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October 16, 2025

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Honorable Judges of the
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
Post Office Box 006
Trenton, New Jersey 08626

Re State of New Jersey (Plaintiff-Movant)
v. Michele M. Linzalone (Defendant-Respondent)
Appellate Division Docket No. AM-
Indictment No. 22-03-00420
Case No. 21003993
Criminal Action: On Motion for Leave to Appeal from an Interlocutory Order Entered in the Superior Court of New Jersey, Law Division (Criminal), Monmouth County
Sat Below: Honorable Jill Grace O'Malley, P.J.Cr.

Honorable Judges:

Please accept this letter memorandum, pursuant to R. 2:6-2(b), in lieu of a more formal brief submitted on behalf of the State of New Jersey.

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STATEMENT OF PROCEDURAL HISTORY

Defendant, Michele Linzalone, stands charged by way of Indictment Number 22-03-00420, with first-degree Murder, N.J.S.A. 2C:11-3(a)(1) and/or 2C:11-3(a)(2), and second-degree Possession of a Weapon for an Unlawful Purpose, N.J.S.A. 2C:39-4(a)(1). Pa1-2.

In accordance with N.J.R.E. 104(c), the State filed a motion seeking to admit at trial statements made by the defendant to the 9-1-1 operator and to police on scene. (1T:3-19 to 3-20).[1] The Honorable Jill Grace O'Malley, P.J.Cr., heard testimony on this motion on June 12 and 18, 2025. See generally (1T; 2T). Judge O'Malley rendered an oral opinion admitting some of defendant's statements, but suppressing others. (3T:3-10 to 31-6). Judge O'Malley memorialized this ruling by way of an order, stamped filed on September 26, 2025 and served on the parties via eCourts on October 3, 2025. Pa11-12.

The State now moves before this Court seeking leave to file an interlocutory appeal of the portions of this order that preclude the State from admitting into evidence all of the statements made by the defendant in the

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[1] 1T refers to Transcript of Miranda Hearing, June 12, 2025.
2T refers to Transcript of Miranda Hearing, June 18, 2025.
3T refers to Transcript of Miranda Hearing, September 11, 2025.

minutes following police arrival on scene.

STATEMENT OF FACTS

Consistent with the deference owed to the factual findings of trial courts, see State v. Hubbard, 222 N.J. 249, 262-63 (2015), for purposes of this motion the State will adopt the lower court's factual findings, see (3T:4-11 to 12-10); Pa3-10, and incorporates the same as if set forth at length herein. These facts established that police quickly responded to defendant's residence after her 10:13 a.m. call to 9-1-1 reporting "an accident with a gun" – "I was playing with it and it went off and I hit my husband" – that resulted in her husband being struck in the head while he was sleeping. Pa6-10; (1T:6-18 to 21-16). Three officers responded in quick succession: two went to the upstairs bedroom in which defendant's husband lay dying; Sergeant Joshua Midose stayed with the defendant, taking her down the hallway to her kitchen. (1T:15-1 to 38-10).

In the first "3 to 5 minutes of just … being there," Sergeant Midose and his fellow officers asked defendant a few questions. Immediately upon arrival, and while defendant was still on the phone with 9-1-1 and escorting the responding officers into her home, Corporal Robert Shannon asked, " Ma'am, where's the gun?" and "Anybody else in here with you?" As they made their way back to the kitchen and while in the kitchen for those first three to five

minutes, Sergeant Midose asked defendant "where the firearm was;" "if there was anyone else in the house;" "if there were any other weapons in the house;" and "what happened that morning." After defendant responded that she was playing with her firearm, Sergeant Midose asked some follow up questions, e.g., "what playing meant, what exactly that was" and "when the incident did occur." When defendant told the sergeant that she had waited 20 to 30 minutes before calling 9-1-1, the sergeant inquired as to reason for the delay, defendant stated that "she needed to get dressed and brush her teeth." (1T:14-23 to 15-23; 24-5 to 38-10; 42-1 to 43-5; 58-1 to 65-13; 2T:8-2 to 9-5; 10-1 to 10-5; 12-1 to 12-20; 14-19 to 16-8).

During the totality of the above, defendant sat in her own kitchen (at the entrance of which defendant had a dog gate) with Sergeant Midose, who remained standing. Much of this questioning occurred before EMS arrived. While the sergeant conceded that defendant would not have been permitted to exit the residence, she was not handcuffed, was free to (and did) move about her kitchen, and had not been told she was under arrest. After answering these few questions about the reasons for the officers' arrival at her home, as officers and EMS entered and exited the home and kitchen, defendant and Sergeant Midose talked about "a litany of things" for another 45 minutes to one hour: "She was very conversational with me during the whole time. The

topics went through the gambit just about Middletown, the police department in general, yeah, day-to-day life ... We're just having a free-flowing conversation. I don't really question her on any of those [re]marks." (1T:38-16 to 49-7; 51-13 to 51-15; 52-10 to 52-12; 55-5 to 57-24; 65-20 to 67-21; 70-13 to 71-22).

