search form for his cellular phone. The defendant acknowledged his rights and executed both the Miranda card and the permission to search form. At no time did the defendant indicate that he wanted an attorney present for the interview or indicate that he wanted to stop the interview. The officers subsequently went through the defendant's phone in his presence.

Following the completion of the interview, the defendant was placed under arrest for charges related to the deaths of Matthew and John Gaudreau.

The defendant's wife was also interviewed. She indicated that the defendant would drink often and that working from home, "did him in". She indicated that the incident was likely the cause of the defendant's "road rage and impatience". Which, she added, was more typical for him than drunk driving.

Subsequent to his incarceration in the Salem County Correctional Facility, the defendant made several calls. In a call to his wife, she tells him, "you're an idiot. I told you before not to do that stuff and you don't listen to me." The defendant responded, "I know…My life is over." Later, after the phone is passed to a friend, defendant's wife is heard yelling, "you were probably driving like a nut like I always tell you you do and you don't listen to me, instead you just yell at me." The

defendant made several other calls indicating that he was driving recklessly at the time of the incident.

LEGAL ARGUMENT

Point I: The Police Interaction with the Defendant on the Roadside Did Not Require Miranda Warnings to be Provided[9]

The Fifth Amendment to the United States Constitution protects a person's Right against self-incrimination. This right has been applied to the states through the Fourteenth Amendment to the U.S. Constitution and is applied in this state under common law and codified under N.J.S.A. 2A:84A-19 and N.J.R.Evid. 503. State v. Nyhmmer, 197 N.J. 383, 399 (2009). The United States Supreme Court in Miranda v. Arizona established safeguards to ensure that a suspect was aware of this right. Nyhmmer, at 400 (citing Miranda v. Arizona, 384 U.S. 436 (1966)). Officers are required to inform a suspect during a custodial interrogation that "he has the right to remain silent, that anything he says can and will be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." Miranda v. Arizona, 384 U.S. 436, 479 (1966). The right against self-incrimination applies to people subjected to custodial interrogations. State v. Messino, 378 N.J.

[9] This Point responds to Points III A 1, 2 & 3 of defendant's brief.

Super. 559, 576 (App. Div. 2005) (citing Miranda v. Arizona, 384 U.S. 436 (1966)). A custodial interrogation exists if the "interrogating officers and the surrounding circumstances would reasonably lead a detainee to believe he could not leave freely." Messino 378 N.J. Super. at 576 (quoting State v. Coburn, 221 N.J. Super. 586, 596 (App. Div. 1987).

Roadside traffic stops are not considered custodial interrogations and fall outside the purview of Miranda, so long as the statements were made prior to arrest. Berkemer v. McCarty, 468 U.S. 420 (1984). The dangers associated with typical custodial interrogations are not present during a typical traffic stop. Id., at 437. This is based on the fact that a traffic stop is temporary. A motorist can expect his encounter with a police officer, during a traffic stop, to last only a few minutes and after the encounter be allowed to carry on. Id. Also, a motorist is not completely at the mercy of the police officer who stopped them. This is attributed, in part, to the public nature of the contact. Id. at 438. Considering this, traffic stops are more akin to Terry stops in which officers are not required to read the Miranda warnings to an individual. Id. at 439-40. It should also be noted that the point at which the officer determines to place a suspect under arrest is not relevant in determining when a suspect is "in custody." The issue is what a reasonable person in the suspect's position would have understood the situation to be. Id., at 442.

The officer in Berkemer observed a vehicle weaving out of a lane and initiated

a traffic stop. The officer asked the driver to exit the vehicle and noticed the driver had a problem standing. The officer then determined, but did not inform the driver, that the driver would be charged with traffic offenses and was not allowed to leave the scene. He asked the driver to perform field sobriety tests. The driver failed one of the tests. The officer then asked the driver questions that prompted the driver to give incriminating responses. The driver was then formally arrested. Id. at 423-24. The Court held that the statements prior to arrest were admissible. The post-arrest statements were suppressed, because the Miranda warnings were not given. Id. at 442.

The Berkemer decision was applied to New Jersey in State v. Toro, 229 N.J. Super. 215 (App. Div. 1988). In Toro, officers conducted a traffic stop of a motor vehicle that had a cracked taillight and was driving erratically. Once stopped, the defendant was unable to produce his driver's license. The officer also observed a package wrapped in duct tape near the defendant's feet. The officer suspected narcotics were inside the package. The officers then ordered the defendant and the passenger out of the vehicle and patted them down for weapons. The officer then asked, without reciting the Miranda warnings, the defendant and the passenger what was in the package. The defendant then responded, "coca." The officer arrested the defendant but did not read the Miranda warning to the defendant. Once arrested, the defendant admitted the package was his. Id. at 217-18.

