

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2955-23

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Respondent,	:	On Appeal from a Judgment of
v.	:	Conviction of the
MURAD S. LAMPLEY,	:	Superior Court of New Jersey,
a/k/a MURAD LAMPLEY,	:	Law Division, Essex County
Defendant-Appellant.	:	Indictment No. 18-08-2747-I
	:	Sat Below:
	:	Hon. Michael L. Ravin, J.S.C.

**BRIEF ON BEHALF OF
DEFENDANT-APPELLANT MURAD S. LAMPLEY**

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TABLE OF CONTENTS

	<u>PAGE NOS.</u>
PRELIMINARY STATEMENT.....	1
PROCEDURAL HISTORY.....	3
STATEMENT OF FACTS.....	5
A. Police arrest Mr. Lampley for an unrelated parole violation and interrogate him about a homicide.	5
1. First interrogation: Lampley invokes his right to counsel.....	5
2. Second interrogation: Lampley repeatedly invokes his right to silence, but the detectives continue the interrogation anyway and ultimately tell Lampley that he is being charged with homicide.	6
3. Third interrogation: Lampley makes inculpatory statements.....	9
B. Detective Pirez obtains a complaint-warrant charging Lampley with murder, carjacking, and related offenses.....	11
C. The trial court grants the State’s motion to admit Mr. Lampley’s custodial statement.....	11
LEGAL ARGUMENT	14
POINT I.....	14
THE TRIAL COURT SHOULD HAVE DENIED THE STATE’S MOTION TO ADMIT MR. LAMPLEY’S CUSTODIAL STATEMENTS. (Da73-89)	14
A. The State conceded Mr. Lampley was in custody, so the detectives were required to follow the full array of protections against self-incrimination.	15
B. During the second interrogation, the detectives failed to scrupulously honor Mr. Lampley’s repeated invocations of his right to silence, so his subsequent inculpatory statements should have been suppressed.	17
C. Mr. Lampley’s later reinitiation and waiver were invalid because, after ignoring his repeated invocations of his right to silence, the detectives improperly deceived him about the “true status” of his legal charges to pressure him to confess.	40
CONCLUSION	50

TABLE OF JUDGMENTS, ORDERS, & RULINGS BEING APPEALED

Opinion & Order Granting State’s Motion to Admit Custodial Statements
(Ravin, J.S.C.) (June 7, 2022).....Da73-89

RECORD CITATIONS

- Da – Appendix to Defendant-Appellant’s Brief
- 1T – January 28, 2019, Miranda Hearing Transcript (Ravin, J.S.C.)
- 2T – February 15, 2019, Miranda Hearing Transcript (Ravin, J.S.C.)
- 3T – March 18, 2019 Scheduling Conference Transcript (Ravin, J.S.C.)
- 4T – October 1, 2019, Miranda Hearing Transcript (Ravin, J.S.C.)
- 5T – December 9, 2019, Miranda Hearing Transcript (Ravin, J.S.C.)
- 6T – February 17, 2021, Plea Transcript (Teare, J.S.C.)
- 7T – March 7, 2023, Plea Transcript (Ravin, J.S.C.)
- 8T – April 28, 2023, Sentencing Transcript (Ravin, J.S.C.)

INDEX TO APPENDIX

Essex Superseding Indictment No. 18-08-2747-I (Aug. 31, 2018).....Da1-12

Videotape Recording of Interrogations (Nov. 30, 2017)
(State’s Miranda Exhibit S-34A).....Da13

Transcript of Interrogations (Nov. 30, 2017)
(State’s Miranda Exhibit S-34B)Da14-56

Miranda Forms (Nov. 30, 2017)
(State’s Miranda Exhibits S-34C, S-34D, S-34E)Da57-59

Complaint-Warrant and Affidavit of Probable Cause (Nov. 30, 2017)...Da60-72

Opinion & Order Granting State’s Motion to Admit Custodial Statements
(Ravin, J.S.C.) (June 7, 2022).....Da73-89

Plea Forms (Mar. 6, 2023)Da90-97

Judgment of Conviction and Order for Commitment (May 1, 2023)...Da98-101

Notice of Appeal (May 30, 2024).....Da102-106

TABLE OF AUTHORITIES

PAGE NOS.

Cases

Garcia v. Long, 808 F.3d 771 (9th Cir. 2015) 28

Michigan v. Mosley, 423 U.S. 96 (1975) 17, 33

Miranda v. Arizona, 384 U.S. 436 (1966) passim

Moran v. Burbine, 475 U.S. 412 (1986) 41, 42

Smith v. Illinois, 469 U.S. 91 (1984) 33

State v. Adams, 127 N.J. 438, 445 (1992) 17, 39

State v. A.G.D., 178 N.J. 56 (2003) passim

State v. Bey (Bey I), 112 N.J. 45 (1988) 18, 35, 37, 38

State v. Bullock, 253 N.J. 512 (2023) 15, 16

State v. Burno-Taylor, 400 N.J. Super. 581 (App. Div. 2008) 25, 33, 39, 48

State v. Chirokovskcic, 373 N.J. Super. 125 (App. Div. 2004) 48

State v. Diaz, 470 N.J. Super. 495 (App. Div. 2022) passim

State v. Hartley, 103 N.J. 252 (1986) passim

State v. Johnson, 120 N.J. 263 (1990) 19

State v. Knight, 183 N.J. 449 (2005) 42

State v. L.H., 239 N.J. 22 (2019) 16, 26

State v. Maltese, 222 N.J. 525 (2015) passim

State v. Nyhammer, 197 N.J. 383 (2009) 15, 42

TABLE OF AUTHORITIES (CONT'D)

PAGE NOS.

Cases (Cont'd)

State v. O’Neill, 193 N.J. 148 (2007) 15

State v. P.Z., 152 N.J. 86 (1997)..... 15

State v. Patton, 362 N.J. Super. 16 (App. Div. 2003) 48

State v. Pillar, 359 N.J. Super. 249 (App. Div. 2003)..... 26

State v. S.S., 229 N.J. 360 (2017)..... passim

State v. Sims, 250 N.J. 189 (2022) 44, 48

State v. Vincenty, 237 N.J. 122 (2019) 15, 42, 47, 48

State v. W.B., 205 N.J. 588 (2011) 16, 41

State v. Walker, 372 P.3d 1147 (Kan. 2016)..... 28

Statutes

N.J.S.A. 2A:84A-19 14, 15, 50

N.J.S.A. 2C:11-3(a) 3

N.J.S.A. 2C:15-1(a)..... 3, 4

N.J.S.A. 2C:15-2(a)..... 3, 4

N.J.S.A. 2C:24-4(a)..... 3

N.J.S.A. 2C:39-4(a)..... 3

N.J.S.A. 2C:39-5(b)..... 3, 4

N.J.S.A. 2C:5-2 3, 4

TABLE OF AUTHORITIES (CONT'D)

PAGE NOS.

Rules

N.J.R.E. 104	passim
N.J.R.E. 503	14, 15, 50

PRELIMINARY STATEMENT

Defendant Murad Lampley was arrested for a parole violation, brought to the Essex County Prosecutor's Office, and placed in an interrogation room. Over the course of the next two hours and 20 minutes, Lampley was subject to three interrogation sessions.

Lampley invoked his right to counsel during his first interrogation, but later reinitiated contact with the detectives. Soon after the detectives began his second interrogation, Lampley quickly changed his mind and repeatedly invoked his right to silence by telling the detectives that he did not want to speak after all. Instead of immediately ending the interrogation and leaving the room, however, the detectives used several strategies to prolong the interrogation and to coax Lampley into talking about the homicide. The detectives asked coercive non-clarifying questions, like "what's holding you back?" They employed manipulation, initially telling Lampley that signing the Miranda¹ waiver meant only that he informed him of his rights -- not that he was waiving them. They tried to bargain, appealing to him that they could answer his questions about the homicide investigation but only if he signed the waiver form first. They used half-truths, telling him that their cell phone was not recording, but failing to explain that the entire interrogation room was

¹ See Miranda v. Arizona, 384 U.S. 436 (1966).

being recorded. And ultimately, before leaving the interrogation room, the detectives informed him that he was being charged with homicide in an effort to get him to talk. Shortly after, Lampley reinitiated, signed the waiver form, and made inculpatory statements during a third interrogation session. But the detectives employed all of these coercive tactics after Lampley had already clearly and repeatedly invoked his right to silence. Because the detectives failed to scrupulously honor Lampley's Fifth Amendment rights, the trial court should have denied the State's motion to admit his custodial statements made after he invoked his right to silence. This violation alone requires suppression.

But it gets even worse. It turns out that Lampley was not being charged with homicide at that time. In fact, it was not until Lampley made inculpatory statements during the third interrogation that the detectives decided to seek a homicide charge. The detectives' misrepresentation about Lampley's true legal status separately requires suppression because it rendered his later reinitiation and waiver invalid.

For both of these reasons -- the detectives' failure to scrupulously honor Lampley's invocations of silence and their misrepresentation about his true legal status -- the trial court should have denied the State's motion to admit Lampley's custodial statements. Because it did not, this Court must reverse.

PROCEDURAL HISTORY²

On August 31, 2019, an Essex County grand jury returned Superseding Indictment 18-08-2747-I,³ charging defendant Murad Lampley and two codefendants with offenses related to the November 23, 2017, murder of Shuri Henry in Newark. (Da1-12) Lampley was charged with: first-degree conspiracy to commit murder, N.J.S.A. 2C:5-2, 11-3(a)(1)(2) (Count 1); first-degree murder, N.J.S.A. 2C:11-3(a)(1)(2) (Count 2); second-degree conspiracy to commit carjacking, N.J.S.A. 2C:5-2, 15-2(a)(1)(2) (Count 3); first-degree carjacking, N.J.S.A. 2C:15-2(a)(1) (Count 4); first-degree carjacking, N.J.S.A. 2C:15-2(a)(2) (Count 5); second-degree conspiracy to commit robbery, N.J.S.A. 2C: 5-2, 15-1(a)(1) (Count 6); first-degree carjacking resulting in death, N.J.S.A. 2C:11-3(a)(3) (Count 7); first-degree robbery, N.J.S.A. 2C:15-1(a)(1) (Count 8); second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1) (Count 9); second-degree handgun possession for an unlawful purpose, N.J.S.A. 2C:39-4(a) (Count 10); and third-degree child endangerment, N.J.S.A. 2C:24-4(a)(2) (Count 11). (Da1-12)

On November 19, 2018, the State moved under N.J.R.E. 104(c) to admit Lampley's custodial statements. After hearing testimony and argument (1T,

² This section recounts only the procedural history most relevant to this appeal.

³ The earlier indictment, Essex No. 18-02-569, was filed on February 16, 2018.

2T, 4T, 5T), on June 7, 2022, the Honorable Michael L. Ravin, J.S.C., issued a written opinion and order granting the State's motion to admit Lampley's statements. (Da73-89)

On March 7, 2023, pursuant to a plea agreement (Da90-97), Lampley pleaded guilty to first-degree carjacking, N.J.S.A. 2C:15-2(a)(1) (Count 4); second-degree conspiracy to commit carjacking, N.J.S.A. 2C:5-2(a)(1) (Count 3); first-degree robbery, N.J.S.A. 2C:15-1(a)(1) (Count 8); second-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2(a)(1), 15-1(a)(1) (Count 6); and second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b)(1) (Count 9). (7T27-8 to 53-9) In exchange for his plea, the State requested that the trial court impose an aggregate 25-year NERA prison sentence, impose concurrent seven and 18-month sentences in separate Essex County Indictment 17-06-1744, and dismiss the remaining counts in both indictments. (8T22-21 to 23-8; Da93-95) On April 28, 2023, Judge Ravin sentenced Lampley to the recommended sentence. (8T23-9 to 29-22; Da98-101)

On May 30, 2024, Lampley filed a notice of appeal. (Da102-106)

STATEMENT OF FACTS

The following facts are drawn from the Rule 104 Miranda hearing, during which Detective Marcello Pirez was the State's sole witness. (1T; 2T) At the hearing, the parties and trial court relied on a transcript (Da14-56) and video recordings (Da13) of Lampley's three interrogation sessions.

A. Police arrest Mr. Lampley for an unrelated parole violation and interrogate him about a homicide.

On the evening of November 23, 2017, Shuri Henry was shot and killed during a carjacking outside her Newark home. (1T7-17 to 21) Detective Pirez was the lead detective in the case. (1T7-22 to 24)

On November 30, 2017, police arrested Lampley for an unrelated parole violation (1T19-4 to 8; 2T20-11 to 15; 5T26-6 to 13; Da75), brought him to an interrogation room at the Essex County Prosecutor's Office, and gave him a sandwich and drink (1T7-25 to 9-1, 12-16 to 13-6; 2T7-20 to 11-13). Over the next two hours and 20 minutes, Detective Pirez and his partner Detective Wilfredo Perez interrogated Lampley three separate times. (Da13; Da14-56)

1. First interrogation: Lampley invokes his right to counsel.

At 10:25 a.m., Detectives Pirez and Perez entered the interrogation room (Da13 at 10:25:00) and told Lampley that they worked for the Essex County Prosecutor's Office Homicide Taskforce. (Da15 at 2-1 to 14) Pirez explained that "what I want to discuss with you today is a -- a homicide that occurred at

306 South 20th Street in Newark.” (Da15 at 2-15 to 25) Before Pirez could finish reading the Miranda warnings from the waiver form, Lampley stated that “I don’t want to waive my rights.” (Da15-16 at 3-4 to 5-17) “What do you mean by that?” Perez asked. Lampley replied, “I want a -- a lawyer or somebody to speak to. I don’t -- no I can’t -- I need a lawyer or a somebody.” (Da16 at 5-18 to 21) Pirez inquired again, “Okay. So, you’re requesting your attorney at this time?” “Yes,” Lampley confirmed. (Da16 at 5-22 to 25)

The detectives then required Lampley to write “refused” on the waiver form. (Da17 at 6-1 to 7-19; Da57) The detectives left the room at 10:31 a.m. and turned off the recording devices. (Da13 at 10:30:55) Pirez returned to his desk outside the room and alerted an assistant prosecutor. (1T18-21 to 19-3)

2. Second interrogation: Lampley repeatedly invokes his right to silence, but the detectives continue the interrogation anyway and ultimately tell Lampley that he is being charged with homicide.

A little more than 30 minutes later, Lampley knocked on the interrogation room door. (1T19-15 to 20-12) Detective Pirez opened the door, entered the room, and Lampley “indicated . . . that he wanted to speak to us again.” (Ibid.)

The detectives turned on the recording devices and reentered the room at 11:04 a.m. (Da17 at 7-21; Da13 at 11:04:22) After confirming that Lampley wanted to speak to the detectives (Da17-19 at 7-22 to 10-11), Pirez again

stated that “I’m going to ask you certain questions regarding a homicide that occurred on 11/23/2017 at 306 South 20th Street, Newark, New Jersey.” (Da19 at 11-6 to 9) Pirez read aloud the Miranda rights from the form, and Lampley replied, “I don’t really want to take my chances.” (Da19-20 at 11-2 to 13-14) The detectives insisted that they read Lampley the Miranda form’s waiver language before discussing anything. (Da20-21 at 13-15 to 14-12) Then the detectives asked Lampley to sign the waiver form, with Perez instructing that “all that signature says is that we read this to you.” (Da21 at 14-13 to 19) Lampley explained that he did not want to sign because he did not want to waive his rights: “I really want to take my chances, man. I’m tired. . . . Is this me doing this? This makes me -- telling -- saying I’m -- I was there, everything. I know. No, no. No. I can’t -- I can’t -- . . . I can’t.” Detective Perez responded, “I understand.” (Da21 at 14-20 to 15-13)

Detective Perez then told Lampley that the detectives “can’t answer any questions regarding the situation you’re in until we get through” the waiver form. Lampley replied, “Yeah. But -- . . . they said I got to explain, I got to talk. I don’t have to -- I don’t know, man. I can’t -- I can’t -- I can’t. I’m sorry. . . . I can’t -- I can’t -- I can’t. I’d rather take my chances. I’d rather take my chances.” (Da21-22 at 15-14 to 16-23) Perez then inquired, “Do you feel like you want to ask us some questions? Is that it? Is that’s -- what -- what’s

holding you back?” Lampley responded, “I can’t -- no.” (Da22 at 16-24 to 17-2) Lampley then pointed at Pirez’s cell phone on the table, and asked “that’s not recording. Is it?” Both detectives answered that the phone was not recording. (Da21 at 17-2 to 11) They did not inform Lampley that the interrogation room was being audio and video recorded.