As defendant did "not dispute the admissibility of the 9-1-1- call," Judge O'Malley's decision focused on the questions posed by the officer upon arrival on scene and defendant's responses to those questions. (3T:4-3 to 4-5; 12-21 to 16-18). With regard to defendant's statements to the responding officers made within the first three to five minutes after arrival, Judge O'Malley found that "the totality of the circumstances surrounding defendant's restraint compels the conclusion that portions of the questioning of the officers constituted a custodial interrogation." (3T:19-22 to 20-1).

The test Judge O'Malley applied for determining custody for Miranda purposes was "if the action of the officers" and "the surrounding circumstances [fairly] construed would reasonably lead a detainee to believe he could not ... freely leave." (3T:17-16 to 17-19). For Judge O'Malley, these surrounding circumstances that would have "convinced a reasonable person ... that ... her freedom had been curtailed" included Sergeant Midose's testimony that he told defendant to sit down upon entry into the kitchen, even though

admittedly defendant was free to, and did, move about the kitchen; "the officers were aware that a very serious incident had occurred;" "that the defendant had identified herself as the perpetrator, that the officers knew the situations was dire;" that the 9-1-1 call had "cast[] immediate suspicion upon her;" "that the defendant was outnumbered by police officers, many of whom were in uniform, and presumably all of whom were carrying weapons." (3T:23-20 to 31-4).

> Here, defendant remains in a small, enclosed area under the watchful eye of an armed police officer … cutoff from contact with the outside world. She was directed to enter that room by the officer. It was not of her own volition or choosing.
>
> …
>
> An objective view of the situation is that she was confined, she was detained. This is further demonstrated by Sergeant Midose's testimony that officers and EMTs entered the kitchen to report to him regarding the condition … of the victim and the status of the investigation.
>
> Should there have been the ability to leave the room, Sergeant Midose could have met those officers elsewhere, for instance, where the investigation was being conducted upstairs or out of the earshot of the defendant.
>
> Likewise, when the EMTs came to report to the defendant that her husband had died, they came to the kitchen where the defendant was being held, monitored, detained. She was not pulled aside or brought to another room. This further demonstrates that the kitchen areas was a de facto holding cell for the defendant.
>
> That the questioning took place over 45 minutes is also significant … to the Court's findings. This was not a passing conversation or a singular passing question. Rather it was prolonged.

> And while much of the conversation may have revolved around benign or irrelevant topics, a good portion of it related to the situation at hand. Indeed, the type of questioning is, perhaps, the most significant factor in the Court's ruling.
>
> ...
>
> These are targeted questions designed to elicit incriminating responses. They are also questions fashioned in response to information already received that is incriminating that was known to the officers and that required Miranda.
>
> In sum, the Court has considered the psychological impact of the situation which includes being confined to a small area of the home, and area chosen by the officer. It includes being outnumbered by several officers. Multiple indications to the defendant was clearly not free to leave the room. It includes the length and type of questions asked by the officers. These factors in the [aggregate] certainly suggest that this was a custodial interrogation and that Miranda was required.

Ibid.

This finding of custodial interrogation did not conclude the trial court's decision as it found that the two questions asked by Corporal Shannon – "where's the gun and where is the person shot" – and the first three questions asked by Sergeant Midose – "where the gun was, if there were other guns in the house, and if anyone else was in the home" – satisfied the three-part emergency aid exception test and, therefore, defendant's responses would be admissible. (3T:20-1 to 24-5). The remaining questions (and defendant's answers to them) asked by Sergeant Midose immediately after those first three admissible questions, but still within the sergeant's first three to five minutes

with the defendant – what happened that morning, what playing with the gun meant exactly, when did the incident occur and why defendant waited to call 9-1-1 – were found to be outside the emergency aid exception and suppressed. Ibid.

By way of this motion, the State seeks this Court's review, and ultimate reversal, of that order of suppression.

LEGAL ARGUMENT

POINT I

> LEAVE TO APPEAL SHOULD BE GRANTED TO REVIEW AND REVERSE THE LOWER COURT'S ORDER OF SUPPRESSION [(3T:3-10 to 31-6); Pa11-12]

R. 2:2-4 permits this Court to "grant leave to appeal, in the interest of justice, from an interlocutory order of a court." While determination of a request for leave to appeal is "highly discretionary," discretion should be exercised in favor of the grant of leave where the requesting party can establish "at a minimum, that the desired appeal has merit and that 'justice calls for [an appellate court's] interference in the cause.'" State v. Reldan, 100 N.J. 187, 205 (1985); State v. Alfano, 305 N.J. Super. 178, 189 (App. Div. 1997); Brundage v. Estate of Carl V. Carambio, 195 N.J. 575, 599-600 (2008)(quoting Romano v. Maglio, 41 N.J. Super. 561, 568 (App. Div.), certif.

denied, 22 N.J. 574 (1956), cert. denied, 353 U.S. 923 (1957)).