The Court determined that officers are able to ask, without giving Miranda warnings, a driver of a vehicle "general on-the-scene questions as to facts surrounding a crime or other general questions of citizens in the fact-finding process." Toro, at 219 (quoting Miranda 384 U.S. at 477). Applying that reasoning and the holding in Berkemer, the Toro Court held the pre-arrest statements made in that case were admissible, finding that the defendant was not subject to a custodial interrogation when he indicated the package found near him contained cocaine. Toro at 221. Even though the defendant's freedom of movement was more curtailed than that of a generic traffic stop when the officers had the defendant and the passenger exit the vehicle, the court declined to put this in the same category as an arrest finding the defendant, "was not told he was under arrest, he was not handcuffed, and he was not subjected to any search beyond a patdown for weapons." Id. The court determined that the officer's questions and actions were akin to a Terry stop with the purpose of getting information to confirm or reject the officer's suspicions. Id., 221-222.[10]

Here, similar to Toro, its clear troopers' pre-arrest interactions with the defendant were akin to a Terry stop where Miranda is inapplicable. Flanegan's

[10] The Toro court did find that the post arrest statement, made by the defendant, that the cocaine was his was inadmissible since the Miranda warnings had not been read to the defendant prior to being questioned. State v. Toro, 229 N.J.Super. 215, 222 (1988).

interaction with the defendant was limited since he was the first on scene. While he was enroute he advised the defendant that he needed to remain where he was and wait for other troopers to arrive to investigate what happened. Flanegan did not even get out of his vehicle while he was talking with the defendant. The extent of Flanegan's interaction was asking the defendant if he was okay. At that point, the defendant responded, "I hit them. I hit them". No reasonably objective person would feel that they were in custody based on that interaction with police.

Once Allonardo arrived on scene, he asked the defendant general investigative questions about his involvement, if any, with the crash that just took place. He also asked the defendant if he had a driver's license and for the credentials for the defendant's Jeep. This interaction is also consistent with an accident investigation.

While Allonardo was verifying the information in those documents, Harding briefly asked the defendant general questions about the crash. The defendant was "worked up" and pacing back and forth. Harding did not smell any alcohol on the defendant's breath and observed nothing about the defendant's demeanor that indicated he was intoxicated. Harding testified that he told the defendant to take a few breaths and relax and told the defendant he could sit in the car if he wanted but did not tell him to sit down or curtail his freedom of movement. Harding also testified that the defendant pulled out some cigarettes and he told the defendant that he could smoke if he wanted to. Harding indicates this interaction lasted, "maybe a

minute", he was the only trooper with the defendant and was standing approximately five to seven feet away. Harding testified that at that time he had no indication that criminal charges would be pending and at no time did the defendant indicate that he wanted to leave. Once again, this interaction is consistent with an accident investigation. The defendant was not restrained, had freedom of movement in and out of the motor vehicle and was allowed to smoke a cigarette.

Harding, testified consistent with Flanegan's testimony, that he knew there were fatalities, but he did not know anything else about the accident and that the accident was ¼ of a mile away.

When Allonardo returned from running the cresdentials, he believed alcohol might be a factor in the crash and asked the defendant questions regarding this. The defendant admitted to consuming alcohol earlier that day. Allonardo had the defendant perform the standard field sobriety test, which he failed, at which point, probable cause existed for the defendant's arrest and he was, in fact, arrested and placed in handcuffs. While this was happening, Allonardo read the Miranda warnings to the defendant advising him of his rights under the Fifth Amendment. The defendant indicated he understood those rights.

This troopers' conduct was in line with our well settled jurisprudence. Like Berkemer this was an investigation and traffic stop that involved a DUI where the officers conducted field sobriety tests. The defendant made statements on scene pre-

arrest. Based on those statements and the investigation that the officers conducted, the defendant was arrested. In Toro, the officers conducted a traffic stop that led to a criminal investigation. The questions lead to criminal charges. Here, the officers were conducting an investigation and a traffic stop jointly, that may or may not result in criminal charges.[11] There initial questions were limited to the defendant's involvement in the crash in an attempt to determine what occurred. Once they determined he was involved in the crash, the questions turned to whether he was intoxicated or not. When he admitted to consuming alcohol, Allonardo had the defendant perform the field sobriety tests. This is typical of many, if not all, traffic accidents police officers encounter daily. It is commonly referred to as a Terry stop. Per Toro, officers are allowed to ask individuals on scene questions regarding crimes during the fact-finding process without advising individuals of the Miranda warnings. This is what Allonardo and Harding did prior to the defendant's arrest. Contrary to the defendant's assertion, he was treated just like a motorist suspected of DUI and not a criminal suspect. He was not restrained and was allowed to pace around and smoke a cigarette, the interaction was on a public roadway and the interaction was brief—14 minutes.