At that point, the detectives again told Lampley that they could answer Lampley’s questions about the investigation, but only if he waived his rights first. (Da22-23 at 17-12 to 18-15) Pirez then read the Miranda waiver to Lampley again (Da23-24 at 18-16 to 21-1), to which Lampley responded: “I’m -- I’m sorry, but -- but just take me to the jail, please. Because I’m not -- ” Perez responded “I understand,” and Pirez said “Okay.” Pirez then asked, “So, you’re refusing to -- you don’t -- you don’t want to speak to us?” and Lampley replied “Yeah. I’m sorry, you all. I’m sorry.” (Da24 at 21-2 to 11)

The detectives continued talking to Lampley, and after Pirez said “you don’t want to speak to us, right? As far as this case? Okay,” Pirez requested that Lampley write “refused” on the Miranda form. (Da24-25 at 21-12 to 22-13) Perez then stated to Lampley, “And I -- I -- I understand you struggle with -- .” (Da25 at 22-14 to 15) That comment caused Lampley to try to explain his refusal to sign the waiver form, describing that “I’m not talking -- I’m not talking about . . . saying like, go into detail . . . but, I’m saying if I do that and

I'm saying what I'm saying, I'm basically, I'm placing myself at the scene.” (Da25 at 22-18 to 23-6) The detectives continued the discussion, including stating “I would like to explain that to you, but we have to get the form first.” (Da25 at 23-7 to 23) Lampley then asked, “So, basically, I'm being arr-arrested for this and not questioned?” (Da25 at 23-24 to 25) Perez responded: “Right. You're being charged with . . . homicide.” (Da26 at 24-1 to 4) “Exactly,” Perez added. (Da26 at 24-5)

After some additional discussion back and forth, including Lampley attempting to clarify whether his signature on the form would implicate him in the homicide, the detectives left the interrogation room at 11:18 a.m. (Da26 at 24-8 to 25-18; Da13 at 11:18:35) Perez then notified an assistant prosecutor that Lampley had “invoked again.” (1T35-9 to 18)

3. Third interrogation: Lampley makes inculpatory statements.

According to Detective Perez, he later heard knocking again coming from the interrogation room. (1T35-22 to 36-2) Perez entered the room and Lampley “indicated that he wished to speak to us.” (1T35-22 to 36-2) Perez left and printed out a third Miranda form. (1T37-11 to 16) Perez “was a little bit frustrated” that this was the second time Lampley had knocked. (1T37-4 to 10)

Perez started the recording devices and he and Perez entered the interrogation room at 11:54 a.m. (Da26 at 25-18; Da13 at 11:54:41) After

confirming that Lampley wanted to speak to them (Da26-27 at 25-19 to 26-11), Pirez again stated that the detectives are “going to ask certain questions regarding a homicide that occurred on 11/23/17 at 306 South 20th Street in Newark, New Jersey,” and read Lampley the Miranda rights and waiver language from the form. (Da27-28 at 27-1 to 28-18)

Lampley signed the Miranda waiver form (Da59) and, over the course of the next 50 minutes, answered questions about the November 23, 2017, homicide. He described that he and three other individuals -- two younger males and one older male -- were walking around Newark and looking for a car to steal. (Da30-31 at 33-1 to 35-11) As the group approached a woman on South 20th Street who was unloading bags from her Jeep, one of the individuals passed Lampley a handgun. (Da31-32 at 35-12 to 37-5; Da48-49 at 68-9 to 71-21) Lampley told the woman to hand over her car keys. (Da45 at 62-9 to 20; Da46 at 65-5 to 24; Da50 at 72-7 to 22) The older man became upset that she was taking too long. (Da50 at 72-24 to 73-6) After the woman hit the car alarm button on the keys (Da43-45 at 59-24 to 63-24), the older man grabbed the gun from Lampley and shot her (Da46 at 64-4 to 23). Lampley then noticed a child near the woman. (Da35 at 42-16 to 43-19) The four individuals got in the Jeep and left; Lampley was in the back seat. (Da33-34 at 38-1 to 39-22) A short time later, Lampley asked to exit the vehicle and got

out. (Da34 at 40-12 to 41-12) Lampley repeatedly expressed his regret about the victim's death: "I'm a regular old car thief" and never intended anyone to be hurt, he explained. (E.g., Da37-38 at 47-20 to 48-5; Da47 at 66-19 to 67-16)

The interrogation ended after Lampley asked, "Can I stop -- can I stop here and just erase the whole thing, please?" and said, "That whole thing, I was just lying." (Da54-55 at 80-6 to 82-21) As the detectives left, Lampley said "I'm intoxicated. Under the influence." (Da55 at 82-22 to 83-6)

B. Detective Pirez obtains a complaint-warrant charging Lampley with murder, carjacking, and related offenses.

Later that afternoon, Detective Pirez filed a probable cause affidavit in the Newark Municipal Court. (Da70-72) The affidavit relied on Lampley's inculpatory statements made during the third interrogation session. (Da70) The court then issued a complaint-warrant charging Lampley with murder, carjacking, and other related offenses. (Da60-72)

C. The trial court grants the State's motion to admit Mr. Lampley's custodial statement.

After the State moved pretrial to admit Lampley's and a codefendant's custodial statements, Judge Ravin held a Rule 104 hearing at which Detective Pirez testified. (1T; 2T; 4T; 5T) On June 7, 2022, the court granted the State's motion in a written opinion and order. (Da73-89) The court made factual and legal determinations related to each of Lampley's interrogation sessions.

First, the court held that during the initial interrogation “Defendant invoked his right to counsel” and “the detectives scrupulously honored that right by ending the interrogation and terminating all questioning.” (Da82)

Next, the court found that, about 15 minutes later, Lampley knocked on the door and “indicated he wished to speak with Detective Pirez.” (Da81) That “initiation did not constitute a knowing, intelligent, and voluntary waiver of his rights,” however, “because once the detectives were back in the room with him, . . . they attempted to go through the Miranda warnings and waiver with Defendant once again, and Defendant invoked his right to remain silent.”

(Da82) More specifically, the court first addressed Lampley’s statement that “They said I got to explain, I got to talk. I don’t have to -- I don’t know, man. I can’t -- I can’t -- I can’t. I’m sorry. I can’t -- I can’t -- I can’t. I’d rather take my chances. I’d rather take my chances.” (Da83) This statement, the court held, “indicates to the Court that he did not wish to speak,” but his “words reflect an ambiguous intent to invoke his right” so the “detectives were able to ask him questions in order to clarify his intent.” (Da83) The court held that Detective Perez’s follow-up inquiry -- “Do you feel like you want to ask us some questions? Is that it? Is that’s what’s holding you back?” -- was permissible because it fell “within the realm of questions that clarify Defendant’s intent.” (Da83)

The court then addressed (1) Lampley's statement "I'm -- I'm sorry, but -- but just take me back to the jail, please"; (2) Detective Pirez's response "Okay. No problem. So you're refusing -- you don't -- you don't want to speak to us?"; and (3) Lampley's reply, "Yeah. I'm sorry, you all. I'm sorry." (Da83-84) The court held these words again "invoked his right to silence" but "it was not clear and unambiguous" and so the detectives again "asked merely clarifying questions[.]" (Da84)

Finally, the court held that during the third interrogation session, Lampley "voluntarily, knowingly, and intelligently waived his right against self-incrimination" and made inculpatory statements. (Da88) The court acknowledged that, at the end of the second interrogation, the "detectives told him that he was being charged with homicide" despite the fact that "an official charging document in the form of a complaint warrant had not yet been issued, nor had an arrest warrant." (Da87) However, the court held that showed Lampley "was aware, based on these circumstances, of his 'true status' as a suspect in a homicide." (Da87) The court also found that Lampley's statement indicating he was intoxicated was not credible. (Da87)⁴

⁴ The trial court's opinion references Essex Indictment No. 18-02-569-I (Da73-74), but that indictment had already been superseded by Indictment No. 18-08-2747-I. (Da1-12; see 7T52-17 to 25) The opinion also incorrectly lists exhibits from a different Rule 104 hearing concerning a codefendant. (Da74-75)

LEGAL ARGUMENT

POINT I

THE TRIAL COURT SHOULD HAVE DENIED THE STATE'S MOTION TO ADMIT MR. LAMPLEY'S CUSTODIAL STATEMENTS. (Da73-89)

Over decades, our Supreme Court has developed clear rules for custodial interrogations. Mr. Lampley's interrogation violated two of the most important and straightforward. First, rather than immediately stop questioning after Lampley repeatedly invoked his right to silence during his second interrogation, the detectives continued to pressure him to speak about the homicide. They used several tactics, including manipulative follow-up questions, bargaining, and half-truths. Second, the detectives told Lampley that he was being charged with homicide. But that was not true. It was only after Lampley provided incriminating statements during a third interrogation that detectives sought a complaint-warrant.

Because the detectives failed to scrupulously honor Lampley's invocations of silence and then misled him about his true legal status in an effort to force his waiver, the trial court should have denied the State's motion to admit Lampley's custodial statements. Because it did not, this Court should reverse. U.S. Const. amends. V, VI, XIV; N.J. Const. art. I, ¶ 1; N.J.R.E. 503; N.J.S.A. 2A:84A-19.

A. The State conceded Mr. Lampley was in custody, so the detectives were required to follow the full array of protections against self-incrimination.

“The right against self-incrimination is guaranteed by the Fifth Amendment to the United States Constitution and this state’s common law, now embodied in statute, N.J.S.A. 2A:84A-19, and evidence rule, N.J.R.E. 503.” State v. S.S., 229 N.J. 360, 381-82 (2017) (quoting State v. Nyhammer, 197 N.J. 383, 399 (2009)). The right against self-incrimination is “one of the most important protections of the criminal law,” and requires courts to “maintain an unyielding commitment to ensure the proper admissibility of confessions.” State v. Vincenty, 237 N.J. 122, 132 (2019) (quotations omitted).

In Miranda, 384 U.S. 436, the Supreme Court “determined that a custodial interrogation by law enforcement officers is inherently coercive, automatically triggering the Fifth Amendment privilege against self-incrimination.” State v. P.Z., 152 N.J. 86, 102 (1997). Whether a suspect is in custody is an objective determination based on “how a reasonable person in the suspect’s position would have understood his situation.” State v. Bullock, 253 N.J. 512, 533 (2023) (quotation omitted) (cleaned up). Here, the State conceded and Judge Ravin rightly held that Lampley “was the subject of custodial interrogation[.]” (Da77); accord State v. O’Neill, 193 N.J. 148, 169 (2007) (questioning was custodial where individual was held on unrelated

charge, but was a suspect in the instant case). Thus, the State was required to follow the rules set forth in Miranda and its federal and state progenies.

Because the State sought to admit Lampley's custodial statements, it "has the affirmative duty to prove -- in New Jersey by proof beyond a reasonable doubt -- both that [his] statement was voluntary and, if custodial, that [he] was advised of his rights and knowingly, voluntarily and intelligently waived them." State v. W.B., 205 N.J. 588, 602 n.3 (2011) (citations omitted). "When faced with a trial court's admission of police-obtained statements, an appellate court should engage in a searching and critical review of the record to ensure protection of a defendant's constitutional rights." State v. L.H., 239 N.J. 22, 47 (2019) (quotation omitted). Although Judge Ravin's factual findings are due deference, this Court must review de novo "the consequences that flow from established facts" and the "trial court's legal conclusions." Bullock, 253 N.J. at 532 (quotation omitted); State v. Diaz, 470 N.J. Super. 495, 513 (App. Div. 2022).

Here, the State did not satisfy its heavy burden, as the detectives failed to scrupulously honor Lampley's invocation of the right to silence and provided misleading and coercive information that inflated the "true status" of Lampley's legal peril.

B. During the second interrogation, the detectives failed to scrupulously honor Mr. Lampley's repeated invocations of his right to silence, so his subsequent inculpatory statements should have been suppressed.

The trial court rightly held that Lampley twice invoked his right to silence during his second interrogation. (Da83-84) But the court failed to address the fact that detectives ran roughshod over his clear invocations. Instead of immediately stopping the interview, the detectives used tactics to try and convince Lampley to abandon his invocations, including asking additional manipulative questions, trying to bargain, and providing half-truths. And then, on top of all that, the detectives falsely told Lampley that he was being charged with homicide. The detectives' repeated violations of Lampley's right to silence tainted all that followed, so his subsequent statements -- including those during his third interrogation -- must be excluded.

An invocation of the right to silence must be "scrupulously honored" by interrogators. Michigan v. Mosley, 423 U.S. 96, 103-04 (1975). "Care must be taken therefore that there be no blurring of the separate lines of analysis that are followed in respect of the 'scrupulously honor' requirement on the one hand and the waiver issue on the other." State v. Hartley, 103 N.J. 252, 261 (1986). "If the police have not scrupulously honored the suspect's right to silence, the court should not reach the waiver issue." State v. Adams, 127 N.J. 438, 445 (1992).

Scrupulous adherence requires that if a suspect “indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.” Miranda, 384 U.S. at 473-74. “[U]nder our state law privilege against self-incrimination, a request, however ambiguous, to terminate questioning must be diligently honored.” S.S., 229 N.J. at 382 (quotation omitted) (cleaned up). Our Supreme Court has set a low bar for invocation: “any words or conduct that reasonably appear to be inconsistent with defendant’s willingness to discuss his case with the police are tantamount to an invocation of the privilege against self-incrimination.” Id. at 382-83 (quotation omitted) (cleaned up). A suspect’s words “are not to be viewed in a vacuum, but rather in the full context in which they were spoken.” Ibid. (quotation omitted). “[A] suspect does not have to follow a prescribed script or utter talismanic words,” and courts should expect that interrogees will “speak in plain language using simple words, not in the parlance of a constitutional scholar.” Id. at 383.

For example, in S.S. the Court held that a suspect’s statement “that’s all I got to say. That’s it,” was a clear invocation that required police to end the interview. Id. at 386. Likewise for a suspect’s statement that “he would have nothing to say.” State v. Bey (Bey I), 112 N.J. 45, 64 (1988). In the end, “[s]o

long as an interrogating officer can reasonably understand the meaning of a suspect's words, the suspect's request must be honored." S.S., 229 N.J. at 383.

"[I]f the police are uncertain whether a suspect has invoked his right to remain silent, two alternatives are presented: (1) terminate the interrogation or (2) ask only those questions necessary to clarify whether the defendant intended to invoke his right to silence." Id. at 383 (citation omitted). Clarifying queries, however, cannot "operate to delay, confuse, or burden the suspect in his assertion of his rights. Because such questions serve to keep the suspect talking, not to uphold his right to remain silent, they constitute unlawful 'interrogation,' not permissible clarification." State v. Johnson, 120 N.J. 263, 283 (1990) (quotation omitted). If police ask a clarifying question, "[u]nless the suspect makes clear that he is not invoking his right to remain silent, questioning may not resume." S.S., 229 N.J. at 384 (citation omitted) (emphasis added).

Here, Lampley invoked his right to silence at least three times during his second interrogation. Each time, however, the detectives ignored his invocation and employed different strategies to keep Lampley talking and persuade him to answer their questions about the homicide.

Lampley's initial invocations came as the detectives first went over the Miranda waiver form. After Pirez read aloud the list of Miranda rights,

Lampley quickly indicated his reluctance to talk to the detectives, telling the detectives “I don’t really want to take my chances.” (Da20 at 13-13 to 14; Da13 at 11:09:35 to 11:09:50) Although that statement may have been ambiguous, instead of seeking clarification, the detectives insisted they read him the Miranda waiver language: “Well, we can’t talk about anything . . . until we finish this. . . . Is that okay? Okay.” Pirez responded similarly: “we can’t talk about . . . until I read this. Okay? . . . All right. Let me just finish this. Okay?” (Da20 at 13-15 to 23; Da13 at 11:09:45 to 11:09:55)

Pirez then read aloud the waiver paragraph and asked Lampley to sign the waiver form, while Perez instructed that “all that signature says is that we read this to you.” (Da20-21 at 13-22 to 14-19; Da13 at 11:09:55 to 11:10:40) But that was not true. The waiver form made clear that Lampley’s signature would indicate that he waived his Miranda rights and was “willing to answer questions and make a statement” (Da58) -- not just that he received them. See Hartley, 103 N.J. at 258 (finding that “the only purpose of the signature was not to acknowledge receipt of one’s rights but rather to indicate a waiver of those rights”). Lampley knew that Perez had misstated the import of signing the form, so he quickly corrected the officer and made clear that he was not waiving his rights because, in Lampley’s view, signing the waiver could indicate that he was involved in the homicide:

DET. PEREZ: Okay. What I'd like you to do is just place your signature there and then I'll give you the date and time.