While the grant of leave is inappropriate to correct "minor injustices," leave should be granted "to consider a fundamental claim which could infect a trial and would otherwise be irremediable in the ordinary course." Reldan, 100 N.J. at 205; Brundage, 195 N.J. at 599; Alfano, 305 N.J. Super. at 190 (providing as an example of an appropriate grant of leave to appeal "[i]n a criminal case," "when the trial judge suppresses evidence because of the jeopardy consequences which flow from an acquittal at the trial which follows the suppression"); see also, e.g., State v. Boretsky, 186 N.J. 271, 273 (2006) (granting leave to appeal "to review a pre-trial order suppressing some of defendant's made to police officers responding to defendant's 9-1-1 telephone call for assistance"); State v. Smith, 374 N.J. Super. 425, 428 (App. Div. 2005) (granting leave to appeal "to consider the circumstances under which an officer responding to a domestic dispute must give warning mandated by" Miranda v. Arizona, 384 U.S. 436 (1966)).

Boretseky and Smith not only provide guidance as to application of the leave to appeal standard to the State's motion, but also make clear the reversible error in the lower court's findings as to both its split application of the emergency aid exception and its finding of Miranda custody. As both Boretseky and Smith bear close identity to the instant facts, the State will

discuss each in turn.

Similar to here, the facts of Boretsky, 186 N.J. at 273-74, started with a 9-1-1 call establishing the need for emergency medical aid, specifically there that the victim, defendant's wife, had attempted suicide. Before arriving on scene, police were informed that defendant was the subject of an FRO, making his presence at the victim's home an arrestable event. Id. at 273. Upon arrival, police were met by the defendant, who demanded they speak with his attorney at the proffered phone. Id. at 273-74. Police rebuffed this request and began rendering medical aid to the victim's "motionless body lying on a couch." Id. at 274. A bloody knife lay on a nearby coffee table. Ibid. Without first providing Miranda, or addressing defendant's attorney, police asked defendant several questions, including "when he had heard last from his wife." Ibid.

In ordering that question and answer suppressed, the trial court in Boretsky, 186 N.J. at 275, "found that defendant was effectively in custody during that period." Our Supreme Court found that custody determination irrelevant to the admissibility of defendant's statements under an application of the emergency aid doctrine to the admissibility of a defendant's statements, first recognized by the United States Supreme Court in Quarles v. New York, 467 U.S. 649 (1984). Id. at 277-78. Like with its Fourth Amendment counterpart, the emergency aid doctrine when applied to the admissibility of a

defendant's statement asks: 1. Whether there is "an objectively reasonable belief, even if later found to be erroneous, that an emergency demands immediate assistance to protect or preserve life, or to prevent serious injury;" and 2. If the "provision of assistance" is "the prime motive for the public official's" questioning. Id. at 280.

Applying these two factors to the facts at hand led the Boretsky Court to find defendant's on-scene questioning admissible:

> In this matter, the officers appeared at [the victim's] home to provide emergency aid in response to a report of an attempted suicide (prong one). That motivating purpose shaped the officer's initial interactions with defendant, the only person at the scene who was able to answer questions and could help in the assessment of the needs and status of the victim before medical assistance arrived (prong two). The record indisputably indicates that the provision of emergency assistance to an alleged suicide victim was the officers' paramount goal upon arriving at the residence and their actions bespeak a consistent effort to assist a victim obviously requiring first aid. Consistent therewith was [the officer's] initial verbal interaction with defendant. [The officer] asked where defendant's wife was and, a short while later, asked when defendant had las spoken with the unresponsive victim lying on the couch. The exchanges were incident to the officer's management of the emergency and were part of an objectively reasonable course of action taken by [the officer] in the face of that emergency.

Id. at 280-81.

The same could easily be said of all of the questions asked by Sergeant Midose in the first three to five minutes of his arrival on scene, when all of the

emergency-related questions were asked. Like the questions asked in Boretsky, of the questions posed here were focused on the presented emergency – the allegedly accidental shooting of the victim by the defendant – and motivated to provide assistance to the victim while concurrently ensuring the safety of first responders. To that end, there is no meaningful distinction – not one warranting the split ruling rendered here – between the questions the lower court found met these two prongs, e.g., questions about the location of the gun and/or other weapons in the house and the existence of others in the residence, and the other questions asked by the sergeant within the same three to five minute time period, e.g., what happened, the meaning of the words used to describe what happened, when the shooting happened, and the reason for the delayed call for medical aid. In fact, the question about delay mirrors one of the questions the Boretsky Court found admissible.

In Boretsky, 186 N.J. at 281, our Court advised that "[w]hen public officials question an individual at the site of an emergency in which life or personal safety hangs in the balance and obtain a responsive statement that may be indicative of guilt, that consequence is secondary to the need to protect public safety." Questioning like that which occurred in Boretsky and here bears "no resemblance to a coercive custodial interrogation of the sort" from which Miranda seeks to protect. Ibid. Like the Boretsky Court, the lower court

should have found that all of the questions posed by Sergeant Midose in that initial three to five minutes with the defendant were part and parcel of the sergeant's duty to assist his fellow officers and emergency responders in safely providing aid to the victim. Because the lower court should have ruled all of the questions fell within the emergency aid doctrine, this Court should grant leave and reverse the order of suppression.