The defendant's reliance on the unpublished case of State v. Edwards, 2024

[11] As indicated previously, the troopers did not yet know if the investigation would result in criminal charges. The Court found this testimony to be "candid".

WL 4746565 (App. Div. 2024) is misplaced. First, the case is unpublished and does not carry precedential value. Second, in Edwards, probable cause was established once the defendant indicated that he had *per se* contraband in his vehicle. Here, there was no probable cause until the defendant failed the field sobriety tests. The fact that the accident occurred, even with fatalities, did not establish probable cause that a crime had been committed. In fact, Flanegan specifically testified at the hearing that just because an accident resulted in a fatality does not make it a crime scene. He further indicated that at that time the matter was being treated as a traffic accident and criminal charges had not yet been contemplated and that criminal charges do not always flow from fatal motor vehicle accidents.[12] The defendant, in his brief, is asking the Court to take the leap from concluding that there was probable cause that a fatal accident occurred to there was probable cause that a crime was committed. (Mb10). They are not the same.

Additionally, the fact that someone indicated they were drinking does not establish probable cause for a crime or even a DUI. It was not until the defendant failed the field sobriety tests that probable cause arose—just like in an ordinary DUI. At that point, the defendant was placed under arrest and given his Miranda rights.

The defendant, in his brief, is blurring the line between someone who was

[12] He further testified that they had a fatal motor vehicle the previous night that did not result in criminal charges.

drinking and a situation where the police have probable cause to believe the driver was drunk. Accepting the defendant's argument, the police would have to issue Miranda warnings in every case once a suspected drunk driver indicates they had a drink, and prior to the field sobriety tests. This, of course, is not the law. The police conduct was proper and not inconsistent with the unpublished holding in Edwards.[13]

In his brief, the defendant argues that the police should have given the defendant his Miranda warnings the moment they came in contact with him for the first time. (Mb6). That proposition finds absolutely no support in the law. At the point of first contact, when the defendant spontaneously indicates to Flanegan that he struck the Gaudreaus, all the police knew was that there was an accident. They did not yet know it was a fatal, they had not talked to any witnesses, the defendant had not said he was drinking and he had not failed the field sobriety tests. There simply was no basis to think that a crime had been committed under any stretch of the imagination. The defendant's argument is utterly without merit.

Further, the defendant argues that the police, while discussing the matter with

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[13] In Edwards, the Court found that the defendant's statements made prior to the police having probable cause were admissible. Apply that holding to the current matter, any statement made by the defendant prior to his failure of the field sobriety tests would still be admissible. The Court should reject any claim that the police had probable cause prior to the actual failure of the field sobriety tests as that is inconsistent with long established case law and would eliminate the need for field sobriety tests in most, if not all, DUI stops. The point of the field sobriety tests is determine whether a reasonable suspicion gives rise to probable cause.

the defendant on the roadside, had, "more than a general understanding of the accident, they had specific pointed details from eyewitnesses." (Mb12). This argument is based upon a false factual predicate. Contrary, to the defendant's argument the testimony at the hearing was clear, the witnesses, other than Jane Doe 3,[14] were not interviewed until after the defendant had already been arrested after failing the field sobriety tests.

Further, the argument of the defendant indicating that he was "standing in the middle of a police controlled death scene," (Mb14) is refuted by the testimony which was consistent that the defendant was on the side of a public roadway ¼ of a mile away from the accident which was not visible.[15]

The motion court correctly found that, under the totality of the circumstances, the defendant was not subjected to custodial interrogation while on the roadside and that his statements to police were admissible. The defendant was not subject to an arrest or the functional equivalent thereof.

Finally, as the defendant's roadside statements are admissible, Missouri v.

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[14] Harding testified that Jane Doe 3 advised him what the defendant had told her concerning how the accident happened, he had been drinking, and he was "freaking out". She did not witness the actual accident.