DET. PEREZ: And -- and thanks, Lampley, I -- I appreciate you going through it and understanding everything. I just -- that signature -- all that signature says is that we read this to you.

MR. LAMPLEY: These are my Rights -- I'm waiting [sic] my Rights.⁵

DET. PEREZ: Correct.

MR. LAMPLEY: That's what this -- I know what this say.

DET. PEREZ: We read this to you. You understood it and -- and you -- you're willing to -- to answer questions like, ask questions, as well.

DET. PEREZ: That's a way I can answer any questions that you may have at this point.

MR. LAMPLEY: I really want to take my chances, man. I'm tired.

DET. PEREZ: Okay. That -- that also -

MR. LAMPLEY: Is this me doing this? This makes me -- telling -- saying I'm -- I was there, everything. I know. No, no. No. I can't -- I can't --

DET. PEREZ: I -- I understand.

⁵ The interrogation video shows Lampley pointing to the form and the signature line while correcting Detective Perez's misrepresentation about what signing the form meant. (Da13 at 11:10:30 to 11:11:15)

MR. LAMPLEY: -- I can't.

[Da21 at 14-13 to 15-13; Da13 at 11:10:25 to 11:11:12]

The video shows Lampley spoke in an anguished tone as he held his head in his hands and moved away from the table. (Da13 at 11:10:55 to 11:11:13) Despite stating that he could “understand” that Lampley did not want to answer questions, instead of ending the interrogation or seeking clarification, Perez again tried to convince him to sign the waiver form. If Lampley signed, Perez coaxed, then the detectives would answer his questions about the investigation. But yet again, Lampley made clear he did not want to talk about the case:

DET. PEREZ: But -- but, I can't answer any questions regarding the situation you're in until we get through this. If you don't want to answer any of the questions that we're asking you, that's your option. That's fine. But, we also can't ask you any questions regarding the incident until we get through this form. But, you understand everything we're telling you. I mean, I'm pretty sure we're communicating back and forth. Are you -- are you understanding --

MR. LAMPLEY: I said (indiscernable).

DET. PEREZ: -- okay. So, unless -- unless we get through this form which is -- which happens to be the main form that we have to get through -- once we put that to the side and we're done with that, then we could sit down and then you could ask us the questions and we could answer and --

MR. LAMPLEY: Well, I --

DET. PEREZ: -- and the same thing for us.

MR. LAMPLEY: -- I was supposed to get questions regardless even this is my Rights. My Rights or not I'm (indiscernible) the questions regardless.

DET. PEREZ: Right. And -- and one of those lines also says that. If we ask you a question and you don't want to answer it, you don't have to answer it. You -- you understand that part, too, right?

MR. LAMPLEY: Yeah. But --

DET. PEREZ: Okay.

MR. LAMPLEY: -- they -- they said I got to explain, I got to talk. I don't have to -- I don't know, man. I can't -- I can't -- I can't. I'm sorry.

DET. PEREZ: Well, so --

MR. LAMPLEY: I can't -- I can't -- I can't. I'd rather take my chances. I'd rather take my chances.

[Da21-22 at 15-14 to 16-23 (emphases added); Da13 at 11:10:55 to 11:12:22]

At that point, the detectives should have immediately stopped the interrogation. Lampley's words were straightforward and their meaning unmistakable: he did not want to talk about the case. The video shows that Lampley made these statements clearly and emphatically. (Da13 at 11:10:55 to 11:11:22)

The trial court's ruling on these invocations was contradictory. On one hand, Lampley's words "indicate[d] to the Court that he did not wish to speak." (Da83) But the court nevertheless found that "it was ambiguous and thus detectives were able to ask him questions in order to clarify his intent." (Da83) That was error, as Lampley made clear he did not want to talk about the homicide. But even if the detectives were somehow unsure, they had only two options: (1) immediately "terminate the interrogation" or (2) "ask only those questions necessary to clarify whether the defendant intended to invoke his right to silence." S.S., 229 N.J. at 382-83; State v. Maltese, 222 N.J. 525, 545 (2015).

Instead, Detective Perez made yet another attempt to pressure Lampley to talk to the detectives. This time he employed a new tactic, asking Lampley what is "holding you back" from answering. Despite this pressure, Lampley again made clear that he did not want to answer questions:

DET. PEREZ: Do you feel like you want to ask us some questions? Is that it? Is that's -- what -- what's holding you back?

MR. LAMPLEY: I can't -- no. It's me place it's -- that's not recording. Is it?

DET. PEREZ: No, no.

DET. PIREZ: This -- this is my phone.

DET. PEREZ: Because at -- at this point --

DET. PIREZ: I'm looking at the time because I was going to give you the time for the -- for the --

DET. PEREZ: -- because even if you answer this --

DET. PIREZ: -- for the sheets.

[Da22 at 16-24 to 17-11 (emphases added); Da13 at 11:12:20 to 11:12:38]

Contrary to the trial court's ruling, the detectives' asking Lampley "what's holding you back" from answering questions did nothing to clarify whether Lampley was invoking. As this Court has noted, an "interrogator never needs to know why a suspect wants to remain silent; once it is clear that the suspect wants to remain silent, the interrogation should cease." State v. Burno-Taylor, 400 N.J. Super. 581, 605 (App. Div. 2008) (quotation omitted). Indeed, "[a]n interrogator would only want to probe beyond the suspect's presumed desire to avoid self-incrimination if he expected either to evoke an incriminating response or to get a clue as to how the suspect might be persuaded to abandon his rights." Ibid. (quotation omitted). Here, that non-clarifying question was simply an attempt to manipulate Lampley into talking about the homicide.

Moreover, in the above exchange, when Lampley pointed to the cell phone on the table and asked "that's not recording. Is it?" both detectives indicated that it was not. (Da22 at 17-2 to 11; Da13 at 11:12:20 to 11:12:38)

But given the context, Lampley was obviously asking whether the detectives were recording the interrogation. By failing to clarify that the interview room was being recorded, the detectives misled him and contradicted their earlier Miranda warnings. See L.H., 239 N.J. at 44 (“[O]fficer[s] cannot directly or by implication tell a suspect that his statements will not be used against him[.]”); State v. Pillar, 359 N.J. Super. 249, 268 (App. Div. 2003) (“An acquiescence to hear an ‘off-the-record’ statement from a suspect, which the officer ought to know cannot be ‘off-the-record,’ totally undermines and eviscerates the Miranda warnings[.]”).

Instead of leaving the room, Detective Pirez then asked Lampley to “just hear me out” and tried to bargain with him again, offering that they could answer his questions about the homicide investigation -- but only if he waived his rights first:

DET. PEREZ: -- and -- and just hear me out. Even if you answer this and say, yeah, you know and then later on as we’re talking you feel like, you want to stop, then you -- you could stop. You understand? You understand what I’m telling you? At any given time -- just because you signed it once and -- and -- and we put it to the side, doesn’t mean you could -- you can’t go back to it and say, hold up. You know, maybe -- maybe I -- I -- I want to take the Miranda and -- and I -- I want to stop right now. Okay? But -- and that’s your prerogative. I’m not telling you what to do. All I’m saying is for us to proceed from this point forward, you know what I’m saying, like for us to understand each other a little bit better, we have to go

through the Miranda and you have to understand what it means which you do already. I'm pretty sure you already do. But, we -- I can't answer any -- like, I -- I wish I could just keep conversating with you, but we can't. Not -- not --

MR. LAMPLEY: Until I waive my rights?

DET. PEREZ: -- not until -- yeah. And then at that point, you know, if you're not comfortable with the questions we're asking you, then you -- you do what you do.

MR. LAMPLEY: Then once I waive my rights --

DET. PEREZ: Okay?

MR. LAMPLEY: -- I have no -- no rights to --

DET. PEREZ: Well, if you -- again, if -- I'll read this to you one more time just in case if you understand it. If you have any questions, you can ask me about this and if not, then that's okay, too.

[Da22-23 at 17-12 to 18-19 (emphases added); Da13 at 11:12:35 to 11:13:45]

Then Perez read the Miranda waiver to Lampley another time and pitched, once more, that the detectives could not answer any of his questions until he signed the waiver form. (Da23-24 at 18-20 to 21-1; Da13 at 11:13:45 to 11:15:30) For example, Perez stated "we can answer questions -- once we finish this -- we can answer whatever questions you're asking us comfortably. But, until we do this, we can't really engage into, you know, the situation."

(Da24 at 20-21 to 25; Da13 at 11:15:00 to 11:15:28) At that point, Lampley unambiguously invoked a third time:

MR. LAMPLEY: I'm -- I'm sorry, but -- but just take me to the jail, please. Because I'm not --

DET. PEREZ: I understand.

DET. PIREZ: Okay.

MR. LAMPLEY: -- (indiscernible).

DET. PIREZ: Okay. No problem. So, you're refusing to -- you don't -- you don't want to speak to us?

MR. LAMPLEY: Yeah. I'm sorry, you all. I'm sorry.

[Da24 at 21-2 to 11 (emphases added); Da13 at 11:15:25 to 11:15:39]

By answering the detective's direct question and requesting to leave the interrogation room altogether, Lampley made his third invocation doubly clear. Garcia v. Long, 808 F.3d 771, 778 (9th Cir. 2015) (where officer asked "do you wish to talk to me?," the suspect's response "No" was a "clear as day" invocation); State v. Walker, 372 P.3d 1147, 1159 (Kan. 2016) ("I'm telling you this conversation is over" and "I'm done" plus "Can you take me to a cell now?" was unambiguous invocation). Indeed, Detective Pirez testified at the Miranda hearing that the detectives understood Lampley's invocation but continued the interrogation anyway:

DEFENSE COUNSEL: And as you continued to speak to Mr. Lampley, did Mr. Lampley say -- specifically, Page 21 [of the transcript at Da24]. Did Mr. Lampley say he's sorry; he's not talking? Just take him to jail. He doesn't want to talk. And you asked, if you're refusing to talk?

DET. PIREZ: Yes.

DEFENSE COUNSEL: Okay. So Mr. Lampley was telling you that he didn't wish to continue speaking to the detectives, correct?

DET. PIREZ: Yes.

DEFENSE COUNSEL: And even after he said he no longer wanted to talk, did Detective Perez still continue to question him after he said he no longer wished to talk?

DET. PIREZ: He continued to speak to him, yes.

DEFENSE COUNSEL: He -- the detective continued to speak to him after Mr. Lampley said he no longer wished to talk, correct?

DET. PIREZ: Yes.

[5T30-19 to 31-17; see also 1T35-9 to 12 (Pirez conceding that Lampley invoked); 2T20-16 to 24, 23-20 to 25 (same)]

The detectives should have -- again -- immediately stopped the interrogation and left the room. But, once more, the detectives tried to force Lampley into a conversation about the homicide, including Perez again pitching Lampley that "once you signed the form . . . if five or 10 minutes later

you feel like you don't -- you want to change your mind, then you can change your mind whenever you want. You understand? Okay? But, I can't answer anything pertaining to -- to -- to the situation until we get through to the standard form, this here." (Da24-25 at 21-12 to 22-4; Da13 at 11:15:35 to 11:16:07)

Then, despite another acknowledgment that Lampley had invoked his right to end the interview -- Perez: "You -- you -- so, you don't want to make a statement? You don't want to speak to us, right? As far as the case? Okay." -- the detectives continued talking to Lampley, again insisting that he write "refused" on the Miranda form. (Da25 at 22-5 to 17; Da13 at 11:16:07 to 11:16:25) But that was not necessary. The form only needed to be completed by Lampley if he decided to waive his rights -- not exercise his right to be silent. See Hartley, 103 N.J. at 258. Once Lampley invoked, the interview should have ended immediately. S.S., 229 N.J. at 382-83; Maltese, 222 N.J. at 545.

Then, Perez provoked Lampley into more discussion by telling Lampley that "I understand you struggle with --" referring to Lampley's decision whether to make a statement or not. (Da25 at 22-14 to 15; Da13 at 11:16:20 to 11:16:28) That comment spurred Lampley to explain why he did not want to sign the form: "I'm not talking -- I'm not talking about . . . saying like, go into

detail . . . but, I'm saying if I do that" -- that is, sign the waiver form -- "and I'm saying what I'm saying, I'm basically, I'm placing myself at the scene."
(Da25 at 22-18 to 23-6; Da13 at 11:16:28 to 11:16:50)

Seeing an opening to convince Lampley to change his mind on his invocations, the detectives ratcheted up the pressure even more by informing Lampley, for the first time, that he was being charged with homicide and that they could not answer questions about the homicide charge unless he waived his rights. Plus, Perez again asked "what's holding you back":

DET. PEREZ: Well, and -- and we can't tell you yes or no. All right? Or not until we cover this. That's why I -- I would like to explain that to you, but we have to get the form first. You know, I can't -- we can't go beyond this form --

DET. PEREZ: In any discussions --

DET. PEREZ: -- any discussions --

DET. PEREZ: -- as far as this.

DET. PEREZ: -- yeah. And I -- I wish we could because you -- I -- there's a simple explanation to that. But, right now, I can't. I really can't. I'm sorry. Yeah. I mean, I could give you some clarity on stuff. You could ask us all the questions you want and we'll give you the answers, but you know, I can't -- we can't. Not unless you -- you -- you say, well, you know what? Let's --

MR. LAMPLEY: So, basically, I'm being arr-arrested for this and not questioned?

DET. PEREZ: Right. You're being charged with --

MR. LAMPLEY: Well --

DET. PEREZ: -- homicide.

DET. PEREZ: Exactly. We're not -- we're not going to ask you questions --

DET. PEREZ: Yeah.

DET. PEREZ: -- in reference to anything or do anything like that, you know, because you elected not to, you know, not to do so. We respect that, obviously. And -- and that's your Right. But, also I can't answer any questions about anything without that, as well, like, we -- like, I was explaining to you beyond this. Obviously, I can answer questions about the sheet, but nothing, you know about these Rights --

DET. PEREZ: So -- so, is your question that once you signed this, then -- then you can't go back and -- and say, well, I want to stop. Is that what it is? Is that what's holding you back? Or I don't want to talk or I don't want to answer anymore? Because you always have that right. I mean, like we read -- he read to you in the waiver part.

MR. LAMPLEY: No. The thing I just ask you you all said I can't answer, basically, me putting my -- me saying I had involvement in that -- what happened. So, if I do go to court and see the judge, whatever, the prosecutor, whatever, I already said I was there. So --

DET. PEREZ: All right. And -- and I --

MR. LAMPLEY: You get -- you get what I'm trying to say?

DET. PEREZ: -- I can't --

DET. PEREZ: Okay.

DET. PEREZ: -- I can't answer that.

DET. PEREZ: Sorry.

DET. PEREZ: Yeah. Sorry about that, Mr. Lampley.

DET. PEREZ: Be right back.

MR. LAMPLEY: Thank you, though --

DET. PEREZ: All right.

[Da25-26 at 23-7 to 25-17 (emphases added); Da13 at 11:16:50 to 11:18:40]

At that point, the detectives finally ended the second interrogation session.

The trial court held that, “based on Defendant’s words,” he again “invoked his right to silence, although it was not clear and unambiguous.” (Da84) The court also found that the detectives, once more, “asked merely clarifying questions, asking him whether he did not want to speak with them and whether he was refusing to speak with them.” (Da84) But the trial court erred. It is blackletter law that interrogators fail to honor a suspect’s invocation by “refusing to discontinue the interrogation upon request or by persisting in repeated efforts to wear down his resistance and make him change his mind.” Mosley, 423 U.S. at 105-06; Smith v. Illinois, 469 U.S. 91, 98 (1984) (similar); see also Burno-Taylor, 400 N.J. Super. at 607 (where suspect “at the very

least” ambiguously invoked his right to silence, “officers could do no more than to attempt to clarify his position, and could not proceed to their extended attempts to persuade defendant to waive his Miranda rights and agree to speak to them”). That is exactly what the detectives did here. Lampley repeatedly and unambiguously invoked his right to silence. Detective Pirez knew it. Detective Perez knew it too. The interrogation only continued because the detectives sought to change Lampley’s mind.

Because the detectives failed to scrupulously honor Lampley’s right to silence, the correct remedy is exclusion of everything that followed Lampley’s first invocations of the right to silence -- “I really want to take my chances, man. I’m tired” (Da20 at 13-13 to 14) and “I really want to take my chances, man. I’m tired. . . . Is this me doing this? This makes me -- telling -- saying I’m -- I was there, everything. I know. No, no. No. I can’t -- I can’t -- . . . I can’t.” (Da21 at 14-13 to 15-13) It was at that point that the detectives should have either stopped the interview or narrowly sought to clarify Lampley’s intent. Instead, they pushed on with the interrogation. Lampley’s subsequent invocations (see Da22 at 16-15 to 23; Da24 at 21-2 to 11) only reinforced his initial assertions of his right to remain silent. In the end, the detectives’ failure to scrupulously honor Lampley’s invocations tainted all that followed, including his inculpatory statements made during the third interrogation.

