

SALEM COUNTY PROSECUTOR'S OFFICE



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

RE: State v. Sean M. Higgins
Ind. No. 24-12-400-I

Dear Judge Silvanio:

Please accept this letter brief, in lieu of a more formal brief, in response to the defendant's Motion to Suppress the Defendant's Statement.

Statement of Facts / Procedural History

On August 29, 2024, at about 8:19 p.m., troopers from the New Jersey State Police were dispatched to a motor vehicle crash near 63 Pennsville Auburn Road (MP 11.15). The 911 caller indicated that a SUV struck two bicyclists and continued to drive away. The caller indicated the victims, later identified as Matthew and John Gaudreau, sustained severe injuries and were unconscious but breathing. Sergeant Flanagan was the first on scene. While enroute he made contact with the defendant, identified as Sean M. Higgins, about a quarter mile away from

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the crash scene. The Sergeant told the defendant to wait for the next trooper to arrive and went to check on the victims.

The Sergeant reached the brothers about the same time that the EMTs and paramedics arrived on-scene. The EMTs and paramedics immediately determined that the victims had died. Tpr. Allonardo arrived shortly thereafter. At that time, emergency personnel were attending to the brothers and Sgt. Flanagan was in the beginning stages of the investigation. Tpr. Allonardo then went back to the defendant's location who was out of his vehicle, appeared to be pacing back and forth, and talking on his cell phone. The defendant ended his call and then indicated to Tpr. Allonardo he was the operator of the Jeep parked on the side of the road. By this time, multiple officers and troopers were on-scene assisting in the investigation.

Around this time, another trooper told Tpr. Allonardo he had just talked with a witness who indicated she saw the defendant, stopped, and asked the defendant if he was ok. The witness indicated the defendant said no and appeared to be freaking out. She indicated defendant admitted to her that he had been drinking.

Tpr. Allonardo then turned his focus onto the defendant and talked with him about what transpired. Tpr. Allonardo felt the defendant appeared nervous and smelled alcohol on him. The defendant also admitted to drinking beer that day when the trooper asked. He asked the defendant for his driver's license and the credentials for his Jeep. Tpr. Allonardo then went to his troop car to check on the defendant's and the defendant's Jeep's information. While he was doing this, Tpr. Allonardo asked Tpr. Harding to stand with the defendant while he was away. Tpr. Harding did so and briefly asked the defendant general questions about what just took place.

Prior to returning to the defendant, Tpr. Allonardo briefly consulted with another trooper via phone about what his investigation uncovered and then returned to the defendant. Tpr.

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Allonardo then had the defendant perform the standard field sobriety tests, which he failed. The defendant was then arrested and transported to the Woodstown barracks. As the defendant was being arrested, Tpr. Allonardo read the defendant his Fifth Amendment rights, typically known as Miranda Rights, from a Miranda card. After each right was read to the defendant, the defendant acknowledged he understood the right being read to him. Tpr. Allonardo's initial encounter with the defendant, from the first question to arrest, was about fourteen minutes.

Shortly after being transported to Woodstown Barracks, the defendant was transported to the Mannington Inspira hospital to have his blood drawn for blood alcohol analysis to determine the defendant's blood alcohol concentration level. While waiting for the blood draw, the defendant briefly made some statements to Tpr. Crespo regarding some injuries he has and asked the trooper if he would call his wife for him. Tpr. Crespo then asked the defendant if he had already talked with his wife and what information he had already given her.

After the blood draw, the defendant was transported back to the Woodstown barracks where Tpr. Allonardo and Det. Repose conducted a formal interview of the defendant. The statement started at about 12:03 a.m. on August 30, 2024 and lasted for about an hour. Prior to questioning, Tpr. Allonardo formally read the defendant his rights. The defendant again acknowledged he understood his Fifth Amendment rights, signed the Miranda card that was read to him, and he agreed to waive his rights and talk with the troopers. He then gave a formal recorded statement. At no time during the interview, did the defendant appear tired or uncomfortable. Prior to making the statement, the defendant was afforded the opportunity to use the restroom. Also, the troopers provided the defendant with water to drink during the interview.

About halfway through the interview, discussion centered around a timeline of what the defendant was doing prior to the crash and who he talked to on his cell phone just after the crash.