The error of the lower court's emergency aid ruling, which parsed out the handful of questions asked during the officers' first three to five minutes with the defendant, was compounded by the lower court's legally erroneous conclusion that the defendant was in custody, thereby necessitating the provision of Miranda warnings, in those first three to five minutes. To that end, this Court's decision in Smith is instructive.

In Smith, 374 N.J. Super. at 428-29, police responded to a call reporting an act of domestic violence. Upon arrival, police were met by the victim, who had visible signs of injury. Id. at 428. The victim told police that her abuser was a corrections officer and was upstairs in bed. Id. at 429. One officer entered defendant's bedroom; defendant was lying in bed and under the covers. Ibid. The officer shined his flashlight in the defendant's eyes and asked, "What happened tonight?" Ibid. The officer followed up that question by asking, "Did you choke your wife and throw her into the wall?" Ibid. This entire encounter

took "less than five minutes." Ibid. During those five minutes, the officer "did not touch [defendant], tell him he could not leave, or tell him that he was under arrest." Ibid.

In finding that the above was custodial interrogation, the trial court concluded defendant was in a "vulnerable position" because he was "clad only in boxer shorts," had a light shined in his eyes just as he was awoken, and the officer "was in some way blocking the defendant's egress from the bed," permitting the defendant to believe that he was not "free to leave." Id. at 429-30. This Court disagreed that these factors established custody for Miranda purposes.

As recognized by this Court in Smith, and in the plethora of precedent that preceded and follows it, "warnings are no required before '[g]eneral on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process,'" "unless the totality of the objective circumstances attending the questioning ... imposes a 'restraint on freedom of movement of the degree associated with a formal arrest.'" Smith, 374 N.J. Super. at 430 (quoting Miranda, 384 U.S. at 477; Yarborough v. Alvardo, 541 U.S. 652 (2004)). Relevant circumstances include, "the time, place and duration of the detention; the physical surroundings; the nature and degree of the pressure applied to detain the individual; language used by the

officer; and objective indications that the person questioned is a suspect." Id. at 431.

For the Smith Court, the totality of the factors before it were found to be more analogous to the restraint on freedom of movement akin to a Terry stop or motor vehicle stop, than a formal arrest. Id. at 431-36. It is well-established that "[d]espite the restraint on freedom of action involved in Terry and traffic stops, an officer is not required to give Miranda warnings before asking questions reasonably related to dispelling or confirming suspicions that justify detention." Id. at 431. Just as "[m]inimally intrusive curtailments of freedom of action reasonably related to securing the safety of the officer and others present ... during an investigation do not convert a proper Terry stop into a formal arrest," those curtailments of freedom do not equate to custody and mandate the provision of Miranda warnings before questioning. Id. at 432. This is so because "the question is not whether a reasonable person would feel free to leave at the inception of the questioning," it is "whether a reasonable person, considering the objective circumstances, would understand the situation as a de facto arrest or would recognize that after questioning ... she would be free to leave." Ibid.

Applying the correct test for Miranda custody, the Smith Court found no custody and no requirement for the provision of Miranda warnings before the

on-scene questioning there:

> The questioning was brief, lasting a matter of moments. The questions were related to dispelling or confirming the officer's suspicion that defendant had choked and pushed his wife and were neither harassing or intimidating ... While one of the two questions directly presented the facts reported by defendant's wife, the question was not a stratagem or phrased to coerce an admission by suggesting the officer had reached a conclusion about the veracity of the information. The officer's position at the side of defendant's bed and his protective use of the flashlight momentarily restricted defendant's movement, but no more so than a protective frisk during a Terry stop. ... The officer did not touch defendant or ask him to move, to get up or to stay still, and he did not tell defendant he was under arrest.

Id. at 435; see also State v. Gandhi, 201 N.J. 161, 199-201 (2010); State v. Coburn, 221 N.J. Super. 586, 595-98 (App. Div.), certif. denied, 110 N.J. 300 (1988).

This analysis could equally and aptly apply to the facts presented to the lower court, such that a similar finding of no custody should have been made by the lower court. While detained as part of a valid Terry stop in light of the nature of the call – an accidental shooting with injury, defendant was not subjected to a de facto arrest in the first three to five minutes following police arrival at her home. The lower court's comparison of defendant's kitchen to a holding cell falls flat. "The fact that such an investigation typically takes place in the suspect's home away from the public view is not an inherently coercive circumstance." Smith, 374 N.J. Super. at 432. "[O]ur courts have not viewed

the home as a location so isolated or dominated by the police as to lead the reasonable person to conclude … she is in custody or in danger of abuse." Ibid. (citing State v. Timmendequas, 161 N.J. 515, 614-15 (1999), cert. denied, 534 U.S. (2001)).