[15] While the defendant argues that the roadway was no longer public, it was not a secure area such as an interrogation room. To the contrary, the roadway, while closed due to the emergency, was a public road and contained residences. Further, Jane Doe 3 was still on scene and was located approximately 1/10 of a mile away. This simply does not have the coercive nature as would be seen in a secured environ.

Seibert, 542 U.S. 600 (2004) relied upon by the defendant is inapplicable to the current case. Even assuming *arguendo* that there was some type of error in the police conduct in obtaining the initial statement (which there was not), this case is clearly distinguishable from Seibert. First, this was not a continuous interrogation as seen in Seibert. Approximately three hours elapsed between the roadside encounter and the formal interview at the barracks—during which the defendant was taken to the hospital for a blood draw. Second, unlike Seibert this was not a scenario where the police deliberately withheld giving Miranda warnings until after the defendant confessed. Id. at 609-10. Third, in Seibert, the initial pre-Miranda interrogation was not on the roadside but, "conducted in the station house, and the questioning was systemic, exhaustive, and managed with psychological skill. When the police were finished there was little, if anything, of incriminating potential left unsaid." Id. at 616. As the Court below noted, the roadside interaction was not conducted in a coercive faction. Simply put, Seibert does not apply as the initial statements did not require a Miranda warning and even if they did, the facts of Seibert are clearly distinguishable from the matter now before the Court.

Point II: The Defendant's Knowingly and Voluntarily Waived His Miranda Rights and Made a Voluntary Statement to the Police[16]

The burden is on the prosecution to not only demonstrate that the defendant

[16] This Point responds to Point III A 4 of the defendant's brief.

was informed of his rights, but he has knowingly, intelligently, and voluntarily waived those rights prior to making a statement. Nyhmmer 197 N.J. at 400-01. To meet this burden, the State has to provide evidence beyond a reasonable doubt that the waiver was valid. State v. Knight, 183 N.J. 449, 462 (2005). In determining whether the defendant voluntarily waived his rights, New Jersey courts have applied the totality of the circumstances test. Messino 378 N.J. Super. at 576 (citing State v. P.Z., 152 N.J. 86, 102-03 (1997)). Courts are to consider factors such as "age, education and intelligence, advice as to constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature and whether physical punishment or mental exhaustion was involved" when applying the totality of the circumstances test. Nyhmmer, 197 N.J. at 402 (quoting State v. Presha, 163 N.J. 304, 303 (2000)).

Nyhmmer addressed the issue of whether the failure of officers to advise someone they are a suspect in an investigation when they are read their rights per Miranda should be a factor courts are to consider when applying the totality-of-circumstances test. Nyhmmer 197 N.J. at 405. The court stated that "one's explicit knowledge as a suspect will not be important for Miranda purposes." Id. at 408. While acknowledging there may be an unusual circumstances where it might be useful, the Court held as a general rule the that the fact the Miranda warnings are administered "strongly suggest, if not scream out" that one is a suspect. Ibid.

There are only limited circumstances where courts have made a *per se* rule determining when an individual did not knowingly and intelligently waive his Miranda rights. First, when an officer fails to inform a suspect that an attorney is present or available to counsel them. Nyhmmer, 197 N.J. at 403 (citing State v. Reed, 133 N.J. 237, 261-62 (1993)). In Reed, the defendant was not made aware that an attorney was retained by his paramour, was present in the building defendant was in and was denied access to the defendant while he was being interrogated. Reed 133 N.J. at 240-46. The second *per se* rule is when officers fail to inform a defendant that a criminal complaint or an arrest warrant has been lodged against that defendant prior to questioning. Nyhmmer 197 N.J. at 404 (citing State v. A.G.D, 178 N.J. 56, 68 (2003)). Neither of these situations is present in the case now before the Court.

The Courts have declined to extend those prohibitions to defendants who have been arrested based on probable cause and no formal charges have been issued against that defendant. That is, per Miranda, there is no requirement for officers to inform defendants who have been arrested based on probable cause of possible charges that may be lodged against the defendant in the future prior to being interrogated. State v. Simms, 250 N.J. 189, 210-13 (2022).

It is clear beyond a reasonable doubt that the defendant knowingly, intelligently, and voluntarily waived his Fifth Amendment rights immediately when he was arrested after the field sobriety tests were administered. When the defendant

was placed into handcuffs and arrested, Allonardo informed the defendant of his rights per Miranda. Each right was read individually and Allonardo asked the defendant if he understood. The defendant stated that he did. Allonardo was clear and unambiguous in his presentation of the rights to the defendant. There is nothing to suggest that the defendant did not know what was being said to him or that he was being coerced into making any statement. The defendant's interaction with the officers up to that point was only about fourteen minutes long.