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Det. Repose asked the defendant for permission to look at the defendant's cell phone to clarify what he had been telling the troopers. The defendant did not know if he should allow the troopers to look at his phone and asked the troopers if he should get a lawyer first. The troopers then immediately stopped the interview and informed the defendant that they cannot advise him whether he should get a lawyer or not. Det. Repose then clarified what part of the phone they would be looking at and for what purpose they would be doing that. She also asked the defendant whether he still wanted to talk with the troopers. He stated he wanted to continue the interview. Because of the confusion there may have been on the defendant's part, Tpr. Allonardo reread the Miranda warnings to the defendant and the permission to search form was read to him as well. The defendant acknowledged his rights and signed another Miranda card and a consent to search form.¹

Tpr. Allonardo then read the permission to search form to the defendant regarding the search of defendant's cell phone. The defendant indicated he understood his rights regarding the search and the parameters of the search. He agreed to allow the troopers to search through his phone in his presence. The remainder of the interview was unremarkable. Hours later, Complaint Warrant W-2024-000109-1715 was issued against the defendant.² At that time, he was charged with two counts of Death by Auto, second degree, a violation of N.J.S.A. 2C:11-5a.³

On December 11, 2024, this matter was presented to the Salem County Grand Jury and a True Bill was returned. The Defendant was indicted on two counts Reckless Vehicular Homicide, second degree, a violation of N.J.S.A. 2C:11-5a; two counts of Aggravated

¹ This was the third time that evening the Miranda warnings were read to the defendant by Tpr. Allonardo. A copy of the signed Miranda cards, signed during the recorded interview, are attached hereto as Exhibit A.

² A review of the Complaint Warrant in eCourts shows it was filed by Tpr. Allonardo at 3:13 a.m. on August 30, 2024 with probable cause found nine minutes later.

³ A copy of the Warrant is attached hereto as Exhibit B.

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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. On June 10, 2025, counsel for the defendant filed a Notice of Motion to Suppress Defendant's Statement and a separate Notice of Motion to Suppress Data Retrieved from the Warrants September 4, 2024 and October 8, 2024. This brief will address that first motion.

Legal Argument

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. Nyhmmmer, 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. Nyhmmmer, 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. 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

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not leave freely.” Messino, 378 N.J. Super. at 576 (quoting State v. Coburn, 221 N.J. Super. 586, 596 (App. Div. 1987)).

A. The initial roadside stop and questioning of the defendant were constitutionally sound, since they did not amount to a custodial interrogation for Miranda purposes.

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

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arrested. Berkemer, 468 U.S. at 423-24. The Court held that the statements prior to arrest were admissible. There 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 (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 were able to ask, sans 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 v. Arizona, 384 U.S. 436 at 477 (1966)). Applying that reasoning and the holding in Berkemer, the Toro Court held the prearrest 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

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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., 221-222.⁴

Here, its clear troopers’ prearrest interactions with the defendant were akin to a Terry stop were Miranda is inapplicable. Sgt. Flanagan’s 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. Sgt. Flanagan did not even get out of his vehicle while he was talking with the defendant. Once Tpr. 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. While Tpr. Allonardo was verifying the information in those documents, Tpr. Harding briefly asked the defendant general questions about the crash.

When Tpr. Allonardo returned, 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, Tpr. Allonardo had the defendant perform the standard field sobriety tests. The defendant failed those tests providing probable cause for arrest. The defendant was immediately arrested and placed in handcuffs. While this was happening, Tpr. Allonardo read the Miranda warnings to the defendant advising him of his rights under the Fifth Amendment.

There is nothing in the facts present before Your Honor that would suggest Your Honor should deviate from the bedrock decisions of Berkemer and Toro. Like Berkemer this was an

⁴ 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).

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investigation and traffic stop that involved a DWI where the officers conducted field sobriety tests. The defendant made statements on scene prearrest. 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. Their initial questions were limited to the defendant's involvement in the crash. 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, Tpr. 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 Tpr. Allonardo and Tpr. Harding did prior to the defendant's arrest. It is for these reasons, it is respectfully requested that Your Honor find that the defendant's prearrest statement made to Sgt. Flanagan, Tpr. Allonardo, and Tpr. Harding are admissible if this matter proceeds to trial.

B. The defendant's statements made post arrest are admissible at trial as the defendant knowingly, intelligently, and voluntarily waived his rights prior to making any statements.