That Sergeant Midose asked defendant to join him in the kitchen while other officers and EMS tended to her husband did not covert the kitchen to a cell as the lower court found. This legitimate limitation on defendant's movement did not convert this valid investigative detention into the functional equivalent of arrest. This is particularly so as for the duration of those first three to five minutes during which the questioning at issue took place, Sergeant Midose was the only officer in the kitchen. He did not search the defendant, place her in handcuffs, or restrict her freedom of movement around the kitchen. As conceded on cross-examination, the defendant would have been free to arm herself with a kitchen knife if she chose because Sergeant Midose was doing nothing to restrict her movement; that would not have been so if she had been subjected to the functional equivalent of arrest.

By focusing not simply on the three to five minutes during which the questioning at issue took place, but the entirety of the 45 minutes in which the sergeant and defendant remained in the kitchen together, the lower court went well beyond the totality of the circumstances relevant to the questioning at

issue. While it is true that later, after the first three to five minutes, multiple officers arrived, information regarding the investigation was exchanged, and defendant was told of her husband's death, none of that happened at or before the timing of the questioning. Sergeant Midose's deemed-credible testimony established that the questioning at issue was immediate, when he and the defendant were in the kitchen, and with most of it occurring before even EMS arrived. What occurred after the questioning at issue should not have been considered to get to a finding of custody.

Moreover, as Smith, Coburn and Gandhi make clear, and contrary to the findings of the lower court, the questions asked by Sergeant Midose to gain more information into what he then-believed could have been the very accidental shooting that had been reported did not convert this investigatory stop into a de facto arrest under Miranda. "Custody at the time of questioning, from the perspective of the reasonable person, not the likelihood of future custody, is determinative." Smith, 374 N.J. Super. at 433; Gandhi, 201 N.J. at 199-201; Coburn, 221 N.J. Super. at 595-98. This Court in Smith, 374 N.J. Super. at 436, concluded by finding that the "trial judge failed to consider that some restraint on freedom of action is involved in most on-the-scene questioning." Because the lower court here made this same misstep, resulting in the unnecessary suppression of some of defendant's statements, the State

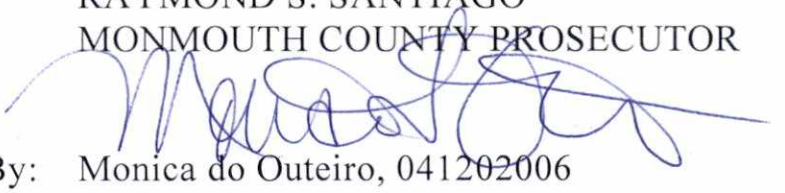
respectfully requests this Court intervene by granting its motion for leave to appeal and reversing the partial suppression entered below.

CONCLUSION

For the above-mentioned reasons and authorities cited in support thereof, the State respectfully requests this Court grant its Motion for Leave to Appeal.

Respectfully submitted,

RAYMOND S. SANTIAGO
MONMOUTH COUNTY PROSECUTOR



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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000821-25
MOTION NO. AM-000113-25

INDICTMENT NO. 22-03-00420-I
CASE NO. MON-21-003993

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Appellant,	:	ON MOTION FOR LEAVE TO
v.	:	APPEAL FROM AN ORDER IN THE SUPERIOR COURT OF
MICHELE LINZALONE,	:	NEW JERSEY, LAW DIVISION (CRIMINAL), MONMOUTH COUNTY
Defendant-Respondent.	:	

SAT BELOW: The Honorable Jill O'Malley, P.J.Cr.

BRIEF ON BEHALF OF DEFENDANT-RESPONDENT MICHELE LINZALONE

DEFENDANT IS NOT CONFINED

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PRELIMINARY STATEMENT

The trial court's Miranda ruling was careful, fact-bound, and entirely consistent with controlling precedent. The State's motion seeks interlocutory review of a discretionary evidentiary ruling that applied the Miranda custody analysis to a police-dominated environment inside the defendant's home after she called 9-1-1 about shooting her husband in the head.

Judge O'Malley's decision was grounded in detailed credibility findings and a scrupulous application of the constitutional standards articulated in Miranda v. Arizona, 384 U.S. 436 (1966); State v. Hubbard, 222 N.J. 249 (2015) The State identifies no novel question of law and no misapplication of established principles that would justify the extraordinary remedy of interlocutory review under R. 2:2-4.

Even if leave were granted, the record supports the trial court's conclusion that (1) Ms. Linzalone was in custody during questioning in her confined gated kitchen; (2) the officers' questions exceeded the narrow scope of the emergency-aid exception; and (3) suppression of those statements was required to vindicate the Fifth Amendment and Article I, paragraph 10 of the New Jersey Constitution.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

Judge O'Malley's factual findings, rendered after taking testimony over the course of two non-consecutive days, are entitled to substantial deference. State v. Locurto, 157 N.J. 463, 470–71 (1999). Those findings establish that Defendant had already identified herself to 9-1-1 as the shooter of her husband before the police even arrived. Upon arrival, multiple uniformed officers entered with weapons visible, directing her movements and escorting her to a confined kitchen area. Sergeant Midose instructed her to "sit down," remained standing over her, and conceded that she was not free to leave the residence.[1T:57-2] Questioning continued for 45 minutes, long after the scene was secured and EMS had arrived. The interrogation included pointed follow-up inquiries about how she shot her husband, why she waited to call 9-1-1, what she meant by "playing with the gun," and other accusatory questions designed to elicit incriminating admissions. No Miranda warnings were given.