Later that evening, the defendant was transported to Mannington Inspira Hospital by Crespo. Allonardo met them there were a blood draw was conducted to later determine the defendant's blood alcohol concentration level. There the defendant made a brief statement to Crespo regarding injuries and what happened right after the crash. During this statement, the defendant was waiting for the registered nurse to come and draw blood from him. The statements here were brief, at the hospital, and limited to only a couple of questions. The defendant initiated the interaction when he asked Crespo if he could contact his wife for him. Crespo then asked the defendant if he had already talked with her and what he had told her. The pertinent statements took merely a few minutes.

Once Allonardo and Crespo collected a sample of the defendant's blood, they returned to the Woodstown Barracks where the defendant agreed to give a recorded statement. Prior to the statement, Allonardo read the Miranda warnings again to the

defendant and had the defendant sign and date the Miranda card Allonardo read from. There was no legal requirement for Allonardo to do this since he had read the Miranda warnings to the defendant earlier that evening. It was only out of an abundance of caution that Allonardo did this. Again, there is nothing to suggest that the defendant did not know what he was doing when he waived his right to remain silent. There was no pressure placed on the defendant to sign the Miranda card. Allonardo was clear in reading the warnings to the defendant. He stopped after each right and asked the defendant if he understood. The defendant acknowledged he understood. Allonardo and Repose took steps to make sure the defendant was comfortable before and during the interrogation. They let him use the restroom and got him a cup of water prior to the interrogation starting.

About halfway through the interrogation, Repose asked the defendant for permission to search the defendant's cell phone. The defendant asked if he should get an attorney. While the defendant quotes a portion of the statement in his brief, (Mb18), he fails to provide the context of the statement which is as follows:

> Allanardo (MA): So, just to help us better understand, umm, the timeline, you know, when you made the phone calls and try to ascertain exactly when the accident happened, uh, will you give us consent to look at your phone and just look at, you know, the times you made the calls?
>
> Defendant: Should, should I actually have a

	lawyer? I don't know. I feel like I need a lawyer.
Repose (TR):	So…
Defendant:	…For something like that. I don't know. I feel uncomfortable with the phone thing. Yeah.
Repose:	Yeah, so I gotcha. So…
Defendant:	…I mean I'm telling you like I, like…
Repose:	…Yeah, yeah…
Defendant:	…Spoke to my friend probably for an hour and a half.
Repose:	Yeah.
Defendant:	'Cause I was railing about my mother and work stuff.
Repose:	So let, let's just pause for a second. Umm…
Defendant:	…Yeah
Repose:	I see what you're saying. Umm, we can't tell you if you should have a lawyer or not. That's a decision that (sic) up, up for you to make. Umm, basically, there's kind a (sic) two parts to this. Are you still, I know you're asking if you should have one. I can't tell you that. Is that something you want, or you okay to continue talking to us without a lawyer? Irregarless (sic)…

Defendant:	…I'll continue talking regardless the phone.
Repose:	Okay.
Defendant:	Right? But when it comes to phones, I'm like, uh…
Repose:	…I gotcha…

(Ma41-42, Emphasis added)

Even though the defendant made clear he was not invoking his right to remain silent and was only concerned about access to his phone, Repose and Allonardo immediately stopped the interrogation, as it appeared there might be confusion on the defendant's part as to what Allonardo and Repose were going to look for in his cell phone. Repose clarified that neither she nor Allonardo can advise the defendant whether he needs to get an attorney or not. She wanted to make sure the defendant still wanted to talk with them, which he did. She then clarified what she and Allonardo wanted to review in the defendant's cell phone. Because the defendant brought up the subject of an attorney, the Miranda warnings were read to the defendant a third time. (Ma 43-44). He signed another Miranda card. Allonardo then went over the permission to search form with the defendant. Once that was done, the defendant agreed to allow Allonardo and Repose to review the call log in the defendant's cell phone with the defendant present and he signed the permission to search from.

As the Court below correctly found, this point of the interrogation falls squarely within Messino. There the defendant was charged with the homicide of a juvenile. During a break at the defendant's first taped interview, he asked one of the investigators, just as the defendant here, if they thought he needed a lawyer. Messino, 378 N.J. Super. at 569-74. On appeal (following conviction), the Appellate Division found that the request there was not a request for a lawyer. The Court found that the defendant was informed he had the right to a lawyer and he could have requested one. An inquiry as to whether the police thought the defendant should have an attorney is not the same as a request for a lawyer. Id. at 577-78.