Each failure to honor Lampley's several invocations is a violation "of constitutional magnitude." Hartley, 103 N.J. at 266. Thus, to determine whether Lampley's later statements are admissible, the familiar attenuation test applies: "where the police infringe the [F]ifth [A]mendment itself[,] subsequent statements or confessions must pass muster under the 'fruit of the poisonous tree' doctrine and be free of any taint from the earlier constitutional infraction." Bey I, 112 N.J. at 71 (citing Hartley, 103 N.J. at 278-84). The fruits analysis requires consideration of "the time between confessions, any intervening circumstances, whether there was a change in place, whether defendant received an adequate warning of his rights, whether the defendant initiated the second confession, the effect of his having previously made a confession, and the purpose and flagrancy of police misconduct." Hartley, 103 N.J. at 283 (quotation omitted); Maltese, 222 N.J. at 548; Bey I, 112 N.J. at 73-74.

Our Supreme Court has made clear that the taint of a violation of one's right to remain silent is not easily dissipated -- even if there is a subsequent Miranda waiver. In Maltese, 222 N.J. at 532, 546-49, a defendant requested to talk to his uncle before continuing to be interrogated by the police, which the Court held was an invocation of his right to silence. Id. at 546. The police then recorded defendant confess to his uncle, violating his right to silence. Id. at

546-47. Seven minutes later, officers initiated another interview of defendant, re-administered Miranda warnings, and indicated that they knew defendant had confessed to murder. The defendant then confessed to the officers. Id. at 547-49. The second interrogation took place in the “same interview room,” “was obtained by officers who defendant knew were involved in the investigation,” and “concerned the same crimes.” Id. at 549. The Supreme Court held that due to the close temporal proximity of the two interviews and the advantage the officers gained by the first violation, “not even the second reading of Miranda warnings removed the taint of the first constitutional violation.” Ibid.

Like in Maltese, the mere rereading of Miranda rights to begin Lampley’s third interrogation was not sufficient to remove the taint of the earlier constitutional violations. The third interrogation took place fewer than 40 minutes later in the same room, with the same two detectives, and concerned the same exact crime. And the detectives received significant help from their earlier violations: they were able to exert more pressure on him to talk -- including asking him “what’s holding you back?”, telling him that they could not answer his questions until he waived, and notifying him he was being charged with homicide. (More on that last coercive tactic in the next section.) The police deployed these unlawful interrogation techniques after Lampley had already invoked his right to silence. Plus, Lampley likely thought

that some of his statements at the end of the second interview indicated he might know about the homicide. (Da25 at 22-18 to 23-6 (Lampley: “I’m saying if I do that [i.e., sign the waiver form] and I’m saying what I’m saying, I’m basically, I’m placing myself at the scene.”); Da26 at 24-17 to 25-17 (similar)); see Maltese, 222 N.J. at 549 (“Once defendant let the cat out of the bag by confessing, no matter what the inducement, he was never thereafter free of the psychological and practical disadvantages of having confessed.” (quotation omitted) (cleaned up)). His “reinitiation” and an additional round of Miranda warnings were therefore not sufficient to purge the taint of the constitutional violations because they were a product of the constitutional violation.

Our Supreme Court likewise made clear in Bey I, 112 N.J. at 52-53, that plowing through a defendant’s invocation weighs heavily against finding attenuation of taint. In that case, the defendant was given Miranda warnings, waived them, and discussed a case with investigators. 112 N.J. at 52, 58-59. Investigators then asked him about a different case, and he invoked his right to silence. Id. at 52-53, 59. Just as in this case, “when defendant invoked his right to cut off questioning, the interrogation continued as if nothing had happened.” Id. at 68. The police then obtained an oral confession. Id. at 53, 62. After the

oral confession, defendant was re-Mirandized, waived his rights, and signed a written confession. Ibid.

In holding that both the oral and written confessions were inadmissible, the Court noted the powerful psychological effect of the police behavior: “where the police fail to halt the questioning even temporarily, the ensuing danger of coercion and compulsion to confess is great, for the suspect perceives their conduct as an indication that the rights he has just been read mean nothing, and that he is going to be subjected to ongoing interrogation by the police until he talks.” Id. at 72. Because the interval between the two confessions was short, and there was no change in the location or interrogators, the taint was not dissipated. Id. at 73. Holding that even the later post-waiver written interrogation was tainted, the Court emphasized that “[i]n effect the two confessions were the product of a single, continuing interrogation, and thus the second is ‘burdened with the same constitutional infirmities’ as the first, irrespective of the intervening warnings and putative waiver.” Ibid. (quoting Hartley, 103 N.J. at 279-80) (cleaned up).

The same legal error is present in this case and necessitates the same result. Just like in Bey I, Lampley “attempted to exercise his constitutional right to remain silent and cut off questioning,” but the detectives “ignore[d] his wishes and continue[d] to interrogate him about the same incident.” Id. at 69.

Because the detectives failed to scrupulously honor Lampley's invocations of the right to silence, this violation "renders unconstitutionally compelled any resultant incriminating statement made in response to custodial interrogation." Hartley, 103 N.J. at 261; Adams, 127 N.J. at 445 ("If the police have not scrupulously honored the suspect's right to silence, the court should not reach the waiver issue."); Burno-Taylor, 400 N.J. Super. at 606 (same).

In sum, Lampley's inculpatory custodial statements were the direct fruits of the repeated violations of his constitutional right to remain silent. Lampley told his interrogators in no uncertain terms that he did not want to waive his rights. In response, the detectives used various tactics to induce him to talk, eventually misleading him about his true legal status. This is the very kind of coercion prohibited by the right against self-incrimination. Therefore, this Court should reverse the trial court's order admitting Lampley's custodial statements.

C. Mr. Lampley’s later reinitiation and waiver were invalid because, after ignoring his repeated invocations of his right to silence, the detectives improperly deceived him about the “true status” of his legal charges to pressure him to confess.⁶

During his interrogations, Lampley was under arrest for an unrelated parole violation. (1T19-4 to 8; 2T20-11 to 15; 5T26-6 to 13; Da75) After his repeated invocations of the right to silence, and before ending the second interrogation session, the detectives told Lampley he was being charged with homicide. But that was not true. Detective Pirez testified at the Miranda hearing that it was not until Lampley made inculpatory statements during the third interrogation session that the detectives sought a homicide charge. This misrepresentation of Lampley’s “true status,” which only came about at the end of the second interrogation because the detectives ignored his repeated invocations, rendered Lampley’s subsequent reinitiation and Miranda waiver invalid.

“Under New Jersey’s custodial interrogation jurisprudence, and consistent with our Supreme Court’s commitment to afford protections beyond those guaranteed under federal law, for an incriminating statement obtained during a custodial interrogation to be admissible, the prosecution must prove

⁶ This argument is presented in the alternative and does not need to be reached if this Court rules that exclusion is required for everything that came after Lampley’s initial invocations, as described above in Point I.B.

beyond a reasonable doubt that the suspect's waiver of Miranda rights was knowing, intelligent, and voluntary in light of all the circumstances." Diaz, 470 N.J. Super. at 515 (quotation omitted) (cleaned up); W.B., 205 N.J. at 602 n.3.

This "inquiry has two distinct dimensions." Moran v. Burbine, 475 U.S. 412, 421 (1986). "First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception." Ibid. "Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Ibid. "Only if the totality of the circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived." Ibid. (quotation omitted). "The totality of the circumstances includes both characteristics of the defendant and the nature of the interrogation." Diaz, 470 N.J. Super. at 515 (quotation omitted).

In State v. A.G.D., our Supreme Court held that interrogators must inform a suspect if a criminal complaint has been filed or an arrest warrant has been issued before any questioning begins. 178 N.J. 56, 58-59 (2003). "Without advising the suspect of his true status when he does not otherwise

know it,” the Court held that “the State cannot sustain its burden . . . that the suspect has exercised an informed waiver of rights, regardless of other factors that might support his confession’s admission.” Id. at 68. In Vincenty, the Court clarified that police must “make a simple declaratory statement at the outset of an interrogation that informs a defendant of the essence of the charges filed against him.” 237 N.J. at 134. In other words, “it is not enough for police to advise an interrogee of the fact that an arrest warrant or complaint-warrant has been issued; the suspect must be informed of the nature and seriousness of the charges that have been filed.” Diaz, 470 N.J. Super. at 514-15. Importantly, the notification must come “before they are asked to waive the right to self-incrimination.” Vincenty, 237 N.J. at 134

Of course, “a valid waiver does not require that an individual be informed of all information useful in making his decision.” Nyhammer, 197 N.J. at 407 (quotation omitted). However, our Supreme Court has warned that “evidence that the accused was threatened, tricked, or cajoled into a waiver of his privilege will render the waiver involuntary.” Ibid. (emphases added) (quotation omitted); Diaz, 470 N.J. Super. at 516 (same); Moran, 475 U.S. at 421 (same for evidence of “coercion” or “deception”).

Courts have sometimes allowed police to use certain limited forms of psychological pressure during interrogations. See State v. Knight, 183 N.J.

449, 463-67 (2005). But this Court has drawn a bright line: police cannot use deception and trickery to pressure a suspect to waive his Miranda rights. As Judge Susswein recently detailed in Diaz, this Court “draw[s] a fundamental distinction between police trickery with respect to the strength of the evidence against an interrogee on the one hand, and trickery with respect to an interrogee’s ‘true status’ within the meaning of A.G.D., 178 N.J. at 68, on the other hand.” 470 N.J. Super. at 525. Diaz explained:

Misleading a defendant about the seriousness of the offense(s) for which he or she was arrested is, in our view, qualitatively different from misleading a defendant about factual evidence of his or her guilt. Stated differently, police are allowed to use certain forms of trickery while posing substantive questions following a knowing and voluntary Miranda waiver. Such trickery is designed to induce an interrogee who has already waived his or her Miranda rights to make factual statements that constitute incriminating admissions. We are aware of no precedent, however, that authorizes trickery as part of the waiver process, that is, trickery designed to induce a person to yield his or her right to remain silent and consult with an attorney before answering substantive questions. Indeed, Miranda itself explains to the contrary that “any evidence that the accused was tricked into a waiver will, of course, show that the defendant did not voluntarily waive his or her privilege.”

[Ibid. (quoting Miranda, 384 U.S. at 476) (cleaned up).]

Our Supreme Court has likewise warned against efforts to circumvent the “true status” disclosure rule by “deliberately delay[ing] seeking a

complaint-warrant or arrest warrant in order to avoid disclosing to an arrestee the charges that he faces.” State v. Sims, 250 N.J. 189, 216 (2022). To ensure that there is no deception related to the suspect’s “true status,” when assessing the totality of the circumstances, a trial court “should consider” any evidence of “bad-faith conduct on the part of law enforcement officers.” Ibid.

In Diaz, 470 N.J. Super. at 503, 513-533, this Court held that a suspect did not knowingly waive his Miranda rights because interrogators “affirmatively misled defendant as to his ‘true status[.]’” Id. at 518. After an investigation into a drug overdose death, police identified the defendant as the person who had likely sold the heroin that killed the victim. Id. at 503-05. Police detained him for questioning and administered Miranda warnings. Id. at 505-06. When the defendant asked, “what this was about,” police told him that they were “conducting an investigation involving narcotics[.]” Id. at 506, 519 (cleaned up). After police found heroin on his person and in his apartment, he was taken to the police station where he was re-Mirandized, waived his Miranda rights, and admitted that he had given eight bags of heroin to the victim’s roommate the day before. Id. at 506-07. At that point, interrogators told the defendant for the first time that he was being charged with strict-liability drug-induced death. Id. at 507-08.

On appeal, this Court held that the detectives “affirmatively misled defendant as to his ‘true status’ by providing a deliberately vague and incomplete answer to his question as to the reason why he was taken into custody.” Id. at 518 (cleaned up). The misrepresentation of his “true status” was part of “an investigative stratagem to withhold information concerning the overdose death until after defendant admitted selling heroin[.]” Ibid. Judge Susswein warned that it is “one thing for police to withhold information” -- which is often permissible -- but that it is “another thing entirely for them to provide an explanation that creates or reinforces a false impression as to the seriousness of the sentence that a defendant is facing.” Id. at 519. “Any such deception or trickery” is “an important circumstance to be considered” in determining whether the State has proved a suspect made a knowing and voluntary waiver of rights. Ibid. Because “[a]ffirmatively misleading an interrogee about the seriousness of the offense for which he or she was taken into custody strikes at the heart of the waiver decision,” this Court affirmed the suppression of Diaz’s statement. Id. at 525-27, 533.

Suppression is likewise required here. After Lampley repeatedly invoked his right to silence, in addition to other coercive tactics detailed above, the detectives told him that he was being arrested for and charged with homicide. (Da25-26 at 23-24 to 24-16) The officers also suggested that they could not

answer any of Lampley's questions about this purportedly pending homicide charge unless he signed the Miranda waiver and submitted to questions. (Ibid.) This surprise information about Lampley's "true status," which detectives waited to provide until they were deep into the second interrogation session, was clearly intended to pressure Lampley into answering questions about the homicide. And it worked, as Lampley later sought out to talk to the detectives to explain that he never intended anyone to be hurt during the carjacking.

But that "true status" information was false. Lampley was not, in fact, being charged with homicide at the end of the second interrogation. Detective Pirez testified at the Miranda hearing that it was not until after Lampley's third interrogation, during which he made many inculpatory statements about the carjacking and shooting, that the detectives decided to seek the homicide charge:

DEFENSE COUNSEL: At what point did you make the determination that you were going to seek charges of homicide against Mr. Lampley?

DET. PIREZ: Well, again, I have to forward the information that I have in the -- during the investigation, you know, facts that are gleaned during the investigation, including any statements made by Mr. Lampley, and forward those through the proper channels. And at that point, they're either approved or -- or not.

DEFENSE COUNSEL: I understand that. At what point did you decide to do that, to forward that information and --

DET. PIREZ: In this particular case?

DEFENSE COUNSEL: Yes.

DET. PIREZ: Once I -- once I spoke to Mr. Lampley and he described his involvement, I then relayed that information up the proper channels and the charges were authorized.

DEFENSE COUNSEL: Okay. So your testimony is that it wasn't until after the third statement?

DET. PIREZ: To charge him?

DEFENSE COUNSEL: Yes.

DET. PIREZ: Absolutely. Yes.

[2T21-10 to 23-19]

Indeed, Detective Pirez's probable cause affidavit filed later that day in the Newark Municipal Court heavily relied on Lampley's inculpatory statements made during the third interrogation session. (Da70)

Telling Lampley that he was being arrested for and charged with homicide violated the "true status" rule. On one hand, if he had been charged with homicide, A.G.D. and Vincenty required the detectives to inform Lampley "of the nature and seriousness of the charges that have been filed" before being interrogated at all. Diaz, 470 N.J. Super. at 514-15. But here, the inverse rule

also applied: the detectives could not tell Lampley he was being arrested for and charged with homicide if they have not yet made that decision. Both types of misrepresentations are improper precisely because they result in the suspect's misunderstanding his "true status."

To be clear, Lampley need not prove that the detectives "intended to mislead [him] into waiving his rights." Burno-Taylor, 400 N.J. Super. at 605. But suppose the detectives had instead shown Lampley a fabricated complaint-warrant charging him with homicide. Suppression would, of course, be required. See State v. Chirokovskic, 373 N.J. Super. 125, 133-134 (App. Div. 2004) ("[P]olice-fabricated tangible evidence inevitably undercuts our confidence in the voluntariness of a confession[.]"); State v. Patton, 362 N.J. Super. 16, 18, 46 (App. Div. 2003) (same). Yet the detectives' words to Lampley -- "you're being charged with homicide" -- were the functional equivalent and had the same effect. Moreover, if the detectives had, in fact, decided to charge Lampley with homicide during the second interrogation, they would have been required to state that again at the beginning of his third interrogation. Otherwise, that would constitute a bad-faith evasion of the A.G.D./Vincenty "true status" rule. Sims, 250 N.J. at 216. But they had not actually decided to charge him until he later made inculpatory statements, so they delivered no such notification here. (See Da27-29 at 26-24 to 30-24)

To be sure, Lampley later reinitiated and waived his Miranda rights during the third interrogation. But a suspect must have an accurate understanding of his “true status” before he can knowingly, intelligently, and voluntarily waive his Miranda rights. In Diaz, this Court explicitly rejected the argument that the defendant’s later interrogation with a new Miranda waiver cleansed the State’s earlier misconduct, holding that “the start of a new interrogation session and the administration of fresh Miranda warnings did not wipe the slate clean” because “the impact” of the detective’s misrepresentation “continued unabated well into the [next] interrogation.” 470 N.J. Super. at 521. So too here. As was the case in Diaz, “[i]f anything, the detectives reinforced the false impression created by” their misrepresentation about Lampley’s legal peril “by saying nothing more about the reason for the defendant’s arrest during the [next] Miranda waiver colloquy[.]” Ibid.; (see Da27-29 at 26-24 to 30-24). Indeed, “[a] reasonable person in defendant’s position would have no reason to believe that the fundamental nature of the investigation and reason for his arrest had changed since he was first told” that he was being arrested for and charged with homicide. Diaz, 470 N.J. Super. at 521-22.

