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April 23, 2025

The Honorable Marc C. Lemieux, A.J.S.C.
Monmouth County Court House
71 Monument Park
Freehold, New Jersey 07728

Re: State of New Jersey v. Paul Caneiro
Indictment No. 19-02-0283; Case No. 18-4915
Motion to Admit Statements of Defendant

Dear Judge Lemieux:

As this Court is aware, an N.J.R.E. 104c hearing was conducted on April 8, 2025, regarding the State's motion to admit statements of defendant. Having concluded testimony, the Court asked for written submissions from both parties. As such, the State submits the following in support of its position that it has proven beyond a reasonable doubt defendant's statements are admissible.¹

Defendant and his family evacuated their home of 27 Tilton Drive in Ocean Township at approximately 5 a.m. on November 20, 2018, during which time defendant's adult daughter called 911 to report and request assistance for a house fire. Police, firefighters and other first responders arrived on scene a few minutes after 5:00 a.m. During the course of the investigation into what started the fire, it was learned that the fire appeared to be incendiary. While on scene, neither

¹ Prior to the N.J.R.E. 104c hearing, the State submitted a brief in which it discussed the law regarding Miranda and voluntariness. In order to avoid redundancy, and also to abide by the Court's 10-page limit, the State's present submission will focus mainly on a legal analysis of the facts elicited at the 104c hearing.

defendant nor his family were believed to be suspects. Defendant and his family responded to the Ocean Township Police Department at approximately 12:00 p.m. to provide voluntary witness statements. Police and fire personnel maintained a presence at the scene the entire time. Defendant spoke to three different patrolmen while on scene: Marino, Redmond and Bernhard. Each of these interactions occurred separately and were captured on body worn camera. The respective footage from the body worn cameras was played during the course of the hearing and transcripts of same were provided. While on scene, defendant also spoke to Detective Christopher Brady from the Ocean Township Police Department, Detective Brian Weisbrot from the Monmouth County Prosecutor's Office, and Fire Marshal Craig Flannigan from the Township of Ocean, Fire District One. Additionally, defendant made unsolicited statements to Detective Brady while at the Ocean Township Police Department.

Miranda warnings must be provided whenever an individual is subject to "custodial interrogation." State v. Smith, 374 N.J. Super. 425, 430 (App. Div. 2005); State v. McLaughlin, 310 N.J. Super. 242, 251 (App. Div.), certif. denied, 156 N.J. 381 (1998). "Custodial interrogation" means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any significant way." State v. Hubbard, 222 N.J. 249, 265-266 270 (2015); see State v. Hall, 253 N.J. Super. 84, 89 (Law Div. 1990) ("There must be both interrogation . . . and custody . . . to trigger Miranda."), aff'd, 253 N.J. Super. 32 (App. Div. 1991).

It is the State's position that none of defendant's statements were the product of custodial interrogation. Defendant was not "in custody" at the time he provided statements on scene or at headquarters. Moreover, defendant's statements at headquarters were not the product of

interrogation, but rather, were unsolicited and spontaneous. As such, Miranda warnings were not required. Additionally, all of defendant's statements were voluntary.

A. Defendant's On-Scene Statements

Approximately nine minutes after his arrival to the scene, Patrolman Marino had a three-minute interaction with defendant and his family near the Caneiros' car, which was parked in the street. Patrolman Marino obtained pedigree information from the family, inquired as to whether medical attention was needed, and asked both defendant and his wife, Susan Caneiro, what had happened. Patrolmen Redmond and Weinkofsky had an approximate two-and-a-half minute interaction with defendant and his family while the family was outside near their car, approximately 15 minutes after the patrolmen's arrival to the scene. Patrolman Redmond asked defendant "where was the gas can," to which defendant replied that it was in his shed; defendant advised he keeps his gas cans in his shed. Patrolman Weinkofsky, who had been having a side conversation with defendant's wife and daughter, then asked the group, "Did the fire alarm start going off first?" Defendant replied, "Yeah," and shortly thereafter advised that "there was smoke coming through the vents." Subsequently, Patrolman Bernhard had two short interactions with defendant. During the first interaction, which lasted approximately 42 seconds, defendant was in the drivers seat of his car while his daughter sat in the front passenger seat. Patrolman Bernhard asked defendant where he kept his DVR and whether it was "running." The second interaction occurred approximately two minutes later and lasted approximately ten seconds. During this second interaction, defendant and his daughter were standing outside. Patrolman Bernhard asked defendant if the DVR for the cameras was a white box.

