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STATE OF NEW JERSEY, : SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

Plaintiff-Appellant :

: DOCKET NO. A-3983-24

v.

JOHNNY SANTIAGO, :

: CRIMINAL ACTION

Defendant-Respondent. :

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On Leave to Appeal an Order Suppressing  
Defendant's Custodial Statement, entered in  
the Superior Court of New Jersey, Law  
Division, Essex County.

Sat Below:

Hon. Marysol Rosero, J.S.C.

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BRIEF ON BEHALF OF THE STATE OF NEW JERSEY

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## **Statement of Procedural History and Facts**<sup>1</sup>

### **The Murder of Oscar Escobar**

On June 29, 2023, police conducting a welfare check found Oscar Escobar's body in his apartment at 358 Mount Prospect Avenue in Newark. Escobar was on the floor, unresponsive and shoeless, with a knife lodged in his neck. He was pronounced dead at 10:53 a.m. (Pa1; 2T7-3 to 10).

Investigators from the Essex County Prosecutor's Office ("ECPO") Homicide Task Force observed at the scene a broken bottle on the floor and blood smeared on the walls. There were no signs of forced entry to the apartment. Crime Scene Unit detectives photographed bloody shoeprints from a sneaker. Detectives also noted several items missing from the apartment, including Escobar's TV, cell phone, and shopping cart. (Pa1).

Escobar's wife, who was not in the country at the time, told detectives she last spoke with her husband on the phone two days earlier, on June 27, at 8:00 a.m. He texted her last about 20 minutes later the same day. She texted him that day around noon but received no response. Several phone calls to him went unanswered. Detectives also learned that Escobar had missed an

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<sup>1</sup> These have been combined for the Court's convenience. As this case is currently pretrial, the facts have been taken from the Affidavit of Probable Cause in support of the complaint, (Pa1-2), the trial court's written opinion, (Pa13-15), defendant's July 6, 2023 statement ("1T"), and the transcript of the April 24, 2025 Miranda hearing ("2T").

appointment on June 28, the day before his body was discovered. (Pa1; 2T7-13 to 19).

The Medical Examiner determined that Escobar's manner of death was homicide caused by a stab wound to the neck. Escobar also suffered a broken nose and head injuries. The medical examiner initially estimated Escobar had died two to three days before his body was discovered. (Pa2).

### The Investigation

Video footage recovered from 358 Mount Prospect Avenue captured an individual entering the building and walking through the laundry area of the complex on June 27, 2023, at approximately 9:49 a.m. That individual then left the building the same way at approximately 10:09 a.m. pushing a shopping cart containing a flatscreen TV, sneakers and other items. The individual was wearing black sneakers and was identified in the video as defendant Johnny Santiago by both his mother, who also lives in the building at 358 Mount Prospect Avenue, and his uncle. (Pa1, 13).

Defendant was detained on July 6, 2023, for the purpose of executing a search warrant of his person, namely for his clothing and sneakers. (1T4-5 to 6; 2T8-1 to 9-25; 2T11-13 to 19). The sole of the sneakers he was wearing matched the bloody shoeprint in Escobar's apartment. (Pa1, 14-15).

Defendant then gave a video-recorded statement to Prosecutor's Office

Detectives Michael DiPrimio and Xavier Valentin. (2T11-10 to 12, 13-5). At the outset of the statement, the detectives advised defendant that he was being charged with murder, felony murder, burglary, and possession of a weapon for an unlawful purpose. (Pa15, 21). The detectives then provided defendant with his Miranda rights, which he acknowledged understanding, but he refused to sign the Miranda waiver form. (Pa10). He also told the detectives that he did not have his glasses with him, so he could not read the form. (1T15-2 to 8). He then waived his rights and gave a statement in which he admitted to wearing the same black sneakers he was wearing on June 27. He also identified himself in the photos from the laundry area with the shopping cart and the TV. Although he had refused to sign the Miranda warnings form, he signed his name to several photos without issue. See (1T70-12 to 22, 75-25 to 76-3, 86-1 to 24). He also signed a property receipt. (1T119-1 to 14). Defendant was given food and something to drink during the statement, even wanting to continue the interview while he ate, saying, “let’s get this done.” (Pa1, 15; 1T71-3 to 72-16).

On September 29, 2023, an Essex County Grand Jury indicted defendant on charges of: purposeful and/or knowing aggravated murder (murder during the course of a burglary); felony murder; burglary; and possession of a weapon for an unlawful purpose. (Pa3-8) (citations omitted).

### The Miranda Hearing

The State moved, pursuant to N.J.R.E. 104(c) and 803(b)(1), to admit defendant's July 6, 2023 statement. (Pa9; 2T3-19 to 21). A hearing was held on April 24, 2025, before the Honorable Marysol Rosero, J.S.C. (2T). At the hearing, Detective DiPrimio testified for the State. (2T5-13 to 46-7). The entire video-recorded statement was moved into evidence, as was a transcript of the statement. See (Pa28; 1T; 2T4-4 to 7). Judge Rosero later found Detective DiPrimio's testimony credible. (Pa15-16).

Detective DiPrimio testified that when he arrived, defendant was already in the fourth-floor interview room. He explained that there are no other holding areas for persons in custody at the Prosecutor's Office and so defendant was brought into that room and the recording began immediately. (2T10-8 to 11-1). Defendant was not shown any photos before the interview began, nor did detectives have any conversations with him. (2T17-16 to 22).

Defendant was not shackled or under arrest at the time. (2T11-2 to 5). He was wearing a white jumpsuit officers provided him. (2T12-1 to 6). During the interview, defendant received water and food—chicken wings, fruit, and a protein bar. (2T26-20 to 27-23). He experienced no difficulty eating. (2T28-5 to 7).

Detective DiPrimio, well versed in the symptoms of withdrawal from his

15 years as a law enforcement officer, testified that he never saw defendant “nodding off” before the statement began. (2T36-7 to 15, 37-15 to 38-2).

Rather, defendant’s demeanor throughout the interview was, according to the detective’s credible testimony, “calm, coherent, [and] understanding.”

Defendant followed the conversation at all times and provided no reason to suggest that he did not understand what was going on. Nor was there any indication that defendant was under the influence of anything that affected his ability to understand. (2T12-10 to 21, 33-20 to 34-5).