The burden is on the prosecution to not only demonstrate that the defendant was informed of his rights, but he has knowingly, intelligently, and voluntarily waived those rights prior to making a statement. Nyhmmmer, 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

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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. Nyhmmmer, 197 N.J. at 402 (quoting State v. Presha, 163 N.J. 304, 303 (2000)).

The Nyhmmmer, court did wrestle with the issue of whether failure of officers to advise someone they are a suspect in an investigation when they are read their rights per Miranda and whether that should be a factor courts are to consider when applying the totality-of-circumstances test. Nyhmmmer, 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. It did carve out an exception in unusual circumstances where it might be useful. In those rare circumstances it would be a consideration in the totality-of-the-circumstances test. The court concluded that the fact the Miranda warnings are administered “strongly suggest, if not scream out” that one is a suspect and should be considered as well. 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. Nyhmmmer, 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 who were both present in the building defendant was in but were denied access to the defendant while he was being interrogated. State v. Reed, 133 N.J. 237, 240-46 (1993). The second *per se* rule is when officers fail to inform a defendant that a criminal complaint or an arrest warrant has been lodged

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against that defendant prior to questioning. Nyhmmmer, 197 N.J. at 404 (citing State v. A.G.D., 178 N.J. 56, 68 (2003)). However, the Court declined to extend that rule 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, Tpr. Allonardo informed the defendant of his rights per Miranda. Each right was read individually and Tpr. Allonardo asked the defendant if he understood. The defendant stated that he did. Tpr. 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 Tpr. Crespo. Tpr. Allonardo met them there where a blood draw was conducted to later determine the defendant's blood alcohol concentration level. There the defendant made a brief statement to Tpr. 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 Tpr. Crespo if he could contact his wife for him. Tpr. Crespo then

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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 Tpr. Allonardo and Tpr. 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, the Tpr. Allonardo read the Miranda warnings again to the defendant and had the defendant sign and date the Miranda card Tpr. Allonardo read from. There was no legal requirement for Tpr. 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 Tpr. 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. Tpr. 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. Tpr. Allonardo and Det. Repose took steps to make sure the defendant was comfortable before and during the interrogation. They let him use the restroom before the interrogation and got him a cup of water prior to the interrogation starting.

About halfway through the interrogation, Det. Repose asked the defendant for permission to search the defendant's cell phone. The defendant asked if he should get an attorney. Det. Repose and Tpr. Allonardo immediately stopped the interrogation, as they should. It appeared there might be confusion on the defendant's part as to what the Tpr. Allonardo and Det. Repose were going to look for in his cell phone. Det. Repose clarified that neither she nor Tpr. 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 Tpr. Allonardo wanted to review in the defendant's cell phone. Because the defendant brought up the

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subject of an attorney, the Miranda warnings were read to the defendant a third time. He signed another Miranda card. Tpr. Allonardo then went over the permission to search form with the defendant. Once that was done, the defendant agreed to allow Tpr. Allonardo and Det. Repose to review the call log in the defendant's cell phone with the defendant present and he signed the permission to search from.

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 before Your Honor) if they thought he needed a lawyer. Messino, 378 N.J. Super. 569-74. The New Jersey Supreme Court 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. The statement was not a request for a lawyer. Id., at 577-78.

Likewise, Your Honor should find that the defendant's statement to Det. Repose midway through his taped statement to Det. Repose and Tpr. Allonardo was not a request for a lawyer and in no way corrupted the statement, making it inadmissible at trial. Further, 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 of August 29, 2024 and early morning hours of August 30, 2024. He signed two Miranda cards. Each time he acknowledged his rights and agreed to speak with Tpr. Allonardo and Det. Repose about what happened on August 29, 2024. There is nothing to suggest that Tpr. Allonardo or Det. 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 Tpr. Allonardo read the Miranda card to him.

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Finally, there should be no credible argument that the defendant's 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. It is for these reasons, it is respectfully requested that Your Honor find all the statements the defendant made on the days in question admissible, if this matter proceeded to trial, and deny the defendant's Motion to Suppress.

Conclusion

Since the initial stop and interrogation of the defendant did not amount to custodial interrogation for Miranda purposes and the State established beyond a reasonable doubt the subsequent statements made by the defendant were made after he knowingly, intelligently, and voluntarily waived his Fifth Amendment Constitutional right to remain silent, all statements the defendant made on the days in questions should be admissible if this matter proceeds to trial.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael Mestern", written over a horizontal line.

Michael Mestern
Assistant Prosecutor