Detective Brady arrived on scene between approximately 6:15 a.m.-6:20 a.m. His first interaction with defendant occurred at approximately 7:00 a.m., whereby he spoke to Susan and

defendant on the porch of their neighbor's home and in the presence of the neighbor. Detective Brady inquired as to what had happened. Defendant advised he awoke to the alarms going off and saw smoke coming out of the vents in the room he was sleeping in. Defendant advised he believed it was a fire, alerted his family, and they all left the house. Defendant stated he returned into the house and backed a vehicle out of the garage. Defendant said he closed the garage door because he didn't know if "more air was going to be a problem." Detective Brady asked defendant about an injury to his left hand. Defendant claimed he banged his hand on the door or doorknob as he was exiting the residence. He declined first aid.

Detective Brady subsequently learned from Monmouth County Fire Marshal Tuberion that the fire appeared to be incendiary. He notified the Monmouth County Prosecutor's Office. Detective Weisbrot arrived on scene. Detectives Brady and Weisbrot had an interaction with defendant at approximately 9:50 a.m. near defendant's driveway. Specifically, they requested defendant's consent for Fire Marshal Tuberion to examine the Porsche Macan that was parked in defendant's driveway; the Macan appeared to have fire damage to it. Detective Weisbrot read defendant the consent form,² after which defendant provided consent and requested the right to be present for the examination. While the Macan was being examined, defendant made the unsolicited statement: "That door is making me nervous."

Detectives Brady and Weisbrot interacted with defendant again at approximately 11:37 a.m. in the vicinity of defendant's front yard. During that time, they asked for consent to search defendant's Q-See DVR. The consent to search form³ was presented to defendant and he provided consent. Defendant stated he was having problems with the DVR such as some fire wall issues and connectivity issues of some sort, and that the DVR was offline in the recent past.

² State's Exhibit 32

³ State's Exhibit 33

Subsequently, between approximately 11:37 a.m. and 12:00 p.m., Detectives Brady and Weisbrot asked defendant and his family to go to Ocean Township Police Department to provide statements. The family requested the opportunity to get cleaned up and/or get food prior to going to headquarters. The detectives reminded them of the importance of taking witness statements as close to the incident as possible so that memory is not lost. As such, defendant and his family agreed and drove themselves to headquarters.

None of defendant's aforementioned on-scene statements were custodial. "Custody" is a "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." State v. Erazo, 254 N.J. 277, 298-99 (2023) (quoting California v. Beheler, 463 U.S. 1121 (1983)). The determination of whether an individual is "in custody" for the purposes of Miranda necessarily involves a fact-sensitive analysis and requires a case-by-case examination of the totality of the circumstances. State v. Pearson, 318 N.J. Super. 123, 133 (App. Div. 1999). Factors relevant to "custody" include: (1) the time, location, and duration of the detention; (2) the physical surroundings; (3) the nature and degree of pressure applied to detain the individual; (4) language used by the officer; and (5) objective indications that the person questioned is a suspect. State v. Smith, 374 N.J. Super. 425, 431 (App. Div. 2005); see also State v. Pierson, 223 N.J. Super. 62, 67 (App. Div. 1988). Ultimately, the critical determinant is "whether there has been a significant deprivation of the suspect's freedom of action based on the objective circumstances." State v. P.Z., 152 N.J. 86, 103 (1997).