Detectives also told defendant, even though they were not legally required to do so, what the charges against him were going to be “because he was going to be charged after the statement, either way...so he understood what he was looking at.” (2T13-11 to 14-22).

Detective DiPrimio explained that he put his own initials on the Miranda rights form because defendant refused to sign it. He explained that defendant “advised me that he refused to sign or initial, but I continually asked him if he understood; and he was okay with me -- I asked him if it was okay for me to put my initials, and he said okay.” (2T15-7 to 16-5). Defendant also indicated he had some knowledge of the investigation and was familiar with the photos detectives had previously shown his mother. (2T17-6 to 15); see (2T18-8 to 19-1) (summarizing that previous interaction with defendant’s mother).

It is noteworthy that defendant, when shown certain photographs annotated several of them with markings and signed them. (2T19-6 to 26-3). For example, defendant was shown a photo of the victim and he wrote “Oscar” on it, then signed and dated it. He signed and dated two other photos as well. (2T29-1 to 32-5). At one point defendant even took the pen from a detective so he could mark the photos. (2T26-16 to 19).

When asked if there was any point during the interview where the detectives thought they needed to clarify with defendant whether he wanted to continue, the detective said just once, explaining that “at one point, he said he was done; and I clarified at that point what he meant, if he meant that he was done talking and if he -- and then I asked him if he wanted to proceed. And he said, yes, he wanted to continue to talk.” (2T16-19 to 17-50); see also (2T26-4 to 15). It was the detectives, not defendant, who ultimately decided to end the interview. (2T33-16 to 19).

#### The Decision Suppressing Defendant’s Statement

On July 11, 2025, Judge Rosero issued an order denying the State’s motion to admit defendant’s statement. (Pa11). In her accompanying written opinion, (Pa12-26), the judge first found Detective DiPrimio’s hearing testimony credible. (Pa15-16). She specifically highlighted Detective DiPrimio’s “candor during [his] testimony, manner of testimony, his demeanor

and willingness to answer questions, that he testified to facts personally known to him, his ability to recollect and relate, [the] reasonableness of his testimony as well as corroborating evidence - video recorded statement S-1 [(Pa28)], search warrant S-2, Miranda waiver form S-3[, (Pa10)] and phot[o]s S-4 — S-9, and [the] lack of contradicting evidence.” (Ibid.).

Judge Rosero then found that defendant did not knowingly, intelligently, and voluntarily waive his Miranda rights. She based her conclusion on two unrelated findings, neither of which is supported by the totality of the evidence, or, whether viewed independently or together, brought into reasonable doubt defendant’s waiver.

The judge’s first conclusion was that because defendant would not sign the Miranda waiver form, his waiver of those rights was invalid. She properly found that the warnings he received satisfied Miranda’s mandate as to what the warnings had to convey. The detective divided the warnings “into five parts, with Det. DiPrimio using ECPO’s Miranda waiver form as a prompt.” The judge also found that during the reading of the warnings, defendant could be seen on the video “nodding his head ‘yes’ and verbally indicating he understood each of the Miranda rights.” (Pa23).

Nonetheless, Judge Rosero concluded that “several statements” defendant made “do not support an express or implied waiver.” Those

statements, though repeated four times, all said the same thing: that defendant would not sign any papers. (Pa23-24) (citing 1T12-4, -6, -9 to 10, 16-9). Based on these scant lines of the 125-page statement transcript, the judge found it “unclear if the defendant understood his Miranda rights, and what he meant with his express refusal to sign the Miranda waiver form.” She also suggested that if defendant’s statement that he would not sign any papers “were interpreted as a vague acquiescence,” detectives should have followed up with a clarifying question. She added: “[T]hough the defendant possessed sufficient education to read the Miranda waiver, he was physically unable to see the waiver [form], as he was missing his glasses and stated as much.” She deemed defendant’s lack of glasses or having read the form “an additional indication that the defendant did not make a knowing waiver.” (Pa24).

The second conclusion Judge Rosero made that led her to suppress defendant’s statement was his “medical emergency” that occurred after the interview. Citing the transcript of the statement, the judge noted that “[t]oward the end of the custodial interrogation, the defendant became visibly ill.” (Pa24). Defendant “moved himself to the floor” and claimed that he was not feeling well and was “dope sick.” (Pa24-25). Detectives wanted to show defendant “one more thing” before the statement concluded, but instead said they would call EMS for him. After the detectives swabbed defendant for

DNA and fingerprinted him, they brought him back to the room and EMS arrived and asked him if he had vomited. Defendant said he did so twice, but hours earlier, “[r]ight before they brought me in here.” (Pa25).

Although Judge Rosero concluded that “the totality of the circumstances” shows “the defendant did not make a knowing, voluntary and intelligent waiver of his Miranda rights beyond a reasonable doubt[,]” she only relied on defendant’s unsupported claim that he got sick before the statement began and that he didn’t feel well after the statement had essentially concluded. (Pa25). The judge did not consider the fact that the video recording of the statement, which began recording for two hours before the interview began, shows no indication of defendant having been ill during his time in custody. Similarly, Detective DiPrimo testified—and Judge Rosero found his testimony credible and uncontradicted, (Pa15-16)—that defendant never appeared to be under the influence at any time.

Importantly, Judge Rosero also found that defendant, age 55, was “a mature adult” who “was not subject to an extensive interrogation.” (Pa25); see (1T88-12). He also “previously had experience with law enforcement as evidenced from his criminal record....” But she found—along with defendant’s refusal to sign the Miranda form and his not reading it because he did not have his glasses—that because “defendant was ill” based on his own

claims and that he “showed signs of medical distress toward the end of the interview[,]” his waiver given almost two hours earlier was invalid. (Pa25).