Because Lampley was misinformed of the “true status” of his legal peril, his later reinitiation and waiver were invalid. This Court should reverse the trial court’s order admitting Lampley’s custodial statements.

CONCLUSION

For the reasons stated above, this Court should reverse the trial court's order granting the State's motion to admit Mr. Lampley's custodial statements. U.S. Const. amends. V, VI, XIV; N.J. Const. art. I, ¶ 1; N.J.R.E. 503; N.J.S.A. 2A:84A-19. On remand, Lampley should be given the opportunity to withdraw his plea. Rule 3:9-3(f).

Respectfully submitted,

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Dated: April 9, 2025

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-2955-23

STATE OF NEW JERSEY : CRIMINAL ACTION

Plaintiff-Respondent, : On Appeal from a Judgment of
Conviction of the Superior Court
: of New Jersey, Law Division,
v. : Essex County.
:

MURAD S. LAMPLEY, : Sat below:
a/k/a MURAD LAMPLEY, :
Defendant-Appellant. : Hon. Michael L. Ravin, J.S.C.

**BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT
STATE OF NEW JERSEY**

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Table of Contents

	<u>Page nos.</u>
Counterstatement of Procedural History	1
Counterstatement of Facts	3
A. First Interview	4
B. Second Interview	5
C. Third Interview	8
D. Trial Court’s Ruling	12

Legal Argument

Point I

The Detectives Scrupulously Honored Defendant’s Right to Remain Silent During the Second Interview and Defendant Knowingly, Intelligently and Voluntarily Waived His <u>Miranda</u> Rights and Gave a Statement of His Own Free Will During the Third Interview	16
A. Defendant was in Custody at the Time of the Three Interviews and Was Properly Given <u>Miranda</u> Warnings on Each Occasion....	20
B. After Clarifying Defendant’s Intention to Remain Silent, the Officers Scrupulously Honored That Right by Terminating the Second Interview Without Obtaining His Waiver or Taking a Statement. Thereafter, Defendant Reinitiated the Conversation with the Officers, Was Given Fresh <u>Miranda</u> Warning, Waived His Rights and Gave an Inculpatory Statement at the Third Interview That Was Properly Ruled Admissible.....	21

Table of Contents (continued)

	<u>Page nos.</u>
C. The Detectives Did Not Deceive Defendant About the “True Status” of Criminal Charges Against Him to Coerce Him to Confess	41
Conclusion	48

Cases Cited

<u>Colorado v. Spring</u> , 479 U.S. 564 (1987)	31
<u>Michigan v. Mosley</u> , 423 U.S. 96 (1975)	25,33
<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)	passim
<u>State v. A.G.D.</u> , 178 N.J. 56 (2003)	43,44,45
<u>State v. A.M.</u> , 237 N.J. 384 (2019)	19
<u>State v. Alston</u> , 204 N.J. 614 (2011)	23
<u>State v. Bey I</u> , 112 N.J. 45 (1988)	38-39
<u>State v. Bey II</u> , 112 N.J. 123 (1988)	23
<u>State v. Carrion</u> , 249 N.J. 253 (2021)	30
<u>State v. Chew</u> , 150 N.J. 30 (1997)	12,20
<u>State v. Cook</u> , 179 N.J. 533 (1990)	25,29
<u>State v. Diaz</u> , 470 N.J. Super. 495 (App. Div.), <u>leave to appeal denied</u> , 251 N.J. 8 (2022)	45,46,47
<u>State v. Diaz-Bridges</u> , 208 N.J. 544 (2011)	13,23,24,25,29

<u>State v. Erazo</u> , 254 N.J. 277 (2023)	18,19
<u>State v. Fuller</u> , 118 N.J. 75 (1990).....	22,24,24n.5
<u>State v. Galloway</u> , 133 N.J. 631 (1993)	19,20,35
<u>State v. Hartley</u> , 103 N.J. 252 (1986)	22,24,24n.5,25,28,35,38
<u>State v. Hreha</u> , 217 N.J. 368 (2014)	19
<u>State v. Hubbard</u> , 222 N.J. 249 (2015)	20
<u>State v. Johnson</u> , 120 N.J. 263 (1990)	23,24,25,31,39
<u>State v. Knight</u> , 183 N.J. 449 (2005)	29, 35
<u>State v. L.H.</u> , 239 N.J. 22 (2019)	34
<u>State v. Maltese</u> , 222 N.J. 525 (2015)	20,38,39
<u>State v. Miller</u> , 76 N.J. 392 (1978)	19,20
<u>State v. Nyhammer</u> , 197 N.J. 383 (2009)	15,18,20,31,33,34,44,45
<u>State v. Pillar</u> , 359 N.J. Super. 249 (App. Div. 2003)	27
<u>State v. Prall</u> , 231 N.J. 567 (2018)	17
<u>State v. Presha</u> , 163 N.J. 304 (2000)	19,21,37,42
<u>State v. Rivas</u> , 251 N.J. 132 (2022)	18
<u>State v. Roman</u> , 382 N.J. Super. 44 (App. Div. 2005)	25
<u>State v. S.S.</u> , 229 N.J. 360 (2017)	17,18,23,25,26,30
<u>State v. Sims</u> , 250 N.J. 189 (2022)	44,45

State v. Tillery, 238 N.J. 293 (2019) 27

State v. Vincenty, 237 N.J. 122 (2019) 43

State v. Wint, 236 N.J. 174 (2018) 18

Statutes Cited

N.J.S.A. 2A:84A-19 18

N.J.S.A. 2C:5-21

N.J.S.A. 2C:11-3a(1)1

N.J.S.A. 2C:11-3a(2)1

N.J.S.A. 2C:11-3a(3)1

N.J.S.A. 2C:15-2a(1)1

N.J.S.A. 2C:15-2a(2)1

N.J.S.A. 2C:24-4a(2)1

N.J.S.A. 2C:39-4a1

N.J.S.A. 2C:39-5b(1)1

N.J.S.A. 43-6c2

N.J.S.A. 2C:43-7.22

Rules Cited

N.J.R.E. 50318

Counterstatement of Procedural History

On August 31, 2018, defendant Murad S. Lampley¹ was charged in Essex County Indictment No. 2018-8-2747 with the following crimes: first-degree conspiracy to commit murder, N.J.S.A. 2C:5-2, 2C:11-3a(1),(2) (Count One); first-degree murder of Shuri Henry, N.J.S.A. 2C:11-3a(1),(2) (Count Two); second-degree conspiracy to commit carjacking, N.J.S.A. 2C:5-2, 2C:15-2a(1), (2) (Count Three); first-degree carjacking of Henry, N.J.S.A. 2C:15-2a(1) (Count Four); first-degree carjacking of Albida Saldana, N.J.S.A. 2C:15-2a(2) (Count Five); second-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2, 2C:15-1a(1) (Count Six); first-degree felony murder of Henry, N.J.S.A. 2C:11-3a(3) (Count Seven); first-degree robbery of Henry, N.J.S.A. 2C:15-1a(1) (Count Eight); second-degree unlawful possession of a handgun, N.J.S.A. 2C:39-5b(1) (Count Nine); second-degree possession of a handgun for unlawful purposes, N.J.S.A. 2C:39-4a (Count Ten); and third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4a(2) (Count Eleven). (Da1-12).

On November 19, 2018, the State filed a motion for a Miranda² hearing to determine the admissibility of defendant's November 30, 2017 statement to

¹ Co-defendants Supreme Allah and William McCray were charged with defendant in all counts of the indictment.

² Miranda v. Arizona, 384 U.S. 436 (1966).

law enforcement. (Da74). The Honorable Michael L. Ravin, J.S.C., held evidentiary hearings on January 28, February 15, March 18, October 1, and December 9, 2019. (1T, 2T, 4T, 5T).³ On June 7, 2022, Judge Ravin issued an order granting the State's motion to admit defendant's statement for the reasons expressed in his written opinion. (Da73-89).

On March 7, 2023, defendant entered a plea of guilty to second-degree conspiracy to commit carjacking (Count Three), first-degree carjacking (Count Four), second-degree conspiracy to commit robbery (Count Six), first-degree robbery (Count Eight), and second-degree unlawful possession of a handgun (Count Nine). (7T27-8 to 9-28; Da90-97). In exchange for his guilty plea, the State recommended an aggregate sentence of 25 years with an 85% parole disqualifier subject to N.J.S.A. 2C:43-7.2, the No Early Release Act (NERA), and N.J.S.A. 43-6c, the Graves Act, and the dismissal of all remaining charges. (7T28-10 to 23; Da93). The sentence was to run concurrently with the sentence to be imposed on Essex County Indictment No. 17-6-1744. (Da95; 6T9-9 to 20; 7T29-11 to 15; Da95). Defendant reserved the right to appeal the Miranda decision. (7T38-9 to 39-19; Da91).

On April 28, 2023, defendant was sentenced in accordance with the plea agreement to an aggregate term of 25 years with an 85% parole disqualifier, to

³ The State adopts defendant's transcript designation code. See (Dbii).

run concurrently with the sentence imposed on Indictment No. 17-6-1744. (8T26-14 to 29-14). The court found the aggravating factors outweighed the mitigating factors and supported a custodial term toward the higher end of the ordinary range. (8T26-10 to 13). On May 30, 2024, defendant filed an amended notice of appeal. (Da102-106).

Counterstatement of Facts

New Jersey State Police Detective Marcello Pirez was assigned to the Essex County Prosecutor's Office (ECPO) Homicide Task Force in May 2017, and was the lead detective in the homicide investigation into Henry's death on November 23, 2017, during a carjacking and robbery outside her home in Newark. (1T6-20 to 7-4; 1T7-17 to 24; Da60-61). On November 30, 2017, defendant was arrested for a parole violation and was in custody when Detective Pirez and ECPO Detective Wilfredo Perez took a video-recorded statement from him in an interview room at the ECPO Homicide Unit. (1T8-7 to 9-1; 1T13-12 to 17; 1T19-4 to 8). Detective Pirez identified the following exhibits during his testimony: the video recording of defendant's statement marked S-34A (Da13); the transcript of defendant's statement marked S-34B (Da14-56); and three Miranda forms marked S-34C, -34D and -34E (Da57-59). (1T 9-19 to 11-12). He administered Miranda warnings to defendant three times. (1T10-7 to 12).

A. First Interview

Defendant was given something to eat and drink before the interview began. (1T12-1 to 13-6; Da13@ 10:24:53). Detective Pirez informed defendant that he wanted to discuss a homicide occurring on November 23, 2017, at 306 South 20th Street in Newark. The detective wrote the date and current time – 10:26 a.m. – at the top of a Miranda rights and waiver form, which he presented to defendant to follow along with him as he read each right. Defendant initialed each right. (1T13-21 to 16-15; Da13@ 10:25:17-28:56; Da15-16@ 2-20 to 5-12; Da57).

When Detective Pirez asked defendant to read the waiver portion, defendant said, “No. It’s me waiving my right – no.” Pirez asked, “What do you mean by that?”, and defendant replied, “No. I’m going – a lawyer or somebody to speak to. I (indiscernible) – I need a lawyer or somebody.” Detective Pirez asked, “You’re requesting an attorney at this time?” Defendant replied, “Yes” and Pirez responded, “Okay.” (1T16-15 to 17-2 Da13@ 10:28:56-29:22; Da16@ 5-11 to 25). Per the detective’s request, defendant wrote the word “refused” on the signature line of the form. Detective Pirez logged the date and time – 10:30 a.m. – on the form, and he and Detective Perez signed it. The detectives left the interview room. (1T17-3 to 19-3; Da13

@10:29:22-31:00; Da17@6-2 to 7-18; Da57). No one reentered the room. (1T19-9 to 14).

B. Second Interview

About fifteen minutes later, defendant knocked on the door of the interview room. When Detective Pirez entered, defendant said he wanted to speak to the officers again. The detectives reentered the room. (1T19-15 to 20-9; Da76). Detective Pirez stated the date and time – 11:04 a.m. – and said, “Mr. Lampley, you indicated that you wish to speak to us, so we came back in this room to speak to you. Is that correct?” Defendant replied, “Yeah.” The detective asked defendant, “At this time, do you wish to have an attorney present or do you wish to talk to us?” Defendant replied, “Talk – talk to you.” (1T21-8 to 25; Da13@ 11:04:35-05:14; Da17@7-21 to 8-11). Defendant said he had not been threatened or forced to change his mind. (1T22-1 to 14; Da13@ 11:06:46-06:51; Da18@ 8-12 to 9-25).

Detective Pirez filled out the preamble of a new Miranda form at 11:07 a.m., told defendant that questions would concern the November 23, 2017 homicide, and read each Miranda right to him. Defendant answered that he understood each right. He initialed each right on the form. (1T23-16 to 25-17; Da13@ 11:06:59-09:26; Da19-20@10-7 to 12-19; Da58).

Detective Pirez then directed defendant to the waiver portion of the form and offered to read it aloud. Defendant made conflicting comments: “Might have just took my chances now” and “I don’t really want to take my chances.” Pirez said, “Just let me finish this. Okay?”, then read the waiver portion aloud and asked, “Do you understand?” Defendant replied, “Yes.” (1T26-3 to 21; Da13@ 11:09:26-10:24; Da20-21@ 12-21 to 14-12).

Detective Pirez asked defendant to sign the waiver, and Detective Perez explained that his signature was an acknowledgement that “we read this to you. You understood it and – you’re willing to – to answer questions like, ask questions, as well.” Defendant replied: “These are my rights – I’m waiting (sic) my rights”, and “I know what it say.” (1T26-22 to 27-10; Da13@ 11:10:24-10:49; Da21@ 14-13 to 15-4). He then said, “I really want to take my chances, man. I’m tired[,]” then said, “Is this me doing this? This makes me – telling – saying I’m – I was there, everything. I know. No, no. No. I can’t – I can’t – I can’t.” (1T27-15 to 17; Da13@ 11:10:54-11:14; Da21@15-5 to 13).

Detective Perez again explained that they could not ask any questions until the form was completed and that defendant did not have to answer any questions. Defendant made numerous responses: “I was supposed to get questions regardless even this is my Rights. My Rights or not I’m

(indiscernible) the questions regardless”, “they said I got to explain, I got to talk. I don’t have to – I don’t know, man. I can’t – I can’t – I can’t. I’m sorry”, and “I’d rather take my chances. I’d rather take my chances.” (Da13@ 11:11:14-12:22; Da21-22@ 15-14 to 16-23).

Detective Perez explained again that they could not answer questions until defendant waived his rights, and even if he did, he could stop the interrogation at any time. Defendant responded, “Until I waive my rights?” “Then once I waive my rights – I have no – no rights –.” Detective Pirez clarified defendant’s confusion about his waiver of rights by re-reading the waiver. (Da13@ 11:12:38-14:27; Da17-18@ 17-12 to 19-11).

Detective Pirez asked defendant if he had any questions about the form “that I can clarify for you? Because those questions I can answer.” Defendant responded, “I’m – I’m sorry, but – but just take me to the jail, please.” Detective Pirez responded, “Okay. No problem. So, you’re refusing to – you don’t want to speak to us?” Defendant said, “Yeah. I’m sorry, you all. I’m sorry.” (Da13@ 11:14:38-15:39; Da24@ 20-2 to 21-11). Detective Perez asked defendant to write “refused” and the date and time – 11:16 a.m. – on the form. (Da13@ 11:16:10-16:34; Da25@ 22-5 to 17; Da36).