These circumstances led the trial court to conclude that Ms. Linzalone was subjected to a custodial interrogation:

> In the present case, the totality of the circumstances surrounding defendant's restraint compels the conclusion that the questioning of the officers— of the officer, specifically, Sergeant Midose—constituted a

[1] The Procedural History and Statement of Facts are combined as they are intrinsically related.

> custodial interrogation. In reaching this conclusion, the Court emphasizes the specific facts of this case. To begin, officers were dispatched to the residence on a report by defendant that she had shot her husband. In other words, the officers were aware that a very serious incident had occurred, one involving the use of a firearm. And that the defendant had identified herself as the perpetrator, that the officers knew the situation was dire, was confirmed by their testimony.

[3T:26-8 to 21].

. . .

> That defendant was not free to leave also seems apparent to this Court. While an exact number was not provided, it is clear that the defendant was outnumbered by police officers, many of whom were in uniform, and presumably all of whom were carrying weapons. Sergeant Midose confirmed that at least three Middletown officers arrived upon the initial call and then additional officers from the Monmouth County Prosecutor's Office. According to the testimony, the defendant was instructed by Sergeant Midose to a separate specific portion of the house, the kitchen, where she remains engaged in conversation with the sergeant for approximately 45 minutes to 1 hour. People apparently come and go, other officers, EMTs, et cetera. And she moves about the kitchen, but she's otherwise confined to that room. The State has emphasized that the defendant was free to move about the kitchen as evidenced that she was not detained, but that is not dispositive of the issue. A defendant free to move about a holding cell, interrogation room or police station is, nonetheless, still detained. Here, defendant remains in a small, enclosed area under the watchful eye of an armed police officer for a considerable period of time cutoff from contact with the outside world. She was directed to enter that room by the officer. It was not of her own volition or choosing. And while others came and went, she did not enjoy that same luxury. An objective view of the situation is that she was confined, she was detained.

[3T:27-22 to 29-4].

As a result, the trial court suppressed all statements made by the defendant as the product of unwarned custodial interrogation, with the exception of those made in response to the initial officer's questions regarding the location of the firearm and

the presence of others in the home. "They are targeted specifically to gain information about the whereabouts of the weapon and the presence of other threats in the home. Such statements clearly fall under the emergency doctrine".

[3T:23-15 to 19].

The State has filed for leave to appeal the interlocutory order suppressing these statements made in violation of Miranda. The following is submitted in opposition thereto.

LEGAL ARGUMENT

POINT I

LEAVE TO APPEAL SHOULD BE DENIED BECAUSE THE STATE HAS NOT DEMONSTRATED A SUBSTANTIAL BASIS FOR INTERLOCUTORY REVIEW

Interlocutory appeals are disfavored and granted only in "exceptional circumstances." State v. Reldan, 100 N.J. 187, 205 (1985). The State identifies no miscarriage of justice or unsettled issue warranting immediate appellate intervention. Whether questioning was "custodial" and whether an "emergency" justified unwarned interrogation are quintessentially fact-intensive inquiries reviewed under a deferential "clearly mistaken" standard. Hubbard, Id at 262–63. Accordingly, this Court should deny leave.

POINT II

THE TRIAL COURT CORRECTLY FOUND THAT DEFENDANT WAS IN CUSTODY FOR MIRANDA PURPOSES

Under state law, the standard at a Miranda hearing is proof beyond a reasonable doubt. State v. Presha, 163 N.J. 304, 313 (2000). The testimony adduced at the hearing here fell well below that mark as found by the trial court.

"One of the most fundamental rights protected by both the Federal Constitution and state law is the right against self-incrimination." State v. O'Neill, 193 N.J. 148, 167 (2007). The Fifth Amendment of the United States Constitution states that '[n]o person ... shall be compelled in any criminal case to be a witness against himself..." New Jersey recognizes the privilege under its common law and incorporated it into the New Jersey Rules of Evidence. In re Martin, 90 N.J. 295, 331 (1982). The United States Supreme Court set forth the procedures to be followed to safeguard the protection of an individual's privilege against self-incrimination in Miranda v. Arizona, 384 U.S. 436 (1966). "The Miranda warnings ensure 'that a defendant's right against self-incrimination is protected in the inherently coercive atmosphere of custodial interrogation.'" State v. Tillery, 238 N.J. 293, 315 (2019) (quoting A.M., 237 N.J. at 397). "The essential purpose of Miranda is to empower a person—subject to custodial interrogation within a police-dominated atmosphere—with knowledge of his basic constitutional rights so that he can exercise, according

to his free will, the right against self-incrimination or waive that right and answer questions." State v. Nyhammer, 197 N.J. 383, 406 (2009).