Finally, Judge Rosero noted that even after defendant indicated he was sick, detectives still attempted to continue the interview by asking him if he’d look at “one more thing” before concluding. (Pa25-26). “The detectives did not verify with the defendant whether despite appearing ill, the defendant was of sufficient clear mind to understand the Miranda waiver.” (Pa26). But the judge failed to recognize that: defendant did not “appear ill” when the statement began, but only, as she found, two hours later, “toward the end of the interview[,]” (Pa25); and, after some discussion about showing defendant “one more thing,” detectives did clarify with defendant, who said he did not want them to show him anything, shook his head ‘no’ and then expressly said “no,” which led them to call EMS and end the interaction. (1T116-23 to 117-11). Worse still, the judge failed to consider that once detectives completed the waiver portion of the interview with defendant’s consent to Detective DiPrimio initialing as he read each right to defendant, defendant was clear and coherent, answering every question and never showing any signs of distress or wanting to discontinue the statement at any point during the interview.

This Court subsequently granted the State’s motion for leave to appeal. State v. Santiago, No. AM-0613-24 (App. Div. Aug. 14, 2025); (Pa27).

## Legal Argument

### Point I

**Defendant’s waiver was knowing, voluntary, and intelligent. He fully understood his rights even if he did not want to sign the Miranda form, and there was no evidence defendant was ill when he waived his rights or during the statement itself, only after it had effectively concluded. The trial court should have ruled the statement admissible. (Pa11; Pa12-26).**

The trial court erred in suppressing defendant’s statement. Although defendant refused to sign the Miranda waiver form, the totality of the circumstances establishes beyond a reasonable doubt that he received and understood his rights and waived them knowingly, voluntarily, and intelligently. And while defendant may have become ill after the statement was over, no evidence shows he was so unwell, either at the start of the statement or at any time during it, that he did not understand his rights or was incapable of exercising them. Instead, the record shows that defendant gave a lengthy, videotaped statement in which he was clear, coherent, and cooperative throughout, exhibiting no signs of physical distress or mental anguish. He fully understood the warnings he received and the situation he was in. This Court must reverse the order suppressing defendant’s statement.

It is well settled that “a confession obtained during a custodial interrogation may not be admitted in evidence unless law enforcement officers first informed the defendant of his or her constitutional rights.” State v. Cotto,

471 N.J. Super. 489, 513 (App. Div.), certif. denied, 252 N.J. 166 (2022). The State must prove defendant waived those rights beyond a reasonable doubt “in light of all the circumstances.” State v. O.D.A.-C., 250 N.J. 408, 420 (2022). It must also prove, by the same standard, that any statement was voluntary and not the product of law enforcement overbearing the suspect’s will. State v. S.S., 229 N.J. 360, 384 (2017); see also State v. Hubbard, 222 N.J. 249, 267 (2015); State v. Carpenter, 268 N.J. Super. 378, 379, 384 (App. Div. 1993), certif. denied, 135 N.J. 467 (1994).

“In determining whether a defendant knowingly, voluntarily, and intelligently waived the right against self-incrimination, courts consider the totality of the circumstances.” State v. McGuigan, 478 N.J. Super. 284, 301 (App. Div. 2024); see also State v. Nyhammer, 197 N.J. 383, 402-03 (2009) (“In determining the voluntariness of a defendant’s confession, we traditionally look to the totality of the circumstances to assess whether the waiver of rights was the product of a free will or police coercion.”). In doing so, trial courts consider factors including “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.” State v. A.M., 237 N.J. 384, 398 (2019) (quoting State v. Miller, 76 N.J. 392, 402 (1978)). Also relevant

are a suspect's "previous encounters with law enforcement...and the period of time between 'administration of the [Miranda] warnings and the volunteered statement[.]'" State v. Knight, 183 N.J. 449, 463 (2005) (citations omitted). "In short, 'the root of the inquiry is whether a suspect's will has been overborne by police conduct.'" State v. Sims, 250 N.J. 189, 217 (2022) (quoting State v. Presha, 163 N.J. 304, 313 (2000)).

It is not a prerequisite to a valid Miranda waiver that a suspect provide the waiver in writing or sign or initial any specific form. As the Supreme Court has said, a "waiver need not take a designated legal form or be expressed in designated legal terminology." State v. Yough, 49 N.J. 587, 596 (1967). Thus, "Miranda does not require a written waiver." State v. Warmbrun, 277 N.J. Super. 51, 62 (App. Div. 1994) (citations omitted), certif. denied, 140 N.J. 277 (1995); see also State v. Faucette, 439 N.J. Super. 241, 262 (App. Div.) ("Defendant orally acknowledged he understood his rights, including the rights to not say a word and to cease the interview at any time."), certif. denied, 221 N.J. 492 (2015). Rather, the issue is "whether the suspect understood that he did not have to speak, the consequences of speaking, and that he had the right to counsel before doing so if he wished." A.M., 237 N.J. at 397 (quoting Nyhammer, 197 N.J. at 402)).

For example, in State v. Adams, defendant told a detective that he would

not sign a written statement, but he would talk about the incident. 127 N.J. 438, 446 (1992). Although he wrote that, “I do not wish to give a statement at this time,” the Court held that the defendant never invoked the right to silence beyond his refusal to sign a written statement. Ibid. And, to the extent there was some confusion about the defendant’s desires, it was utterly “dispelled by his contemporaneously-stated, unambiguous willingness to talk to [the] Detective [] about the circumstances surrounding the shooting.” Ibid.<sup>2</sup>

A defendant does not have to explicitly waive his Miranda rights. State

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<sup>2</sup> Federal courts too have long been in accord that the refusal to sign a written form does not preclude a finding of waiver. See North Carolina v. Butler, 441 U.S. 369, 375 n.5 (1979) (noting that all circuit decisions have “rejected the... argument that refusal to sign a written waiver form precludes a finding of waiver”); see also United States v. Plugh, 648 F.3d 118, 128 (2d Cir. 2011) (notwithstanding his refusal to sign the waiver form, defendant validly waived his rights “when he chose to begin speaking with custodial agents” with “a full understanding of his...rights”), cert. denied, 565 U.S. 1230 (2012); United States v. Smith, 218 F.3d 777, 781 (7th Cir.) (“When asked whether she understood her rights, Smith indicated that she did. She then refused to sign a waiver form, but went on to confess anyway.... [T]here can be no doubt that Smith's conduct demonstrated a waiver of her right to remain silent.”), cert. denied, 531 U.S. 1021 (2000); United States v. Filiberto, 712 F. Supp. 482, 487 (E.D. Pa. 1989) (“Although defendant did refuse to sign a form of waiver, testimony shows that he responded to subsequent questions by [the agent] without invoking his right to counsel or to remain silent. This procedure is consonant with...Miranda.”). Such a hedging—agreeing to speak but refusing to sign any forms—should not be countenanced by the courts. See United States v. Shabaz, 579 F.3d 815, 820 (7th Cir. 2009) (“[D]espite Shabaz’s failure to sign the waiver form, he was advised of his Miranda rights and voluntarily agreed to waive them. In fact, the magistrate judge specifically found that Shabaz had ‘hedged his bets’ by talking and getting the benefit of cooperation while refusing to sign the waiver and thus enabling his subsequent claim of non-waiver of rights.”), cert. denied, 560 U.S. 952 (2010).