Defendant reinitiated a conversation with the detectives and attempted to explain that he did not want to talk because “I’m placing myself at the scene”,

but the officers told him they could only clarify and answer questions about the form. (Da13@11:16:34-17:23; Da25@ 22-18 to 23-23). Defendant said, “So, basically, I’m being arrested for this and not questioned?” Detective Pirez responded, “Yes. . . . We’re not going to ask you questions –,” and Det. Perez responded, “Right. You’re being charged with homicide.” (Da13@ 11:17:27-17:57; Da25-26@23-24 to 24-4). After the officers again told defendant that they could not ask or answer any questions, the interview ended, and the officers left the room. (Da26@ 24-5 to 18).

C. Third Interview

About forty minutes later, defendant again knocked on the interview room door and told Detective Pirez he wanted to talk. (1T35-22 to 36-2; Da26-27@25-18 to 26-11; Da77). The detective admitted to being “a little bit frustrated” at this point. (1T37-4 to 10). Both detectives reentered the interview room. Detective Pirez filled out and read the preamble of a third Miranda form at 11:55 a.m., and again told defendant that questions would concern the November 23, 2017 homicide. (1T37-11 to 38-24; Da27@26-12 to 27-3; Da59). Detective Pirez read each Miranda right to defendant, who said he understood and initialed them. (1T38-24 to 40-12; Da27-28@ 27-3 to 28-18; Da59). He read the waiver form to defendant and reaffirmed that defendant could stop the questioning at any time. Defendant signed, dated and

logged the time – 11:58 a.m. - on the waiver portion of the form. (1T40-13 to 41-25; Da28-29@ 28-19 to 30-13; Da59). Defendant acknowledged he was not forced or threatened to speak to the detectives. (1T42-1 to 10; Da29@ 30-14 to 24).

Defendant stated during that ensuing interview that on Thanksgiving night, November 23, 2017, he and three other males – one a juvenile - were walking in the area of South Orange Avenue and South 20th Street looking for a car to steal or someone to rob. (1T42-11 to 18; 1T45-3 to 25; 1T51-11 to 16; 1T70-14 to 71-12; Da30@ 31-4 to 9; Da31@ 34-5 to 35-10; Da46@65-5 to 10; Da50@ 73-7 to 75-7). They spotted a woman removing bags from her red Jeep. She was with a child. (1T46-13 to 25; Da31-32@ 35-24 to 36-18; Da35@ 42-16 to 23).

One of defendant's companions handed him a handgun when they spotted the woman. (1T69-1 to 70-4; Da47-49@ 67-21 to 70-24). Defendant pointed it at the woman and demanded money. (Da46@ 65-8 to 24). Defendant told the woman, "Miss, easy." (Da39@ 50-3 to 8). When the woman took too long to comply with their demand, another assailant grabbed the gun from defendant and directed the other two males to "grab the stuff." The juvenile grabbed the woman's pocketbook. (Da39@ 50-10 to 13; Da50-51@ 72-24 to 74-7). The woman was very nervous as she tried to remove her

house keys from her key chain. The gunman said something to her because she was not acting quickly enough. The woman panicked and pressed the car alarm button on her key fob, and the armed assailant shot her. Defendant heard the woman scream and saw her fall onto the house steps. (Da35@ 43-15 to 19; Da41@ 54-6 to 19; Da42-46@ 57-19 to 64-15). Defendant jumped into the back seat of the Jeep and the foursome drove off toward Central Avenue. Defendant was dropped off near the Georgia King Village and went home. (Da33-34@ 39-3 to 41-19; Da51-52@ 75-17 to 76-14).

Defendant asked for a bathroom break, and Detective Pirez said, “Give me a couple of minutes, I’ll let you use the bathroom. Okay?” The two detectives exited and re-entered the room. After answering a few follow-up questions about his Facebook page, defendant stated, “Can I stop – can I stop this here and just erase the whole thing, please? Oh man[,]” and “I just want to stop the whole thing.” (Da53-54@ 78-10 to 80-7). Detective Pirez asked defendant several times if he wished to “stop talking now.” Defendant made various responses that, “Yeah. I want to stop the whole – statement[,]” “I want to delete everything[,]” and “I was lying.” (Da54-55@ 80-21 to 82-21). Detective Pirez concluded the statement at 12:45 p.m., without asking any additional questions about the case, at which time defendant stated, “I’m intoxicated. Under the influence.” (Da55@ 82-22 to 83-5).

Detective Pirez testified at the Miranda hearing that defendant was calm and talkative throughout most of the interrogation. No one made any promises to him in exchange for his statement or forced or coerced him to make a statement. (1T79-20 to 80-18). Prior to the first interview, Detective Pirez entered the interview room, introduced himself, told defendant he would be returning to speak with him, and asked defendant if he needed anything. Defendant asked for some food, which the detective delivered to him. These brief interactions were not recorded. No other conversations occurred until Detective Pirez reentered the room and the recording began. (2T7-10 to 11-8; Da13@ 10:24:59). He had brief unrecorded conversations with defendant when defendant knocked on the door and said he wished to give a statement prior to the second and third interviews. (2T24-15 to 25-24; 2T26-21 to 27-18; 2T32-13 to 16; 5T24-9 to 25-25; 5T35-25 to 36-14). The detective opined based on his training and experience that defendant did not appear to be under the influence of drugs or alcohol when he gave his statement. (2T33-25 to 34-7).

Detective Pirez testified that he never told defendant during the second interview that he was being charged with homicide. The detective did not intend to seek a homicide charge against defendant irrespective of whether he gave a statement. It was only after the third interview, after defendant made

an inculpatory statement, that a homicide charge was authorized by the prosecutor. (2T20-25 to 23-19).

D. Trial Court's Ruling

The trial court granted the State's motion to admit defendant's November 30, 2017 statement to law enforcement. (Da88-89). The judge found Detective Pirez was a credible witness based on his tone and demeanor. "His testimony was consistent throughout, reasonable, and he spoke in a clear, calm voice." (Da76). He further found that defendant was in custody at the time of the interrogations, and Miranda warnings were required. (Da77).

As to the first interrogation, the judge found that defendant invoked his right to counsel during the Miranda waiver process and the detectives "scrupulously honored" that right by properly ending the interrogation. (Da81-82, citing State v. Chew, 150 N.J. 30, 61 (1997)).

About fifteen minutes later, defendant knocked on the door of the interview room door and told Detective Pirez that he wished to speak to him. (Da81). At 11:04 a.m., Detectives Pirez and Perez entered the room, and defendant initiated an exchange with the officers when he confirmed that he wanted to speak with them. (Da81-82). Detective Pirez properly read defendant the Miranda warnings and the waiver from the form. However, defendant's initiation of an exchange did not constitute a knowing, intelligent

and voluntary waiver of his rights because defendant made an equivocal invocation of his right to remain silent during the Miranda waiver process. (Da82). While going through the Miranda form, defendant stated, “They said I got to explain, I got to talk. I don’t have to – I don’t know, man. I can’t – I can’t – I can’t. I’m sorry. I can’t – I can’t – I can’t. I’d rather take my chances. I’d rather take my chances.” (Da83). “Defendant’s words reflected an ambiguous intent to invoke his right”, and the detectives were permitted to ask him questions to clarify his intent. (Ibid., citing State v. Diaz-Bridges, 208 N.J. 544, 565 (2011)). The detectives’ questions could “reasonably be interpreted as attempting to figure out whether Defendant was willing to talk once detectives answered his questions, or if Defendant simply wanted to stop talking completely.” (Ibid.).

Defendant again invoked his right to remain silent with ambiguous words when he said, “I’m sorry, but – but just take me back to the jail, please.” (Ibid.). Detective Pirez properly asked defendant, “So you’re refusing to – you don’t – you don’t want to speak to us?”, and defendant said, “Yeah. I’m sorry, you all. I’m sorry.” The detectives said, “You don’t want to make a statement? You don’t want to speak to us, right? As far as the case? Okay. So, all right. So, if you could just put, you know, on this form, as well, like you did last time just refused.” (Da83-84). Defendant then asked the detectives,

“so basically, I’m being arrested for this and not questioned?” The detectives responded, “Right. You’re being charged with homicide. We’re not going to ask you questions in reference to anything like that, you know, because you elected not to, you know, not to do so. We respect that, obviously. And that’s your right.” The interview was properly concluded. (Da84).

As to the third interview, the judge found that Sims’ bright-line rule, requiring an officer to inform a suspect about any charges against him prior to interrogation, did not apply here because no complaint-warrant or arrest warrant had been filed against defendant as to the carjacking, homicide and weapons charges at the time of the interrogation. (Da85-86, citing State v. Sims, 250 N.J. 189, 213 (2022)). The judge noted that defendant conceded this fact in his brief. (Da86). Instead, the totality-of-the-circumstances test applied to determine whether defendant knowingly, intelligently and voluntarily waived his Miranda rights. (Da84-85, citing id. at 211). The judge found that defendant had properly waived his rights under the later test and that his statement was admissible. (Da88).

The facts demonstrated that defendant again knocked on the interview room door around 11:45 a.m., about twenty minutes after the second encounter ended, and again asked to speak with the detectives. (Da84). Detective Pirez properly read defendant his Miranda rights and the waiver. The detective

informed defendant, “I am going to ask certain questions regarding a homicide that occurred on 11/23/17 at 306 South 20th Street in Newark, New Jersey.” (Da86). Defendant initialed each right, signed the waiver and did not invoke his right to remain silent. (Da84-85). The detectives were not required to tell defendant that he was a suspect prior to his waiver. (Da86-87, citing State v. Nyhammer, 197 N.J. 383, 405-06 (2009)). However, defendant was aware of his “true status” as a homicide suspect based on the circumstances of the interrogation, including that he was told he was being charged with homicide, even though no complaint-warrant or arrest warrant had yet been issued. (Ibid.).

The detectives did not ask defendant whether he could read and write English⁴, but there was no evidence in the record showing or suggesting defendant did not understand the Miranda form or the detective’s words. (Da87). There was no evidence that defendant was under the influence of drugs or alcohol during the interrogation. The trial court found defendant’s outbursts at the very end of the third interrogation that, “I’m intoxicated. I’m under the influence[,]” were not credible. The statement was made “at the end of an almost hour-long interrogation during which he made no other indication

⁴ At the first interview, Detective Pirez asked defendant, “You read English?”, and defendant responded, “Yes.” (Da15@ 3-1 to 3).

that he was intoxicated.” (Da87). Also, immediately before this declaration, defendant said, “I want to delete the whole – the thing I just said. I want to delete everything. That whole thing, I was just lying.” (Da87). These statements suggested “[d]efendant had regrets about his decision to speak to the police at the end of his statement and was making any attempt to discredit the statement he gave, rather than actually being under the influence.” (Da87). There was no evidence that defendant “had a diminished mental capacity, was of below-average intelligence, or was suffering from a mental illness.” (Da87). Defendant was 26 years old and had previous encounters with the criminal justice system as evidenced by his three prior criminal convictions. (Da87-88). See also (8T24-1 to 4).

Legal Argument

Point I

The Detectives Scrupulously Honored Defendant’s Right to Remain Silent During the Second Interview and Defendant Knowingly, Intelligently and Voluntarily Waived His Miranda Rights and Gave a Statement of His Own Free Will During the Third Interview.

Defendant’s remarks during the second interview, after the Miranda rights and waiver were read to him, were reasonably interpreted by the officers as ambiguous or equivocal requests to remain silent requiring clarification. After asking limited follow-up questions, the detectives scrupulously honored

defendant's right to remain silent by ending the interview. Defendant did not sign the waiver, orally waive his rights or make a statement. At the third interview, after reinitiating a conversation with the officers and receiving fresh Miranda warnings, defendant signed the waiver and confessed to his involvement in the crimes. The State met its burden to prove beyond a reasonable doubt that the officers properly honored defendant's right to remain silent at the second interview, that defendant made a knowing, intelligent, and voluntary waiver of his rights at the third interview, and that his statement was admissible under the totality of the circumstances. The trial court's decision to admit defendant's statement, following an evidentiary hearing, was a proper exercise of its discretion and should now be affirmed.

“[T]he decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion.” State v. Prall, 231 N.J. 567, 580 (2018) (citation omitted). The reviewing court should defer to the trial court's factual findings based on its opportunity to hear and see the witnesses, review video evidence and its feel for the case. State v. S.S., 229 N.J. 360, 374 (2017). It should uphold those findings based on sufficient, credible evidence in the record unless they are “so clearly mistaken that the interests of justice demand intervention and correction.” Ibid. (citation omitted). The appellate court must not disturb the trial court's factual findings even if it might have reached

a different conclusion. State v. Erazo, 254 N.J. 277, 297 (2023). The validity of the defendant's waiver or the voluntariness of his confession are legal questions and are reviewed de novo. State v. Rivas, 251 N.J. 132, 152 (2022).

Here, deference is owed to the trial court's factual findings because they are based on sufficient, credible evidence in the record. In addition, the court properly applied those facts to the law, and correctly concluded that defendant's right to remain silent was scrupulously honored at the second interview and that he made a valid waiver of his Miranda rights and a voluntary confession at the third interview.

"The right against self-incrimination is guaranteed by the Fifth Amendment to the United States Constitution and this state's common law, now embodied in statute, N.J.S.A. 2A:84A-19, and evidence rule, N.J.R.E. 503." S.S., 229 N.J. at 381-82 (quoting Nyhammer, 197 N.J. at 399). Miranda warnings are "safeguards to . . . counteract the inherent psychological pressures that might compel a person subject to custodial interrogation to speak when he would not otherwise do so freely." Rivas, 251 N.J. at 153 (quoting State v. Wint, 236 N.J. 174, 193 (2018) (quoting Miranda, 384 U.S. at 467, 479)).

Due process requires the State to prove beyond a reasonable doubt that the suspect's waiver of his rights was "knowing, intelligent, and voluntary in

light of all of the circumstances” before his incriminating statement may be admitted. State v. Presha, 163 N.J. 304, 313 (2000). “At the root of the inquiry is whether a suspect’s will has been overborne by police conduct.”

Ibid.

In determining whether defendant’s statement is a product of free will, the court applies a totality of the circumstances test and considers factors such as “the suspect’s 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.” Ibid. (quoting State v. Miller, 76 N.J. 392, 402 (1978)). A defendant’s prior experience with the criminal justice system is also a factor. Ibid. The court may also consider the demeanor and conduct of defendant and the officers as seen in the video recording. State v. A.M., 237 N.J. 384, 400-01 (2019). These factors are assessed “qualitatively, not quantitatively.” State v. Hreha, 217 N.J. 368, 384 (2014).

“The [totality] inquiry also considers statements and behaviors by the police which tend to contradict the Miranda warnings, or otherwise render them ineffective.” Erazo, 254 N.J. at 301. The question is whether the suspect’s decision to confess resulted from a change of mind or police tactics that overbore his will. State v. Galloway, 133 N.J. 631, 655 (1993). “Efforts

by a law enforcement officer to persuade a suspect to talk ‘are proper as long as the will of the suspect is not overborne.’” State v. Maltese, 222 N.J. 525, 544 (2015) (quoting Miller, 76 N.J. at 403). A police officer’s “use of a psychologically-oriented technique during questioning is not inherently coercive.” Galloway, 133 N.J. at 654. Likewise, “the use of misleading or incomplete statements do not per se preclude a finding of voluntariness.” Chew, 150 N.J. at 66. However, evidence of physical coercion, threats or trickery will likely render a waiver involuntary. See Nyhammer, 197 N.J. at 407; Galloway, 133 N.J. at 654.

A. Defendant was in Custody at the Time of the Three Interviews and Was Properly Given Miranda Warnings on Each Occasion.

The State agrees that defendant was in custody at the time of the November 30, 2017 interviews because he was under arrest for a parole violation, and was thus subject to custodial interrogation, requiring Miranda warnings, as the trial court found. (1T19-4 to 8; Da75, 77). See State v. Hubbard, 222 N.J. 249, 265-66 (2015).

The evidence establishes that the detectives correctly informed defendant of his Miranda rights during all three interviews (Da15-16@ 3-12 to 5-12; Da19-20@ 10-7 to 12-19; Da27-28@ 26-12 to 28-18; Da57-59), that the waiver was correctly read to him at the commencement of the second and third interviews, and that he signed the waiver before interrogation began at the

third interview (Da20-21@ 13-24 to 14-10; Da28-29@ 28-19 to 30-8).

Defendant does not contend that the warnings and waiver were not appropriately given. Rather, he asserts that his waiver of rights at the third interview was invalid, and his inculpatory statement inadmissible, because the officers failed to honor his expressed right to remain silent and coerced him to waive his rights at the third interview by misrepresenting his “true status” during the second interview. See (Db, Point I, subpoints B and C). As argued post, the State met its burden to prove beyond a reasonable doubt that defendant’s right to remain silent was scrupulously honored at the second interview, and that he knowingly, voluntarily and intelligently waived his rights and made an admissible confession at the third interview. Presha, 163 N.J. at 313.