The State suggests that the trial court violated the principles of State v Smith, 374 N.J. Super. 425 (App. Div. 2005) and should have permitted all statements made during the first three to five minutes, regardless of the purpose and nature of the question posed to elicit the responses. This position is misplaced.

The issue in Smith was whether the defendant was in custody purposes of Miranda. In Smith, the police responded to a report of an incident of domestic violence. The responding officer was met at the door by Mrs. Smith who informed that her husband and choked her and thrown her against the wall. The officer observed red marks on the woman's neck and a scrape on her elbow. Mrs. Smith stated that her husband was upstairs in bed. The officer went upstairs to get the husband's side of the story. The defendant was in bed under the covers. The officer asked what happened and the defendant said they had got into a fight. The officer next asked if the defendant had choked his wife and thrown her into a wall and the defendant replied yes. The questioning was pointed and took only seconds. Id. at 429. The Court held that the defendant was not in custody as the police inquiry was limited to their obligation to assess who, if anyone, was going to be arrested.

The Smith Panel made it plain that its holding was limited to incidents where allegations of domestic violence are being made and the police are attempting to assess the situation as mandated to do under N.J.S.A. 2C:25-21. The court held, "[t]he case requires us to consider the circumstances under which an officer responding to a **domestic dispute** must give warnings mandated by Miranda v. Arizona, 384 U.S. 436 (1966). We conclude that a police officer may question those present without giving Miranda warnings, so long as the inquiries are **reasonably related to confirming or dispelling suspicion** and those questioned are not restrained to a degree associated with formal arrest." Smith, Id at 428. (emphasis added).

Under the Domestic Violence Act, if the responding officer observes an injury on a person protected by the Act, he is mandated to conduct a probable cause assessment. "When a person claims to be a victim of domestic violence, and where a law enforcement officer responding to the incident finds probable cause to believe that domestic violence has occurred, the law enforcement officer shall arrest the person who is alleged to be the person who subjected the victim to domestic violence and shall sign a criminal complaint if: (1) The victim exhibits signs of injury caused by an act of domestic violence." N.J.S.A. 2C:25-21.

The officer in Smith testified that he went upstairs to speak to the defendant "[i]n order to acquire more information, 'get both sides of the story," and see whether

defendant was injured." Id. at 429. Once the defendant admitted to the assault, the officer had probable cause to know who was to be arrested. The officer's inquiry ceased there. The court found "[t]he questioning was brief, lasting a matter of moments. The questions were related to dispelling or confirming the officer's suspicion that defendant had choked and pushed his wife and were neither harassing nor intimidating." Id. at 435.

The Court explained that Miranda **is** required when a suspect has been objectively identified, as there is no need to determine whom to arrest. "[A]bsent objective manifestations that the person is a 'suspect' or is under arrest," the officer can make inquiries reasonably related to figure out who to arrest. Id. at 434.

Here, the Defendant had already identified herself to 9-1-1 as the shooter of her husband. Sgt. Midose acknowledged having this information before entering the home.

> Q . And what information did you have at that point as you arrived up to the location?
>
> A. As we got there, I -- I had seen or heard that a female was inside the residence who claimed that her husband was shot in the head and that she had -- she had done it.

[1T:24-22 to 25-2].

It was objectively clear to the officers that the defendant shot her husband before the police even arrived at the home. She was not free to go and was confined in a gated kitchen. As such, there was no need to confirm or dispel suspicion. The

coercive factors far exceeded those in Smith: multiple armed officers; confinement to a small kitchen; direction to sit; awareness she was the identified shooter; and acknowledgment by Sergeant Midose that she could not leave. A reasonable person in Ms. Linzalone's position would have understood she was under police control and subject to a de facto arrest. Thus all questions asked constituted custodial interrogation.

POINT III

THE EMERGENCY-AID EXCEPTION DOES NOT EXTEND TO PROLONGED, INVESTIGATORY QUESTIONING

The State also argues that all statements made during the first three to five minutes are admissible pursuant to the emergency aid exception to Miranda adopted in this state in State v. Boretsky, 186 N.J. 271 (2006). Curiously, they fail to indicate the basis for this arbitrary time of "admissibility," which is contrary to well established precedent.

While Smith addresses custodial interrogation, under the emergency aid exception it "makes no difference whether defendant was in custody. The officers must be permitted to interact with defendant in performing their emergency aid responsibilities." State v. Boretsky, Id at 282. Accordingly, time does not have to be taken to Mirandize prior to questions focused to assist with their emergency aid obligations.