v. Tillery, 238 N.J. 293, 316 (2019). “A waiver may be “established even absent formal or express statements.” Ibid. (quoting A.M., 237 N.J. at 397). “Any clear manifestation of a desire to waive is sufficient.” Ibid. (quoting State v. Hartley, 103 N.J. 252, 313 (1986)). “Where the prosecution shows that a Miranda warning was given and that it was understood by the accused, an accused’s uncoerced statement establishes an implied waiver of the right to remain silent.” Ibid. (quoting Berghuis v. Thompkins, 560 U.S. 370, 384 (2010)). “The criterion is not solely the language employed but a combination of that articulation and the surrounding facts and circumstances.” State v. Kremens, 52 N.J. 303, 311 (1968). “Any clear manifestation of a desire to waive is sufficient.” Ibid.

A suspect during a custodial interrogation, even after having waived his Miranda rights, “can assert the right to remain silent by ‘indicat[ing] in any manner, at any time prior to or during questioning, that he wishes to remain silent.’” State v. Burno-Taylor, 400 N.J. Super. 581, 590 (App. Div. 2008) (quoting Miranda v. Arizona, 384 U.S. 436, 473-74 (1966)). The individual’s words must be viewed in “the full context in which they were spoken.” S.S., 229 N.J. at 382. Police may continue questioning “as long as the person’s words or conduct could not reasonably be viewed as invoking the right to remain silent.” Burno-Taylor, 400 N.J. Super. at 590 (citation omitted).

On appeal, this Court defers to the trial court's factual findings, but only if they are supported by sufficient, credible record evidence. State v. Hager, 462 N.J. Super. 377, 381 (App. Div. 2020) (citing State v. Gandhi, 201 N.J. 161, 200 (2010)). "A trial court's interpretation of the law, however, and the consequences that flow from established facts are not entitled to special deference." Hubbard, 222 N.J. at 263 (citing Gandhi, 201 N.J. at 176). Accordingly, legal conclusions that flow from those facts, such as "a trial court's determination of the validity of the defendant's waiver of constitutional rights or the voluntariness of a confession" are reviewed de novo. State v. Rivas, 251 N.J. 132, 152 (2022); accord Hager, 462 N.J. Super. at 381.

Here, the totality of the circumstances establishes beyond a reasonable doubt that defendant received his Miranda rights, understood them, and waived them knowingly, voluntarily, and intelligently. He then provided a clear, coherent statement in which he spoke freely about the incident and answered the detectives' questions. Judge Rosero erred by failing to consider the totality of the circumstances before her, including both the videotaped statement and Detective DiPrimio's credible testimony, and instead focused on two points that had no material bearing on defendant's waiver.

The totality of the circumstances reveals the following. At the outset of the interview, defendant was fully advised of, and understood, the charges he

was facing. (1T10-2 to 14). Defendant told the detectives that he was familiar with his Miranda rights. (1T10-15 to 18). As Detective DiPrimio began to read aloud each right, defendant acknowledged that he understood but was adamant that he would not sign the form. (1T11-23 to 12-10). After saying, “I’m not signing no papers” three times quickly,<sup>3</sup> Detective DiPrimio asked defendant, “if you’re not willing to sign do you still want to proceed and talk?” Defendant answered, “yeah.” (1T12-11 to 14) (emphasis added). Defendant said he would not even initial the form, so Detective DiPrimio said that he would put down his own initials as he read each right. He also told defendant, “I’m going to read these rights. If you have any questions about these rights then I need you to tell me, I’ll stop, and I’ll explain it to you, okay?” Defendant answered, “Yeah, yeah. Yeah, yeah.” (1T12-15 to 13-1).

Detective DiPrimio then read defendant each of his rights, with defendant verbally acknowledging with a “yes” or a “yeah” indicating that he understood each one. (1T13-2 to 14-12). The detective initialed each right on the form as he read them. See (Pa10). As the judge found, these warnings accurately and completely conveyed the substance of the required warnings.

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<sup>3</sup> Cf. Burno-Taylor, 400 N.J. Super. at 603-04 (“[D]efendant refused on eleven separate occasions to sign a waiver” and “did not merely refuse, repeatedly, to sign the form presented to him. He also explained that he would not sign the form because he did not want to make a statement... Defendant was pressed continually by the officers for nearly one-half hour to execute the form and talk to them.”) (emphases added).

(Pa23). The judge also found that defendant acknowledged these warnings by “nodding his head ‘yes’ and verbally indicating he understood each of the Miranda rights.” (Ibid.).

Defendant confirmed that he could read, write and understand the English language, and that he completed the twelfth grade and his GED. (1T14-13 to 24). But defendant would not read the waiver on the form, not because he did not understand what was going on, but because he didn’t have his glasses, which were in his sister’s car. (1T14-25 to 15-8).

Detective DiPrimio then read the waiver out loud to defendant. (T15-9 to 19). Defendant acknowledged that he understood the waiver the detective just read to him, saying, “Yeah, yeah, yes, yes, yes.” (1T15-20 to 22). He also made clear that no pressure had been applied to him, nor had any threats been made against him. (1T15-23 to 16-3). The following exchange then occurred:

DET. DIPRIMIO: Do you want to proceed forward?

MR. SANTIAGO: Yeah.

DET. DIPRIMIO: Okay. So you understand all this, but you just don’t -- you don’t want to sign.

MR. SANTIAGO: I’m not signing nothing.