B. After Clarifying Defendant’s Intention to Remain Silent, the Officers Scrupulously Honored That Right by Terminating the Second Interview Without Obtaining His Waiver or Taking a Statement. Thereafter, Defendant Reinitiated the Conversation with the Officers, Was Given Fresh Miranda Warning, Waived His Rights and Gave an Inculpatory Statement at the Third Interview That Was Properly Ruled Admissible.

Defendant argues that the detectives twice ignored his clear invocation of his right to remain silent during the second interview and their repeated violations of his right to silence tainted “his subsequent statements – including those during his third interrogation.” (Db17). However, defendant never made an incriminating statement during the second interview that the State

sought to use, as defendant suggests. The State's Miranda motion concerned only defendant's statement at the third interview, as evidenced by the trial court's order. See (Da88) ("Defendant's November 30, 2017 statement, which constitutes his third interview with detectives, starting at 11:55 A.M., shall be admitted.") (emphasis added). So, the question on appeal concerns only the admissibility of defendant's confession at the third interview.

"[T]he admissibility of statements made after an accused invokes his right to remain silent depends on the resolution of two separate issues: first, was the right scrupulously honored; and second, was the waiver knowing, intelligent and voluntary?" State v. Fuller, 118 N.J. 75, 84 (1990) (citing State v. Hartley, 103 N.J. 252, 262 (1986)). The answer to the first question is yes. The totality of the circumstances of the second interview establishes beyond a reasonable doubt that Detectives Pirez and Perez scrupulously honored defendant's right to remain silent by ending questioning when he asserted that right. The officers did not pressure, coerce, or trick defendant into waiving his rights and defendant's will was not overborne. Nothing that occurred during the second interview tainted defendant's decision to reinitiate a conversation with the officers, and after receiving fresh Miranda rights, to validly waive those rights and confess at the third interview.

Miranda requires that “at any time prior to or during questioning, [a suspect] wishes to remain silent, the interrogation must cease.” 384 U.S. at 474. “Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been invoked.” Ibid. If defendant’s invocation of his right to remain silent is clear and unambiguous, the interrogating officers must scrupulously honor it. Diaz-Bridges, 208 N.J. at 564 (citing State v. Johnson, 120 N.J. 263, 281 (1990)).

“Law enforcement officials, however, are not obliged to accept any words or conduct, no matter how ambiguous, as a conclusive indication that a suspect desires to terminate questioning.” State v. Bey II, 112 N.J. 123, 136 (1988). When a suspect’s invocation is equivocal or ambiguous, “leaving the investigating officer ‘reasonably unsure whether the suspect was asserting that right,’” the officer is permitted to clarify his words or acts. Diaz-Bridges, 208 N.J. at 564-65 (quoting Johnson, 120 N.J. at 283). The officer “must cease questioning and ‘inquire of the suspect as to the correct interpretation.’” S.S., 229 N.J. at 382-83 (quoting ibid.). “[I]f the [suspect’s] statements are so ambiguous that they cannot be understood to be the assertion of a right, clarification is not only permitted but needed.” State v. Alston, 204 N.J. 614, 624 (2011). Questioning by police in an effort to clarify whether the suspect is

asserting his Miranda rights is not considered “interrogation” under Miranda, because it is not intended to elicit an incriminating response from the suspect. Johnson, 120 N.J. at 283 (citations omitted). But questions designed to keep the suspect talking, rather than clarify his words and uphold his right to remain silent, are considered unlawful interrogation. Id. at 283-84.

The term “scrupulously honored” also requires that law-enforcement authorities, at a minimum, readminister the Miranda warnings before they initiate a second interview. Hartley, 103 N.J. at 256. The issuance of fresh Miranda warnings is considered in conjunction with all other relevant factors in assessing whether the right to silence was scrupulously honored. Fuller, 118 N.J. at 84.⁵

The question of whether the officers could have reasonably concluded that the suspect had invoked his right to remain silent requires a fact-sensitive analysis based on the totality of the circumstances. Diaz-Bridges, 208 N.J. at 565. The suspect’s words, actions and behavior inform the inquiry. Ibid. Those words should not be viewed in a vacuum, but in “the full context in

⁵ Hartley’s “bright-line” rule requiring re-administration of Miranda warnings when police reinitiate interrogation would not apply here because defendant, not the officers, reinitiated further conversation. Fuller, 118 N.J. at 83. So, defendant’s reinitiation of the conversation and the added precaution of third Miranda warnings weigh heavily in favor of a finding that defendant’s rights were scrupulously honored.

which they were spoken.” S.S., 229 N.J. at 382 (quoting State v. Roman, 382 N.J. Super. 44, 64 (App. Div. 2005)). Where a suspect’s response “could be construed as an expression of either emotional reluctance to admit guilt or the desire to cut off questioning”, officers are permitted to ask clarifying questions. Johnson, 120 N.J. at 284. See id. (defendant’s repeated responses, “I can’t talk about it”, during questioning about the crime were sufficiently ambiguous to permit officer clarification). An emotional reaction to questioning may be a defendant’s recognition of “the enormity of the crime” and not an invocation of the right to silence. Diaz-Bridges, 208 N.J. at 568. See State v. Cook, 179 N.J. 533, 563 (1990) (where the trial court found defendant’s emotional distress during questioning seemed “more related to the horrible things he was admitting to than to anything else.”). Other factors that may be considered in the balance are whether the interrogation immediately ended, the time between the first and second interrogations, the readministering of fresh warnings, and whether the subject matter of the first and second interrogation related to different crimes. See Hartley, 103 N.J. at 265 (citing Michigan v. Mosley, 423 U.S. 96, 105-06 (1975)).

Here, defendant unreasonably parses the parties’ every word and sentence during the second interview and considers them in a vacuum, rather than in the context of the overall conversation in which they were said. See

S.S., 229 N.J. at 382. The totality of defendant's words, actions and behavior showed "[d]efendant did not clearly say that he wished to remain silent[,]" as the trial court found. (Da83). Thus, the detectives were permitted to ask questions to clarify defendant's intent while continuing to remind him that he did not have to answer their questions, and that they could only answer his question about the Miranda form and could not ask or answer specific questions about the case until he waived his rights. S.S., 229 N.J. at 383. A review of the video recording shows the officers were calm and polite at all times and their tone was normal and matter of fact.

After about fifteen minutes, defendant knocked on the door of the interview room and told Detective Pirez he wished to speak to him again. (1T20-5 to 21-19). The recording began with defendant's acknowledgement that he made a voluntary decision to speak with the officers, had not been threatened or promised anything for his statement, and did not want an attorney. (Da13@ 11:04:28-05:28; Da18@8-2 to 19-25). Defendant's words and behavior as seen on the video recording show he was calm and respectful and spoke in a quiet tone, but at times struggled with his emotions. Defendant held his hand over his face and said, "Oh my God, man. Man – man --," "I just feel sorry for the --", as he affirmed his wish to speak with the officers. His arms are folded, and his head is down. When Detective Perez suggested "you

struggling with a – the fact that something happened”, defendant nodded. (Da13@ 11:05:28-05:55; Da18-19@ 9-1 to 10-2). Detective Pirez read defendant his rights from a new Miranda form. Defendant said he understood them and readily initialed each one. (Da13@ 11:06:55-09:26; Da19-20@ 10-7 to 13-1; Da58).

Defendant knew from the first interview that his words were being recorded, contrary to his assertion. (Db25-26). Detective Pirez said the words “for the record” in his preliminary statement (Da13@ 10:25:15-25:17; Da15@2-4 to 19), and defendant understood that “anything you say can be used against you in a court of law” (Da19@ 11-10 to 16; Da58). Defendant’s prior involvement with the criminal justice system also suggested he was not “unsophisticated in criminal investigations or interactions with police” and understood the interrogation was being recorded. State v. Tillery, 238 N.J. 293, 308-09 (2019). Detective Pirez truthfully told defendant that he was using his cell phone to log the time on the waiver form, not to record the interview, and no evidence contradicts his words. (Da13@ 11:12:28-12:39; Da22@ 17-2 to 11). The detectives never stated or implied that the interview was “off the record”, or that defendant’s statement could not be used against him. See (Db26). Cf. State v. Pillar, 359 N.J. Super. 249, 272-73 (App. Div. 2003) (where the officer’s agreement to speak “off-the-record” with defendant

following Miranda warnings may have mislead him to believe his statements would not be recorded and used against him).

When presented with the waiver and before reading it, defendant made conflicting statements, “Might have just took my chances now[,]”, and immediately, “I don’t want to take my chances.” Defendant is bent forward with his head down and his hand covering his face. Detective Pirez was reasonably confused by defendant’s words and responded, “we can’t talk about – until I read this. Okay?” and “Just let me finish this. Okay?” (Da13@ 11:09:33-09:55; Da20@13-2 to 23). Detective Pirez read the waiver and defendant responded, “Yes”, to acknowledge he understood it. On the video recording defendant is heard to say, “These are my Rights – I’m waiving my rights[,]”and “I know what this say.” (Da13@ 11:09:55-10:44; Da20-21@ 13-24 to 14-24).

Detective Perez did not misrepresent the implication of defendant’s signature on the form. (Db20). He correctly explained that by signing the waiver, defendant was affirming that “we read this to you. You understood it and – and you – you’re willing to – to answer questions like, ask questions, as well.” (Da21@ 14-25 to 15-2) (emphasis added). Defendant understood based on the officers’ explanations of his rights and the waiver, all of which were written on the Miranda form in front of him, that by signing he was waiving

the rights he had just acknowledged and initialed. Cf. Hartley, 103 at 258 (where the “waiver of rights” form, unlike the present form, did not advise the suspect of his right to have an attorney present and to stop answering questions at any time). See (Db20).

Defendant responded to Perez’s explanation, “I really want to take my chances, man. I’m tired[,]” then immediately stated, “Is this me doing this? This makes me – telling – saying I’m – I was there, everything. I know. No, no. No. I can’t – I can’t –.” (Da13@ 11:10:45-11:13; Da21@15-5 to 13). Defendant’s statement “I can’t”, after stating he felt “sorry” for the victim, along with his anguished tone, covering his face and head-in-hands gesture as seen on the video, could reasonably be interpreted as emotional distress and ambivalence about admitting to his involvement in the crimes, not a request to remain silent. (Da13@ 11:10:55-11:13). See Diaz-Bridges, 208 N.J. at 568; Cook, 179 N.J. at 563.

The detectives did not prod, cajole or pressure defendant to explain what he meant when he said, “This makes me . . .telling . . . I was there, everything”, or to try to keep him talking in hopes that he would make a confession. See State v. Knight, 183 N.J. 449, 468-70 (2005). Detective Perez again explained correctly and truthfully: “If you don’t want to answer any of the questions that we’re asking you, that’s your option. That’s fine. But, we

also can't ask you any questions regarding the incident until we get through this form." (Da13@ 11:11:15-11:30; Da21@ 15-16 to 20) (emphasis added). See S.S., 229 N.J. at 383 (officers may ask only those questions necessary to clarify defendant's intent to remain silent). Defendant did not "let the cat out of the bag" when he made the comment about "telling . . . I was there. . . ." See State v. Carrion, 249 N.J. 253, 275-76 (2021) (once a suspect "let[s] the cat out of the bag by confession, no matter what the inducement, he is never thereafter free of the psychological and practical disadvantages of having confessed."). He knew he was a suspect in the homicide and he chose not to speak about it. The officers did not press him to explain or attempt to reinitiate a discussion with him after he invoked his right to silence. Thereafter, defendant, not the officers, sought out the officers and restarted the third conversation.

Defendant again made several completely ambivalent and confusing statements. He stated, "I was supposed to get questions regardless even this is my Rights. My Rights or not I'm (indiscernible) the questions regardless[,]"" "they said I got to explain, I got to talk. I don't have to – I don't' know, man. I can't – I can't – I can't. I'm sorry[,]"" and I can't – I can't – I can't. I'd rather take my chances. I'd rather take my chances." Defendant is seen placing his hands on his head and his voice sounded emotional. (Da13@ 11:11:48-12:22; Da22@ 16-8 to 23). Again, these statements were more an

expression of emotional reluctance, rather than an invocation of silence. See Johnson, 120 N.J. at 284 (defendant repeated responses, “I can’t talk about it” could have been emotional reluctance to admit guilt, so clarification was needed).

The detectives continued to correctly and truthfully inform defendant numerous times that they could not ask or answer any questions related to the investigation until he waived his Miranda rights. See e.g., (Da21@ 15-19 to 20 (“We can’t answer questions – until we finish this.”) and (Da24@ 20-5 to 20) (“So, as far as this goes, do you have any questions about this [form] that I can clarify for you? Because those questions I can answer.”). These questions did not constitute “interrogation” under Miranda because they were not intended to elicit an incriminating response from defendant. Johnson, 120 N.J. at 283. Further, the officers were not required to supply defendant with information about the investigation or the possible subjects of questioning before he waived his rights “to help him calibrate his self-interest in deciding whether to speak or stand by his rights. . . .” Nyhammer, 197 N.J. at 406 (citing Colorado v. Spring, 479 U.S. 564, 575 (1987)). Their repeated, frank assertions were not coercion, trickery or deception that overbore defendant’s will. Id. at 406-07 (citing ibid.). Defendant understood that the detectives

could not talk about the investigation until he waived his rights. (Da23@ 19-13 to 25).

Defendant appeared to understand no conversation about the incident would happen “[u]ntil I waive my rights?”, but made further ambiguous statements when he said, “then once I waive my rights – I have no – no rights to –.” To clarify, Detective Pirez re-read the waiver to him, “so just to make sure of your understanding.” (Da13@ 11:13:24-14:20; Da23@ 18-8 to 19-14). The detectives explained again that they could only answer questions about the form, stating, “Those questions I can answer” and “I can try to clarify that.” (Da13@ 11:14:20-15:27; Da23-24@ 19-15 to 21-1).

The trial court found that defendant’s response, “I’m -- I’m sorry, but -- but just take me to the jail, please”, was an ambiguous assertion of his right to remain silent and that the officers asked proper clarifying questions. (Da83-84). Pirez said, “Okay. No problem. So, you’re refusing to – you don’t – you don’t want to speak to us?” and defendant responded, “yeah. I’m sorry, you all. I’m sorry.” After again asking, “so, you don’t want to make a statement? Okay[]”, Detective Pirez asked defendant to write the word “refused” on the form and gave him the time – 11:16 a.m. – and the date. The detectives ceased all questioning. (Da13@ 11:15:27-16:36; Da24-25@ 21-2 to 22-17; Da58).

The trial court correctly found that the detectives “scrupulously honored” defendant’s right to silence by ending the interview at this point. (Da84).

Although the officers said nothing further, defendant reinitiated the conversation by attempting to explain his decision to remain silent: “I’m not talking about – saying like, go into detail – but, I’m saying if I do that . . . I’m basically, I’m placing myself at the scene.” Both officers honored defendant’s right to silence by telling him that they could not talk to him about the case. (Da13@ 11:16:36-17:20; Da25-26@ 22-18 to23, 24-5 to 25-14). “This is not a case . . . where the police failed to honor a decision of a person in custody to cut off questioning, either by refusing to discontinue the interrogation upon request or by persisting in repeated efforts to wear down his resistance and make him change his mind.” Mosley, 423 U.S. at 105-06.

Defendant knew he was a suspect in the homicide investigation because Detective Pirez told him three times at the commencement of each interview that he was being questioned about it. See Nyhammer, 197 N.J. at 407-08. “Miranda warnings themselves strongly suggest, if not scream out, that a person is a suspect. . . . [as is] the nature of police questioning. . . .” Ibid. So, his question, “So, basically, I’m being arrested for this and not questioned?” and Detective Perez response, “Right. You’re being charged with homicide[]” did not reveal any shocking information that overbore defendant’s will after he

invoked his right to silence at the second interview.⁶ (Da25-26@ 23-24 to 24-4). Defendant's knowledge about his suspect status was simply another factor that tipped the totality assessment in the State's favor. Id. at 407. (Da83-84). In addition, Detective Pirez responded simultaneously with Detective Perez's remark, "Exactly. We're not – we're not going to ask you questions – in reference to anything or do anything like that, you know, because you elected not to, you know, not to do so. We respect that, obviously. And – and that's your Right." (Da26@ 24-5 to 11). Also, criminal charges were authorized only after defendant made an inculpatory statement at the third interview. (2T20-25 to 23-19).