In analyzing the aforementioned factors relevant to custody, it is important to consider the backdrop in which defendant's statements were made: when police spoke to defendant on scene, for all intents and purposes, he and his family were victims of a house fire. From the time first responders began to arrive a few minutes after 5:00 a.m. until defendant and his family drove

themselves to the Ocean Township Police Department at approximately 12:00 p.m., defendant was never considered a suspect by law enforcement. Nor was his freedom of action restricted by law enforcement in any significant way. To the contrary, defendant moved about the scene freely, at times sitting in his car with his family, at other times speaking with his neighbors in their yards or on his own property. Defendant's car keys were never taken from him, nor was his cell phone. He was never separated from his family or anyone else. He was never physically restrained. He was never told he could not leave the scene. Nor was he told that he had to speak to anyone on scene. At all times, defendant's cooperation was sought, not demanded.

Furthermore, all of defendant's statements on scene were made outdoors, in the vicinity of his home/property and in the general presence of other people, including his own family and neighbors who were milling about; not a traditionally custodial setting. Although law enforcement remained on scene the entire time, their interactions with defendant were sporadic and limited to obtaining pedigree information, determining whether medical attention was necessary, and gathering information in order to further their ongoing investigation into how the fire started. When police officers did speak to defendant, they did not approach him in large groups; rather, one or two officers at a time spoke with defendant. Their questions were not accusatory and did not evince any objective indications that defendant was a suspect. Along those lines, law enforcement did not limit their interactions to just defendant; officers also spoke with other members of defendant's family/household as well as neighbors. Also noteworthy is the fact that defendant and his family drove themselves to police headquarters to provide witness statements. Moreover, defendant's daughters were permitted to leave the scene and get food earlier that morning. The totality of these facts and circumstances not only corroborate the officers' testimony that defendant was never a suspect while on scene, but clearly show that defendant was never objectively treated as such;

rather, he and his family were treated just like any other victims of a house fire under the circumstances. If no Miranda warnings were required in State v. Pierson, 223 N.J. Super. 62 (App. Div. 1988) and State v. Smith, 374 N.J. Super. 425 (App. Div. 2005)⁴ (both of which applied the “on-the-scene questioning” exception to Miranda in situations where there was restraint on defendant’s freedom of movement but not rising to the level of an arrest) then certainly Miranda was not required here.

B. Defendant’s Statements at Ocean Township Police Department

When the Caneiro family first arrived to the Ocean Township Police Department, they were seated in the lobby. Subsequently, detectives began reviewing defendant’s Q-See DVR. Around that same time, Detective Brady also learned of the fire at defendant’s brother’s residence in Colts Neck. Concerned that there was “a larger scale incident happening with this family,” Detective Brady brought the family from the lobby, where anyone could see and have access to them, to a conference room in the detective bureau. Defendant and the rest of his family were permitted to keep their cell phones on them.

By this time, the Caneiro family had been made aware of the Colts Neck incident. Defendant requested that a welfare check be done on his parents who lived in New York. Detective Brady complied with defendant’s request and spoke to the precinct in which defendant’s parents resided. Upon learning that defendant’s parents were fine, Detective Brady relayed same to defendant. Defendant then requested that they make sure his parents were not aware of the fires.

During that same time-frame, defendant advised Detective Brady that he had received four text messages from his brother, Keith, during the overnight hours; text messages, he claimed, he did not hear. Defendant then turned his cell phone around to show Detective Brady the messages.

⁴ Both of these cases were discussed in depth in the State’s initial brief.

Defendant expressed concern that he did not hear the text messages and wished he had heard them when they were sent. The aforementioned comments made by defendant were not precipitated by any police questioning.

Formal statements from defendant's wife and daughters were begun at approximately 2:35 p.m. Detectives also obtained and watched surveillance footage from the areas surrounding Tilton Drive. Subsequently, at approximately 7:25 p.m., defendant was formally read his Miranda rights after which he invoked. Defendant was charged with one count of aggravated arson at approximately 12:15 a.m. on November 21, 2018.