Likewise, here the defendant's statement to Repose and Allonardo was not a request for a lawyer thus invoking his rights making any further statement inadmissible. The defendant made the entire statement out of his own free will. He was informed of his Fifth Amendment rights three times throughout the evening. He signed two Miranda cards. Each time he acknowledged his rights and agreed to speak with Allonardo and Repose about what happened. There is nothing to suggest that Allonardo or Repose's conduct overbore the will of the defendant to gain consent. No promises were made to gain consent from the defendant to get a statement. The defendant did not seem confused when Allonardo read the Miranda card to him.

There is no credible argument that the defendant's, in custody, statement

should be found inadmissible because the defendant was not advised of charges that would be lodged against him as a result of the investigation. The Court in Simms makes it clear, if a defendant is arrested and the arrest is based on probable cause the officer is under no duty to advise the defendant of charges that may be issued against them prior to making a statement.

Further, the defendant's statement in regard to the police request to look at his phone was not an invocation of his right to remain silent as the defendant made clear the request was in relation to the search of his phone and almost immediately, and before being asked any questions, confirmed that he wanted to proceed with the interview. Based on the totality of the circumstances it is clear the defendant did not invoke his right to an attorney and it was his knowing intention to continue with the interview.

Point III: The Defendant has Not Established that this Matter is the Extraordinary Case Requiring Interlocutory Review[17]

This Court may grant leave to appeal from an interlocutory order in the "interest of justice." R. 2:2-4. But "[i]nterlocutory appellate review runs counter to a judicial policy that favors an 'uninterrupted proceeding at the trial level with a single and complete review.'" State v. Reldan, 100 N.J. 187, 205 (1985) (quoting In re Pennsylvania R.R., 20 N.J. 398, 404 (1956)). Indeed, "piecemeal reviews

[17] This Point responds to Points III B & C of the defendant's brief.

ordinarily are anathema to our practice." CPC Intern, Inc. v. Hartford Accident & Indem. Co., 316 N.J.Super. 351, 365 (App. Div. 1998)(internal quotations and citations omitted), certif. denied, 158 N.J. 74 (1999). Thus, "[l]eave to appeal is 'highly discretionary' extraordinary relief and granted only to consider a fundamental claim which could infect a trial and would otherwise be irremediable in the ordinary course." State v. Alfano, 305 N.J.Super. 178, 190 (App. Div. 1997)(quoting Reldan, supra). It follows that leave to appeal is "customarily exercised only sparingly." Reldan, supra. Moreover, its denial by an appellate court will not prejudice further review of the challenged order on a later appeal. Ibid. "Regardless of the specific basis asserted, however, the moving party must establish, at a minimum, that the desired appeal has merit and that 'justice calls for [an appellate court's] interference in the cause.'" Brundage v. Estate of Carambio, 195 N.J. 575, 599 (2008)(alteration in original)(internal citation omitted).

Leave to appeal should be denied. The defendant has not put forth a single valid argument as to why the interests of justice mandate the "extraordinary" relief of an appeal of the interlocutory order. On the contrary, the defendant relies solely on bald assertions that review in the normal course would be inadequate. Further, of all the cases cited in his brief, only one involves an appeal by the defendant through leave granted.[18] Every other case involving a defense appeal, cited by the

[18] The only case where the defense appealed through leave granted was the unpublished case of State v. Edwards. This case is procedurally distinct from the

defendant, was handled through the normal course following a conviction.

Additionally, the resolution of the issues raised in this motion will not result in the termination of the prosecution as there is ample evidence present, irrespective of the defendant's statement, to support a prosecution of the defendant. Should defendant be convicted at trial, he may appeal his conviction in the ordinary course, including the subject of the hearing concerning the admissibility of his statements to police. There is simply no need for interlocutory review.

CONCLUSION

For the reasons stated above, the Motion for Leave to Appeal should be Denied. The defendant has presented no basis as to why this interlocutory order should be the subject of pre-trial appellate review. These issues are without merit and can be addressed in the normal course following trial.

Respectfully submitted,
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current matter in that the leave to appeal involved not only the defendant's statement but also suppression of the evidence seized. Unlike here, if the defendant in Edwards was successful on both portions of his appeal the case would essentially have been over as all of the State's evidence would have been suppressed. Here, as demonstrated by the additional evidence contained in the Counter Statement of Facts, regardless of the outcome of this motion for leave appeal the prosecution will move forward.