> When public officials question an individual at the site of an emergency in which life or personal safety hangs in the balance and obtain a responsive statement that may be indicative of guilt, that consequence is secondary to the need to protect public safety Martinez, supra, 406 F.3d at 1165–66. Further, in the emergency aid context, coerced confessions secured through abusive custodial interrogation are not likely. See Howard v. Garvin, 844 F.Supp. 173, 174–75 (S.D.N.Y.1994)(holding that Miranda warnings not required prior to crime scene questioning of suspect involved in ongoing hostage situation when public safety was prime objective of questions, explaining that "[n]either the Fifth Amendment privilege nor the underlying objectives of Miranda were violated.").

[Boretsky Id at 281.]

In Boretsky, the defendant was at the home of his estranged wife and called 911 to report an attempted suicide. Officers responded and were let into the house by the defendant. The officer asked where defendant's estranged wife was and the defendant indicated in the living room on the couch. The officer found the victim on the couch with injuries to her chest and a bloody knife nearby. The officer asked the last time the defendant heard from his estranged wife and the defendant replied around 4:00 p.m.

In determining whether those statements were properly suppressed by the trial court, our Supreme Court looked at the particular facts of the case: "The exchanges were incident to the officer's management of the emergency and were part of an objectively reasonable course of action taken by [the officer] in the face of that emergency." Ibid. The Court determined that the questions asked of the defendant were in furtherance of the officer's need to render first aid to the victim.

In this case, Judge O'Malley properly admitted the initial safety-related questions ("Where is the gun?" / "Is anyone else here?") but suppressed subsequent inquiries aimed at establishing intent and culpability. By the time Sergeant Midose asked "what happened," "what playing meant," and "why she waited to call 9-1-1," officers had already located the weapon and secured the scene. Those later questions were investigatory, not rescue-motivated. The State's attempt to stretch Boretsky ignores the Supreme Court's own caution that emergency-aid questioning must be "incident to the management of the emergency." Boretsky, Ibid. Once the victim was being "treated" and the weapon secured, any continued interrogation required Miranda warnings. In fact, Midose conceded that the emergency was over when he interrogated the defendant in the kitchen:

> Q. So, early on questions were -- were assessed and made to the location of the firearm, right?
> A. Correct.
> Q. And the firearm was located exactly where she said it was, right?
> A. I believe that's where the officers found it.
> Q. And additional questions were asked as far as whether any other additional firearms in the house, correct?
> A. Correct.
> Q. And those additional firearms were found, right?
> A. Correct.
> Q. Okay. And she was asked whether there was anybody else in the home and you had a ton of cops arrive at this house, right?
> A. After some time, yes.
> Q. Okay. And a search was made of the home and an assessment was made that there was nobody else around, correct?
> A. After some time, yes.

> Q. Despite learning those two -- two things, with respect to the location of the firearm, that no one else is around, you proceeded to ask her questions, right?
> A. Correct.

[1T:58-1 to 59-4].

The next series of questions posed by the officer had nothing to do with rendering aid to the victim, or officer safety.

> Q. Okay. Right after that, you proceed to say, "I asked Michele what had happened today," right?
>
> A. Correct.
>
> Q. So, you proceeded to question her as to how it came about that her husband got shot, right?
>
> A. Correct.

[1T:60-12-17].

The State's emphasis on time, 3 to 5 minutes, is misplaced. The analysis of the emergency aid exception is not the time elapsed during the questioning by law enforcement, but rather the nature of the questions themselves. The questions must be limited and framed to further the purpose of the exception. This was made clear by our Supreme Court in State v. O'Neal, , 190 N.J. 601, 618 (2007). There, the officer asked the suspect what was in his sock. The Court addressed the idea that the public safety exception [2]applied, rejecting the suggestion that a weapon could be in

[2] The public safety exception is the origin of the emergency aid exception adopted in Boretsky and is based on the need to protect the police or the public from any

the sock. "In such circumstances, the police must specifically frame the question to elicit a response concerning the possible presence of a weapon." Ibid.

> Although the safety exception to Miranda was not raised by the State, if it had been raised, we would reject its applicability in this matter. The question asked by the police in referencing the bulge in defendant's sock was "what's this?" That question was not narrowly tailored to prompt a response concerning the possible presence of a weapon or aimed at protecting the safety of the police.

[O'Neal, Ibid.]

Here, Judge O'Mally carefully applied that standard, and found that answers to all questions posed that went beyond the need to render aid to the deceased, and the safety of the officers, must be suppressed.

POINT IV

THE TRIAL COURT'S FINDINGS ARE ENTITLED TO DEFERENCE AND SUPPORTED BY SUBSTANTIAL CREDIBLE EVIDENCE

Appellate courts "should defer to the factual findings of trial judges who hear live testimony." Locurto, Id at 470. Judge O'Malley explicitly credited Sergeant Midose's own admissions: that Ms. Linzalone was not free to leave, that he directed her movements, and that questioning persisted long after the emergency subsided.

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immediate danger associated with a weapon. New York v. Quarles, 467 U.S. 649 (1984).

These factual determinations are amply supported by the record below and should not be disturbed.

CONCLUSION

Accordingly, defendant–respondent respectfully requests that this Court deny the State's Motion for Leave to Appeal or, alternatively, affirm the suppression order in all respects.

Respectfully submitted,

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