DET. DIPRIMIO: Okay. So I’m going to sign. You -- you -- you -- so you understand everything? Is there any questions?

MR. SANTIAGO: Yeah. I’m not -- I’m not signing nothing.

DET. DIPRIMIO: I understand. But do you understand everything?

MR. SANTIAGO: Yeah, yeah.

DET. DIPRIMIO: Okay. But you do not want a lawyer at this time.

MR. SANTIAGO: No, not -- not -- not -- not at this time, no.

DET. DIPRIMIO: Okay. So --

MR. SANTIAGO: We'll -- we'll see. Maybe going down the line. We'll see what happens, bro.

DET. DIPRIMIO: Okay. That's -- that's your right.

MR. SANTIAGO: But as of right now -- as of right now, no, I don't want no lawyer. [(1T16-4 to 17-3) (emphases added).]

That defendant acknowledged he could ask for a lawyer later if he wanted one shows an accurate understanding of the rights he received and was waiving.

Defendant added that the “same shit” happened to him two years ago, he “got acquitted,” and he “smiled then and I’m going to smile again.” (1T17-5 to 12). A lengthy discussion lasting almost 90 minutes followed, and at no point did defendant ask for a lawyer or exhibit any signs of confusion or illness. (1T17-13 to 114-13). At one point he even said he would be beating this charge too and then would be filing a civil suit against “everybody...that’s involved in this....” (1T78-2 to 7). Defendant was given food and water, which he had no difficulty consuming. (1T71-20 to 72-16; 2T26-20 to 27-23, 28-5 to 7). He also signed and dated several photos and a property receipt, at

one point even taking a detective's pen to do so. See (1T70-12 to 22, 75-25 to 76-3, 86-1 to 24, 119-1 to 14; 2T26-16 to 19).

Toward the end of the statement, defendant said, "We done talking, bro." Detective DiPrimio stopped the interview, but defendant said, "No, no, no" and clarified that he was sure he wanted to continue speaking and then did continue speaking. (1T100-8 to 101-4). Like indicating he might ask for a lawyer later, this exchange further shows defendant knew he could stop the interview whenever he wanted to and could restart it as well. When the detectives ended the statement, defendant told the detectives, "See you in trial." (1T114-14).

This exchange as a whole shows that although he would not sign or initial the Miranda waiver form, defendant received his rights, understood his rights, and voluntarily waived his rights before giving his statement. Judge Rosero erred by emphasizing that he wouldn't sign or read the written form over all the other facts and circumstances, which together show a "clear manifestation" of the waiver of his Miranda rights. Tillery, 238 N.J. at 316.

To the extent it is relevant that defendant would not read the written form, that is easily explained by defendant's own words: "I don't have my glasses on." (1T15-2). He was literate and clearly of sufficient age and intelligence to fully understand what the detectives said to him, even if he

could not at that moment read the written version of the same rights the detective read to him. See Carpenter, 268 N.J. Super. at 385 (finding “[a]lthough defendant is illiterate,” he still waived his Miranda rights). He certainly had no problem seeing, identifying, and signing photographs. This fact therefore had no bearing on the totality of the circumstances and certainly did not outweigh the clear exchange above showing a valid waiver.

Judge Rosero was incorrect when she suggested that defendant’s statement that he would not sign any papers was some ambiguous or “vague acquiescence” that required the detectives to clarify. (Pa24). There was nothing vague or unclear about what defendant said—he would not sign any papers. See (1T12-4, -6, -9 to 10, 16-9). And he did not read the written Miranda form because he did not have his glasses, not because he couldn’t read or because he did not understand what it said. Contra (Pa24). Everything that defendant said and did, when viewed as a whole, indicated a knowing, voluntary, and intelligent waiver. No clarification was needed.

As for defendant’s “signs of medical distress toward the end of the interview[,]” (Pa25), that does not render invalid his waiver that had occurred earlier, at the beginning of the interview. The totality of the record makes clear that at most this did not become an issue until after the statement had concluded. At the outset of the interview, defendant was clear and cogent. He

heard and acknowledged each of his rights, orally concurred when each one was read, and, as the judge expressly found, defendant could be seen on the video “nodding his head ‘yes’ and verbally indicating he understood each” of his rights as the detective read them. (Pa23). At one point defendant even explained that although he did not want a lawyer “at this time,” that “maybe going down the line” he would ask for one. (1T16-18 to 17-3).

During the statement, defendant clearly understood everything the detectives said and gave responsive answers to their questions, giving a lengthy, detailed statement, engaging fully with the detectives as they discussed the circumstances surrounding Escobar’s death. During a break defendant ate food and drank water, never once exhibiting any signs of distress or illness. There was even a moment where defendant made a comment indicating the interview would be done, and when the detectives clarified that with him, defendant said “no, no, no” and wanted to, and did, continue speaking. (1T100-8 to 101-4). This is further proof that defendant was well aware of his rights during the interview process.

At the end of the statement, once the detectives left, defendant called out to the detectives and told them to “kiss my ass, man,” calling one detective a “dick head,” and boasting that he would “see you in trial.” (1T114-12 to 14). It was only after the statement was over and the detectives returned to the

room that defendant said he didn't feel good and was sick. (1T114-20 to 115-12). Nothing before that moment, when the interview had all but concluded, even hints that defendant was sick before or during the interview to the point that his waiver was unknowing, involuntary, or unintelligent.

Although defendant told EMS that he had vomited twice “[r]ight before” the detectives brought him into the interview room, (1T123-19 to 25), there was no evidence of that. Defendant’s entire time in the interview room—five hours in all, two of which were before the interview began, and all of which were video-recorded and transcribed, (Pa28; 1T)—gives no indication he was unwell when the interview began or at any time during it. It is convenient at best to say defendant was ill “right before” the recording started, some five hours earlier. Although defendant claimed he was “dope sick,” that does not mean his will was overborne; as Detective DiPrimio testified and the Supreme Court has often observed, he could have just been nervous now that he knew he was going to jail. (2T41-2 to 8); accord State v. Diaz-Bridges, 208 N.J. 544, 568 (2011) (“[W]e have observed that the recognition by a defendant of the enormity of a crime often provokes an emotional reaction.”); State v. Cook, 179 N.J. 533, 563 (2004) (“Although he was emotionally distraught, his will was not overborne. The emotional distress seems more related to the horrible things he was admitting than to anything else.”).