The totality of the circumstances shows beyond a reasonable doubt that after clarifying defendant's intention to remain silent, the officers scrupulously honored that right by ending the interview after less than fifteen minutes. Fuller, 118 N.J. at 79. Defendant was given food and drink and was not handcuffed. He appeared calm and spoke in a normal tone. The officers asked limited questions directed to discovering defendant's true intention. They did not overbear defendant's will through threats of violence, psychological pressure, false promises, deceit or trickery. State v. L.H., 239 N.J. 22, 44-45 (2019); Nyhammer, 197 N.J. at 407. Defendant exercised his right to remain

⁶ This issue is more fully addressed at Subpoint C, post.

silent and chose not to sign the waiver or make a statement. And as noted ante, the State did not seek to admit defendant's volunteered comments after he invoked his right to silence at the second interview. See (Da88).

Finally, the officers' readministering of Miranda warnings - forty minutes after the second interview ended, after defendant reinitiated a conversation and before he was interviewed a third time - was further substantial evidence that defendant's right to remain silent was honored at the second interview and in no manner was the third interview tainted. Hartley, 103 N.J. at 256.

The second question, "was the waiver knowing, intelligent and voluntary?" must also be answered affirmatively. Fuller, 118 N.J. at 84 (citing Hartley, 103 N.J. at 262). As argued ante, the court looks at the totality of the circumstances to decide whether a statement was voluntary, "including the characteristics of the defendant and the nature of the interrogation." Knight, 183 N.J. 462 (quoting Galloway, 133 N.J. at 654). The court considers factors such as defendant's age, education, and intelligence, advice as to Miranda rights, length of detention, repetition and length of questioning, physical punishment and mental exhaustion. Id. at 462-63 (citing ibid.). Here, the trial court correctly found that the State had proven beyond a reasonable doubt that

defendant made a valid waiver of his rights and his inculpatory statement was admissible based on a totality of the circumstances. Id. at 462.

As argued, defendant restarted a third conversation with the officers forty minutes after second interview ended. Defendant responded “yes, yes”, to Detective Pirez’s questions “Do you want to speak to us now? Is that what you want to do?” (Da13@ 11:54:53-55:36; Da27@ 26-1 to 11). His affirmative response “leave[s] no doubt that he was inviting discussion” about the homicide. Fuller, 118 N.J. at 82.

Before defendant was again informed that questioning would concern the homicide, Detective Pirez said for the third time, “I am going to ask certain questions regarding a homicide that occurred on 11/23/17 at 306 South 20th Street in Newark, New Jersey.” (Da13@11:55:38-11:56:21; Da29@ 30-7 to 13). The detective read defendant his rights from a new Miranda form, and defendant said he understood them, initialed them and asked no questions about them. The detective read the waiver to defendant and told defendant he could stop the questioning at any time. Defendant signed the waiver at 11:58 a.m. (Da13@ 11:55:58-59:28; Da27-29@ 26-12 to 30-13). He confirmed that he wished to talk with the officers and had not been threatened, beaten or forced to speak. (Da13@ 11:59:28-59:56; Da29@ 30-14 to 24). He then confessed to his participation in the robbery, carjacking and homicide.

Defendant was 26 years old at the time of the interrogation. He acknowledged during the first interview that he could read English. (Da15@ 3-1 to 3; Da87). He was not handcuffed at any time during the three interviews and was given food and something to drink. The entire interview lasted about 50 minutes. The officers were calm and polite, and spoke in normal, matter-of-fact tones. Defendant was at times upset while recounting the crime, but he was at all times respectful and spoke in a normal tone. His waiver of his Miranda rights was knowing, intelligent and voluntary in light of all the circumstances. Presha, 163 N.J. at 313.

The interrogation ended when defendant stated that he wished to stop, “Can I stop -- can I stop this here and just erase the whole thing, please?” The detectives did not ask any further questions after clarifying defendant’s assertion of silence. (Da54-55@ 80-6 to 82-25). Defendant’s outbursts at the end, “delete the whole thing”, “I was lying”, and “I’m intoxicated. Under the Influence”, were simply expressions of “regret[] about his decision to speak to the police at the end of the statement and [he] was making any attempt to discredit the statement he gave. . . .” (Da87). The trial court properly found these remarks were not credible. (Ibid.).

Defendant contends that his confession at the third interview, irrespective of his reinitiation and waiver of rights, was irreparably tainted by

the circumstances of the second interview and therefore fails to pass muster under the “fruits of the poisonous tree” test. (Db35-39). As argued ante, the totality of the circumstances of the second interview establishes otherwise.

Moreover, because defendant invoked his right to silence and did not make a statement at the second interview, the “fruits” analysis does not apply here. See Hartley, 103 N.J. at 283 (factors in the “fruits” analysis include “the time between confessions . . . [and] the effect of his having previously made a confession. . . .” (emphasis added)). For example, Hartley dealt with the admission of defendant’s two statements. In Hartley, defendant’s confession to a federal agent, who failed to readminister Miranda rights after defendant invoked his rights in an earlier interview, and his statement to State officials, who readministered warnings, were both found inadmissible. 103 N.J. at 258-59. The Supreme Court held that the “federal” statement was inadmissible because of the failure to give renewed warnings, and the “State” statement was inadmissible because the federal authorities failed to scrupulously honor defendant’s earlier invocation of silence. Id. at 256. Like Hartley, Maltese involved two statements as well - defendant’s surreptitiously recorded statement to his uncle, with whom he asked to speak before continuing with the interrogation, and his later confession to police after Miranda warnings were readministered. 222 N.J. at 534-38. The Court suppressed both

statements. Id. at 532. Finally, in Bey I, the Court found inadmissible defendant's oral and written confessions, made after defendant invoked his right to silence, because investigators continued to question him "as if nothing happened." 112 N.J. 45, 52-53, 68 (1988). Stated simply, the voluntariness of defendant's confession at the third interview cannot be assessed for taint against an earlier invocation of silence. For this reason, defendant's reliance on Hartley, Maltese and Bey I, is misplaced.

Even if the "fruits" test were to somehow apply here, it was not met because defendant's confession was "sufficiently independent to dissipate the taint of their illegal conduct." Johnson, 118 N.J. at 653. Relevant factors are "the time between confessions, any intervening circumstances, whether there was a change in place, whether defendant received an adequate warning of his rights, whether the defendant initiated the second confession, the effect of his having previously made a confession, and the purpose and flagrancy of police misconduct." Hartley, 103 N.J. at 283 (citation omitted). First, there was no "time between confessions" because no confession was elicited at the second interview and there was no "effect of defendant having previously confessed." Ibid. Defendant received proper Miranda warnings at the second and third interviews. Once defendant unequivocally asserted his right to silence, the officers honored it by ending the interview without taking a statement from

him. About forty minutes later, defendant knocked on the door, reinitiated a conversation, was given renewed Miranda warnings, waived his right and confessed to his participation in the crimes. Ibid. Defendant's one and only statement was not "the product of a single, continuing interrogation." (Db38, quoting Bey I, 112 N.J. at 73).

The record is devoid of any flagrant attempt by the detectives to overbear defendant's will by continuing to interrogate him irrespective of his assertion of his right at the second interview. Ibid. In fact, the detectives asked no questions at all about the circumstances of the crime and made clear to defendant that they could not ask such questions until he waived his rights. Finally, defendant did not "let the cat out of the bag by confessing" at any time during the second interview. (Db37). Defendant knew from the inception of questioning that the interrogation concerned the homicide on Thanksgiving. He was also aware that police had arrested two of his accomplices in the carjacked red Jeep and defendant admitted to texting one or more of them after the crime. He also saw the crime reported on social media. (Da35-36@ 43-20 to 45-7). The trial court properly ruled defendant's admissible and its order should be affirmed.

C. The Detectives Did Not Deceive Defendant About the “True Status” of Criminal Charges Against Him to Coerce Him to Confess.

After defendant invoked his right to remain silent at the second interview, Detective Pirez ended the conversation and defendant logged the time, date and the word “refused” on the Miranda form. (Da25@ 22-5 to 17). Although no questions were thereafter posed to him, defendant continued to speak about his reasons for not wishing to make a statement. The detectives continued to tell him, “We can’t talk about it, again, I’m sorry[,]” and “we can’t tell you yes or no. All right?” (Da25@ 22-18 to 23-23). Defendant persisted, “So, basically, I’m being arr - arrested for this and not questioned?” Detective Pirez responded, “Exactly.” Although no complaint-warrant had been issued at that point⁷, Detective Perez replied, “Right. You’re being charged with – homicide.” Detective Pirez continued, “We’re not – we’re not going to ask you questions in reference to anything or do anything like that, you know, because you elected not to, you know, not to do so. We respect that, obviously. And – and that’s your Right.” (Da25-26@23-24 to 24-12).

⁷ Defendant had not been charged with the homicide prior to his interviews. Detective Pirez explained at the Miranda hearing that he had no authority to charge defendant irrespective of whether he made a statement. After defendant waived his rights and confessed at the third interview, Detective Pirez relayed the information to the prosecutor who authorized charges. (2T21-10 to 23-19). The detective wrote up an affidavit of probable cause based on defendant’s confession and a complaint-warrant was issued on the same day as the interview. (Da60-72).

Defendant argues that the detective's misrepresentation of his "true status" rendered his later reinitiation and Miranda waiver invalid. (Db40). However, this was not a situation where "the detectives were pursuing an investigative stratagem" to deceive defendant about the real reason they sought to question him by withholding information vital to his waiver of rights. See State v. Diaz, 470 N.J. Super. 495, 518 (App. Div.), leave to appeal denied, 251 N.J. 8 (2022). As argued, defendant knew he was a suspect in the homicide because Detective Pirez so informed him prior to each interview, and his accomplices had been arrested in the carjacked Jeep. Defendant understood the interrogation would concern the homicide, cf. ibid., and he invoked his right to silence before Detective Perez made the statement. Simply stated, the detective's words did not compel defendant to begin speaking, nor did they taint defendant's decision to reinitiate a conversation with the officers and validly waive his Miranda rights.

"[F]or a confession to be admissible as evidence, prosecutors must prove beyond a reasonable doubt that the suspect's waiver was knowing, intelligent, and voluntary in light of all the circumstances." Presha, 163 N.J. at 313. The focus is on whether defendant freely waived the privilege or whether his waiver was the product of police coercion. Ibid.

In State v. A.G.D., 178 N.J. 56, 68-69 (2003), our Supreme Court made a limited departure from the totality of circumstances test and applied a per se rule that officers must inform a suspect that a criminal complaint or an arrest warrant has been issued against him before questioning. The police had obtained an arrest warrant for A.G.D. based on the minor victim's sexual assault allegation, but did not disclose this information to him before questioning and his waiver of Miranda rights. Id. at 59-62. The Court found A.G.D.'s waiver was invalid and suppressed his confession. Id. at 69. "Without advising the suspect of his true status when he does not otherwise know it, the State cannot sustain its burden to the Court's satisfaction that the suspect has exercised an informed waiver of rights, regardless of other factors that might support his confession's admission." Id. at 68.

In State v. Vincenty, 237 N.J. 122, 134 (2019), the Supreme Court explained that "A.G.D. thus calls for law enforcement officials to make a simple declaratory statement at the outset of an interrogation that informs a defendant of the essence of the charges filed against him." Officers failed to inform Vincenty of the charges against him when his Miranda rights were read to him, and he was asked to waive them. Id. at 126. "[S]uspects cannot knowingly and intelligently determine whether to waive their right against

self-incrimination if, when making that determination, they have not been informed of the charges filed against them.” Id. at 134.

However, our courts have declined to extend A.G.D.'s per se rule to require police to inform an interviewee that he is a suspect or about any potential charges when no complaint or arrest warrant has yet been filed against him. In Nyhammer, the Supreme Court held that police were not required to give Nyhammer advanced notice that he was a suspect in the sexual assault of his minor niece before questioning him. 197 N.J. at 387-90. Nyhammer agreed to speak to the officers about the child's allegations of abuse by his uncle but was not told prior to waiving his Miranda rights that she had also made allegations against him. Id. at 389-90. Shortly after implicating his uncle, officers told Nyhammer that his niece had also made allegations against him and defendant confessed without receiving second Miranda warnings. The Court found that the officers were not required to inform Nyhammer that he was a suspect before questioning him, and that he had made an informed waiver of rights. Id. at 409-10. Distinguishing A.G.D., the Court stated: “Unlike the issuance of a criminal complaint or arrest warrant, suspect status is not an objectively verifiable and discrete fact, but rather an elusive concept that will vary depending on subjective considerations of different police officers.” Id. at 405.

In Sims, the Supreme Court declined to expand A.G.D.'s per se rule to require officers to inform an arrestee of potential charges when no complaint-warrant or arrest warrant had yet been issued. "The officers need not speculate about additional charges that may later be brought or the potential amendment of pending charges." 250 N.J. at 214. In Sims, before any complaint, warrant or formal charges were filed against defendant, he was arrested for a shooting. The officers informed Sims of his Miranda rights before questioning, but did not disclose the reason for his arrest. Defendant waived his Miranda rights and gave a statement. Id. at 199. The Court ruled that the waiver was informed in light of all relevant circumstances. Id. at 217-18.

Here, as in Sims and Nyhammer, no complaint-warrant or formal charges had been filed against defendant prior to the interviews, so the detectives were not required to inform defendant prior to questioning whether he was a suspect in the homicide or speculate about potential charges that might be filed against him. Nevertheless, as argued ante, defendant was fully aware of his suspect status. (Da15@ 2-20 to 25; Da19@ 10-11-2 to 9; Da27@ 26-24 to 27-4; Da35-37@ 43-20 to 47-4; Da57-59). See Nyhammer, 197 N.J. at 407-08.

In Diaz, on which defendant heavily relies, this Court addressed the issue of a knowing and intelligent waiver of Miranda rights where police

deception is alleged in a unique set of circumstances. 470 N.J. Super. at 503-08. There, the deceased victim's roommate told police that she had shared heroin purchased from Diaz with the victim the preceding day. The roommate gave the police information about Diaz, and in an intercepted conversation Diaz agreed to come to her home with more heroin. Id. at 503-05. Officers stopped Diaz outside his home, identified themselves, read him Miranda warnings, falsely informed him that they were conducting a narcotics investigation, and asked him if he had any drugs on him. Diaz was arrested when he handed over the heroin in his pocket. Id. at 506-07. He was taken to the police station, where he was re-Mirandized, but never told "what the interrogation was about" or "specif[ied] the potential criminal charges . . . [he] was facing." Id. at 507. After waiving his rights, defendant admitted he had given eight bags of heroin to the victim's roommate the day of the overdose. At that point, the officers told defendant for the first time that he was facing a strict-liability manslaughter charge. Id. at 508.

Applying a "totality" evaluation, Judge Susswein found that defendant had not made a knowing, intelligent and voluntary waiver of his rights because the officers had deliberately misled Diaz to believe he was not a suspect and that the purpose of the interrogation was benign by giving him vague and incomplete answers as to why he was arrested. Id. at 518-19. "[T]he

detectives were pursuing an investigative stratagem to withhold information concerning the overdose death until after defendant had admitted selling heroin to [the roommate] the day before. The reasonably likely if not intended effect of that artifice was to lead defendant—at the critical moment he waived his Fifth Amendment rights—to believe that he had been arrested for a less serious offense than strict liability homicide.” Ibid.

Unlike Diaz, the detectives here did not use trickery and deception to hide the true reason they sought to interrogate defendant. They truthfully informed him prior to each interview that he was a suspect in the homicide investigation. Defendant had asserted his right to remain silent, and the second interview had already ended when he said, “So basically, I’m being arrested for this and not questioned? (Da25@ 23-24 to 25). Detective Perez’s answer, “You’re being charged with homicide” was not accurate because no charges had been filed at that point. However, it was no surprise to defendant to hear that he may have been implicated in the homicide under the circumstances.

Nor did Detective Perez’s words compel defendant to reinitiate a conversation and waive his Miranda rights at the third interview. The record shows that defendant restarted a new conversation forty minutes after the second one ended, stated his decision to speak was voluntarily, received new

Miranda warnings, validly waived his rights, and confessed to his participation in the crime. While defendant's confession may have been compelled by his inner need to explain how "he never intended anyone to be hurt" (Db46), there is no evidence that his will was overborne at any time. The trial court's order to admit defendant's statement at the third interview should be affirmed.

Conclusion

Based on the foregoing arguments, the State respectfully asks this Court to affirm the trial court's order granting the State's motion to admit defendant's custodial statement.

Respectfully Submitted,

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