The State submits that defendant was not in custody for purposes of Miranda at the time he made the aforementioned, unsolicited requests and comments to Detective Brady. Nevertheless, defendant's statements were not the product of police interrogation. The term "interrogation" refers to "express questioning or its functional equivalent." State v. Ward, 240 N.J. Super. 412, 418 (App. Div. 1990) (quoting Rhode Island v. Innis, 446 U.S. 291, 300-01, 100 S. Ct. 1682, 1689 (1980)). The latter encompasses "any words or actions by police that they should have known are reasonable likely to elicit an incriminating response." Innis, supra, 446 U.S. at 304, 100 S. Ct. at 1961; State v. Brown, 282 N.J. Super. 538, 550 (App. Div.), cert. denied, 143 N.J. 322 (1995). In the absence of "interrogation," a volunteered or spontaneous remark by a suspect is admissible regardless of the whether Miranda warnings were provided. State v. Marks, 201 N.J. Super. 514, 528–29 (App. Div. 1985), cert. denied, 102 N.J. 393 (1986); State v. Elysee, 159 N.J. Super. 380, 387 (App. Div. 1978). Here, the testimony clearly indicates that defendant's statements were not the product of questioning or its functional equivalent; rather, they were spontaneous, unsolicited comments. Therefore, Miranda warnings were not required.

C. Voluntariness

The voluntariness of a defendant's statements may be scrutinized separate and apart from the Miranda requirement. State v. W.B., 205 N.J. 588, 605 (2011); Hubbard, 222 N.J. at 267; State v. Knight, 183 N.J. 449, 462 (2005). Relevant factors that inform voluntariness include the suspect's age, education and intelligence, advice concerning constitutional rights, length of detention and whether questioning was prolonged, whether physical punishment or mental exhaustion were involved, and the suspects previous encounters with law enforcement. State v. L.H., 239 N.J. 22, 43 (2019).

Defendant's statements to Fire Marshal Flannigan were voluntary. First and foremost, Fire Marshal Flannigan was not a law enforcement officer, nor was there a law enforcement aspect to his role. His job was to determine how the fire started. As such, his request to speak with defendant did not carry the same inherent pressure as that of a police officer. However, as did the police, Fire Marshal Flannigan treated defendant the same as he would treat any other victim of a house fire that he was investigating. He followed the same process and procedures he follows for every residential fire. Namely, Flannigan did his own independent investigation, which included an examination of the exterior and interior of the residence, as well as attempting to ascertain information from the homeowners as to how the fire may have started. He did not limit his questions to defendant, but also spoke to defendant's wife, one of their daughters, and a neighbor. The questioning took place outside, in the vicinity of defendant's home and in defendant's car. At no time did Flannigan tell defendant that he had to speak with him or pressure or restrain him in any way.

Although Flannigan was on scene for several hours, his questioning of defendant was limited to two instances, each between approximately five and ten minutes in length. During the

first interaction, Flannigan introduced himself and advised that he was there to investigate the fire. The second interaction occurred while defendant was in the driver's seat of his car. Flannigan approached the passenger side and asked defendant if he could ask him a few more questions. Flannigan sat in the front passenger seat, which had been empty. Based on Flannigan's testimony, he either asked defendant if he could get in or defendant mentioned getting in the car as it was raining and Flannigan's notes were getting wet. There were no police officers around during this time. In each instance, Flannigan's questions were focused on ascertaining how the fire started and were not accusatory. As such, defendant's statements to Fire Marshal Flannigan were voluntary.

CONCLUSION

In sum, the State submits that defendant's statements to law enforcement were not the product of custodial interrogation. Therefore, Miranda warnings were not required. Furthermore, all of defendant's statements were voluntary, including those made to Fire Marshal Flannigan. For the above-mentioned reasons and authorities cited in support thereof, the State respectfully requests that its Motion to Admit Statements Pursuant to N.J.R.E. 104(c) be granted.

Very truly yours,

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