Even if defendant vomited at some point hours before he waived his rights and gave the statement, when he did waive his rights and speak, he was not so ill that he couldn't understand his rights, knowingly, voluntarily, and intelligently waive them, and participate in the interview. See Warmbrun, 277 N.J. Super. at 64 (recognizing that “although defendant was very intoxicated, he was capable of communicating and that he was responsive in answering questions and could answer correctly questions such as his name, age, etc.”). Nor was he “in distress” at any time during his statement—not when he was hearing his rights and nodding his head in agreement, not when he was answering questions, not when he was explaining what happened with Escobar, now when he marked up and signed photographs, not when he was eating food or drinking water, and not when he boasted about being acquitted in his last case and seeing the detectives at trial. The video and transcript of his statement confirm all of this, as does Detective DiPrimio’s credible hearing testimony. Judge Rosero therefore erred in putting conclusive weight on defendant’s post-statement interaction with EMS to the exclusion of the totality of the circumstances.

In sum, the totality of the circumstances establishes beyond a reasonable doubt that defendant received his rights, understood them, and waived them knowingly, intelligently, and voluntarily. Neither the fact that he would not

sign the Miranda form nor that he had gotten sick once the interview was completed, called into doubt this evidence-based conclusions. Judge Rosero erred in concluding otherwise, and so this Court should reverse the order suppressing his statement.

**Conclusion**

For these reasons, this Court must reverse the order suppressing defendant's statement.

Respectfully submitted,

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**LETTER-BRIEF ON BEHALF OF RESPONDENT**

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3983-24  
IND. NO.: 23-19-01922

STATE OF NEW JERSEY,	:	<u>A CRIMINAL ACTION</u>
Plaintiff-Appellant,	:	On Appeal from an Order
	:	Suppressing a Custodial Statement
	:	Entered by the Superior Court
v.	:	of New Jersey, Law Division,
	:	Essex County.
JOHNNY SANTIAGO,	:	
	:	Sat Below: Hon. Marysol Rosero,
	:	J.S.C.
Defendant-Respondent.	:	<u>DEFENDANT IS CONFINED</u>

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to R. 2:6-2(b).

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## PROCEDURAL HISTORY

Essex County Indictment No. 23-09-01922 charged defendant-respondent Johnny Santiago with: two counts of first-degree murder, N.J.S.A. 2C:11-3a(1),(2), 2C:11-3b(4)(g) (Counts One, Two); first-degree felony murder, N.J.S.A. 2C:11-3a(3) (Count Three); second-degree burglary, N.J.S.A. 2C:18-2 (Count Four); and third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4d (Count Five). (Pa 3-8)<sup>1</sup>

The State filed a motion to admit the statement Santiago gave to police before the Honorable Marysol Rosero, J.S.C. The motion was heard April 24, 2025. (2T) Judge Rosero denied the State's motion and issued a written decision on July 11, 2025. (Pa 11-26)

This Court granted the State's motion for leave to appeal on August 14, 2025. (Pa 27) The State filed its initial brief on October 6, 2025. (Sb) This brief follows.

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<sup>1</sup> Record material is cited in this brief as follows

1T – transcript of defendant's statement dated July 6, 2023

2T – transcript of Miranda hearing dated April 24, 2025

Sb – State's brief

Santiago adopts the State's labelling of its appendix as "Pa."

## STATEMENT OF FACTS

On June 29, 2023, Oscar Escobar was found dead in his apartment at 358 Mt. Prospect Avenue, Newark, from an apparent stab wound to the neck. (Pa 1) Police speculated he had been dead for at least two days. Ibid. Officers responding to the scene took photographs of a bloody sneaker shoeprint. Ibid. Missing property from Escobar's apartment included a television, shopping cart, shopping bag, and cell phone. Ibid. Surveillance video from the apartment building dated June 27, 2023, was recovered. The footage showed someone entering the building at approximately 9:49 a.m., and leaving through the same area around 10:09 a.m. while pushing a shopping cart with a television and other items inside. Ibid. Santiago's mother, who also lived at 358 Mt. Prospect, identified him as the person depicted in the surveillance video. Ibid.

On July 6, 2023, Santiago was detained while police executed a search warrant of his person to obtain his shoes and clothing. Ibid. While at the police station, he gave a statement to police. Ibid. During the statement, he admitted to wearing the sneakers police had just taken from him on June 27, and identified himself in still shots from the apartment surveillance video. Ibid. This statement was the subject of the Miranda<sup>2</sup> motion.

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<sup>2</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

A hearing on the State's motion to admit Santiago's statement was held on April 24, 2025. (2T) On the date of the interrogation, Santiago was held in a police interrogation room for over two hours before he began talking with police. (Pa 30 at 12:37-14:59) During that time, police took his clothes pursuant to the warrant and gave him a white jump suit to wear. (Pa 30 at 13:36-13:42) Santiago can be frequently seen during those two hours hunched over the desk in front of him or leaning against the wall beside him. (Pa 30 at 12:54-13:14; 13:23-26; 13:42-14:00; 14:09-14:18; 14:20-14:30; 14:38-14:58) He can also be seen shaking his legs. (Pa 30 at 14:00-14:07; 14:18-14:20)

Essex County Prosecutor's Office Detectives Mike DiPrimio and Xavier Valentine conducted the interrogation. (1T 9-15 to 21) Before beginning, police told Santiago that he was being charged with "murder, felony murder, burglary and possession of -- possession of a weapon for unlawful purpose." (1T 9-25 to 10-2) Then, DiPrimio told him that "Before I sp[eak] to you any further, though, I have to go over your Miranda rights, okay?" (1T 10-15 to 17) DiPrimio started reading the Miranda rights to Santiago, but Santiago refused to sign the Miranda waiver form, stating "I'm not signing no papers." (1T 12-4) Santiago repeated that he would not sign the papers two more times before DiPrimio read the remainder of the waiver form. (1T 12-6 to 16-5)

At the conclusion of the form, DiPrimio asked Santiago, “So you understand all this, but you just don’t -- you don’t want to sign.” (1T 16-6 to 8) Santiago replied “I’m not signing nothing.” (1T 16-9) DiPrimio continued, “Okay. So I’m going to sign. You -- you -- you so you understand everything? Is there any questions?” (1T 16-10 to 12) Santiago again replied “Yeah. I’m not – I’m not signing nothing.” (1T 16-13 to 14) DiPrimio asked again if Santiago understood everything, but did not ask Santiago what effect he believed not signing the waiver form would have.

Santiago told police that he used heroin and crack, and that he was due to enter rehab the same day as the interrogation. (1T 47-2 to 5; 48-6 to 11) At the Miranda hearing, DiPrimio was questioned about his knowledge of withdrawal symptoms. He agreed that his 15 years of experience “working in the street and in certain units” had given him the ability to recognize withdrawal symptoms. (2T 36-7 to 15) DiPrimio agreed that symptoms could include nodding off, shaking, being keeled over, and possibly scratching. (2T 36-16 to 25) DiPrimio did not see Santiago exhibiting any of these symptoms prior to conducting the interrogation because he did not view the video feed of the interrogation room prior to entering. (2T 37-1 to 38-2) Santiago’s legs can be seen shaking at multiple points throughout the interrogation, including prior to the Miranda warnings being given. (Pa 30 at 15:00-15:04; 15:13; 15:20;

15:38; 15:43) At one point, DiPrimio even told him “You’re shaking your -- I can’t hear you, man, you’re shaking your leg.” (1T 27-8 to 10; Pa 30 at 15:13)

During a break in the interrogation, Santiago laid down on the floor and covered his face with his hand. (Pa 30 at 16:28) Valentine opened the door and told him to sit at the table before asking him if he was okay. (Pa 30 at 16:31) Santiago replied “I don’t feel good bro.” (1T 114-25) Santiago remained on the floor and repositioned to the fetal position. (Pa 30 at 16:31-16:36) Valentine opened the door again approximately five minutes later and again asked if Santiago was okay. (Pa 30 at 16:35) Santiago denied that he was okay and told Valentine “I’m sick bro, that’s all . . . Sick, dope sick.” (1T 115-10 to 12; Pa 30 at 16:35) He told Valentine that he needed “a hospital or something or a doctor or something. I’m hurting.” (1T 115-13 to 16) Despite Santiago telling police that he was in pain and in need of medical attention, the officers continued to try to interrogate him, stopping only after he refused to participate any further. (1T 115-23 to 117-9) DiPrimio told Santiago they would call EMS for him at 4:37 p.m. (1T 117-9 to 11)

A few minutes later, DiPrimio returned to take a buccal swab of Santiago’s cheek, and Santiago was later taken from the room and fingerprinted. (Pa 30 at 16:49; 16:59-17:27) Upon returning from being fingerprinted, Santiago immediately laid back down on the ground. (Pa 30 at

17:28) He can be heard on the interrogation video audibly moaning at points. (Pa 30 at 18:01; 18:12; 18:22) EMS arrived at 6:49 p.m. (Pa 30 at 18:49) Santiago told them that he was going through withdrawal from heroin, that he was nauseous, and that he had thrown up twice “right before they brought me in here.” (1T 120-15 to 123-25) He was then taken from the cell to the hospital by EMS. (Pa 30 at 16:54)

Despite EMS taking over two hours to arrive, DiPrimio testified that he did not make the initial call to EMS, and did not know if anyone followed up about the delay. (2T 43-4 to 7) DiPrimio knew that there was a sheriff’s office in the same building where the interrogation occurred, staffed with EMS, but he did not contact them. (2T 44-1 to 17)

On July 11, 2025, the motion court denied the State’s motion to admit the statement. (Pa 11) The court found that Santiago was in custody, and that the Miranda warnings were required. (Pa 21) It also found that Santiago had been read the Miranda rights. (Pa 22) The court found that the only remaining question was whether Santiago had waived his rights, and held that “under the totality of the circumstances, the defendant did not make a knowing, voluntary and intelligent waiver of his Miranda rights beyond a reasonable doubt.” (Pa 25)

The court reasoned that although Santiago's interrogation was only two hours long, and that he had previous experience with law enforcement, "other facts and circumstances" cast doubt on whether the waiver was "knowing and intelligent." (Pa 25) Those facts included: Santiago's repeated refusal to sign the waiver form; the fact that he could not see or read the form because he did not have his glasses; that detectives did not clarify what Santiago "meant when he repeatedly stated he would not sign anything." Ibid.

Additionally, the court found that Santiago was ill. "The defendant told EMS he vomited right before his interview and showed signs of medical distress during and toward the end of the interview." Ibid. The court found that the police continued to try to interrogate Santiago after he indicated he was going through withdrawal, and that they did not verify with him whether, despite appearing ill, he was of sufficient clear mind to understand his earlier Miranda waiver. (Pa 25-26)

In consideration of the totality of the circumstances, the court found that the State had not proven a valid waiver of Miranda beyond a reasonable doubt, and denied the State's motion to admit the statement. (Pa 11; 26)

**LEGAL ARGUMENT**

**POINT I**

**THE MOTION COURT PROPERLY RULED THAT THE STATE FAILED TO MEET ITS BURDEN OF PROVING THAT SANTIAGO KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS MIRANDA RIGHTS PRIOR TO HIS INTERROGATION, AND THIS COURT SHOULD AFFIRM THE MOTION COURT'S ORDER SUPPRESSING HIS STATEMENT.**

The motion court correctly ruled that, given the totality of the circumstances, the State failed to meet its burden of proving that Santiago waived his Miranda rights beyond a reasonable doubt. Santiago refused to initial or sign the Miranda waiver form, and was experiencing withdrawal symptoms during the full scope of the interrogation. Police did nothing to make sure that despite his refusal to sign and his illness, he was making a knowing, intelligent, and voluntary waiver of his rights. Because admission of the statement would violate Santiago's privilege against self-incrimination, this Court should affirm the order denying the State's motion to admit his statement. U.S. Const. amend. V; N.J.R.E. 503; N.J.S.A. 2A:84A-19.

The Fifth Amendment of the United States Constitution guarantees that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. Although the New Jersey Constitution does

not contain a corollary provision, the privilege against self-incrimination is firmly rooted in New Jersey's common law and has been incorporated into N.J.R.E. 503 and N.J.S.A. 2A:84A-19. State v. S.S., 229 N.J. 360, 381-82 (2017). New Jersey's privilege against self-incrimination, which has been described by this Court as "so venerated and deeply rooted in this state's common law that it has been deemed unnecessary to include the privilege in our State Constitution," has broader application than the federal privilege. State v. O'Neill, 193 N.J. 148, 176-77 (2007).

In Miranda, the United States Supreme Court recognized that custodial interrogations are often permeated with questions that treat the suspect's guilt as a foregone conclusion and other inherently-deceptive tactics, "which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." In evaluating various custodial interrogations, the Miranda Court noted:

In each of the cases, the defendant was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures. ... To be sure, the records do not evince overt physical coercion or patent psychological ploys. The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truly the product of free choice.

[Id. at 456-57 (emphasis added).]

In an effort to level the playing field for defendants, and ensure that any statement a defendant provides in custody is not the product of psychological coercion, the Court ruled that officers are required to advise defendants of the now-familiar “Miranda rights<sup>3</sup>” prior to initiating a custodial interrogation, and can only proceed with an interrogation if the defendant waives those rights. Id. at 468-75. As this Court has extrapolated, the safeguards implemented under Miranda were designed to “ensure that an individual would have a meaningful opportunity to exercise his right against self-incrimination when subject to police interrogation.” State v. Nyhammer, 197 N.J. 383, 400 (2009) (emphasis added). “The essential purpose of Miranda is to empower a person . . . with knowledge of his basic constitutional rights so that he can exercise, according to his free will, the right against self-incrimination or waive that right and answer questions.” Ibid. at 406.

To establish a valid waiver, the State must do more than show that the suspect gave a statement after officers read Miranda warnings. Berghuis v. Thompkins, 560 U.S. 370, 384 (2010). “The prosecution must make the

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<sup>3</sup> When advising a defendant of his Miranda rights, an officer must tell the suspect that: he or she has the right to remain silent; any statements will be used against him or her in court; he or she has the right to have an attorney present during an interrogation; and if he or she cannot afford an attorney, one will be appointed to him or her. Miranda, 384 U.S. at 467-73; O’Neill, 193 N.J. at 168.

additional showing that the accused understood these rights.” Ibid. Although a valid waiver does not require officers to provide all useful information to a suspect, the State must prove that “the suspect understood that he did not have to speak, the consequences of speaking, and that he had the right to counsel before doing so if he wished.” State v. A.M., 237 N.J. 384, 397 (2019) (quoting Nyhammer, 197 N.J. at 392); see also State v. Puryear, 441 N.J. Super. 280, 292 (App. Div. 2015) (“The focus of a Miranda analysis should be on whether the defendant had a clear understanding and comprehension of his or her Miranda rights based on the totality of the circumstances.”). Because understanding of the warnings is so crucial to validity of waiver, when “the circumstances cast doubt on the knowing and intelligent quality of the alleged waiver[,]” the waiver is invalid. State v. McCloskey, 90 N.J. 18, 28-29 (1982).

Here, the trial court correctly ruled that Santiago did not give a valid waiver of his rights. Santiago was in custody for more than two hours before the interrogation began, at various points hunched over a desk, asleep leaning against a wall, or fidgeting around with his legs shaking. He was shaking before police read his Miranda rights from the waiver form.

After DiPrimio asked whether Santiago understood his first right, the right to remain silent, Santiago refused to sign or initial the waiver form, stating, “I’m not signing no papers.” (1T 12-2 to 10) Indeed, Santiago never

signed the Miranda form. The motion judge correctly observed that it was “unclear if the defendant understood his Miranda rights and what he meant with his express refusal to sign the Miranda waiver form.” (Pa 24) A “defendant’s refusal to sign the waiver form does not necessarily equate to an assertion of the right to remain silent,” but “it is one factor to be considered.” State v. Bruno-Taylor, 400 N.J. Super. 581, 603 (App. Div. 2008).

Neither officer attempted to clarify what Santiago thought refusing to sign the form meant, and so the ultimate answer as to why he refused is absent from the record. DiPrimio did ask whether Santiago understood each right as he read through the form. At the end of the form, DiPrimio separately asked if Santiago wished to proceed, whether he had been threatened, and whether Santiago wanted a lawyer. However, he never asked whether Santiago was choosing to talk in full consideration of the rights that he had just been read, the critical question for a valid waiver. Santiago’s repeated refusal to sign anything could have constituted either a waiver or an intentional assertion of nonwaiver. Either way, it was certainly a refusal of any further signatures. See State v. Shelton, 344 N.J. Super. 505, 516 (App. Div. 2001) (suppressing a signed statement from a defendant who had refused to make a signed statement because he was not given a second set of Miranda warnings after making the refusal). The motion judge’s equally plausible suggestion that this constituted

only a “vague acquiescence” to the conversation obliged the detectives to “follow[] up with a clarifying question.” (Pa 24)

In State v. Alston, 204 N.J. 614, 625-27 (2011), the officers repeated the Miranda warnings after the defendant inquired about needing counsel. To ensure the suspect understood the Miranda rights:

the detective reiterated that if defendant wanted an attorney, the questioning would stop and defendant would get a lawyer, and the detective followed that explanation by referring back to the rights that had just been read to defendant. The detective then reminded defendant further about his rights when he said “[i]f you want to stop at this time then we stop at this time.”

[Ibid.]

As in Alston, DiPrimio had a duty to clarify Santiago’s rights and his understanding of those rights when Santiago refused to sign the waiver form. Had he asked, DiPrimio could have made clear that Santiago’s refusal to sign the form was in no way a misunderstanding of his rights or intended as a muddled assertion of any of them. Because no clarification was sought, the waiver conversation was left confusing, and Santiago never expressly gave a waiver in consideration of all of his rights. Instead, he simply agreed “to proceed.”

Compounding the confusion was the fact that Santiago was going through withdrawal symptoms during the interrogation. DiPrimio testified that

withdrawal symptoms could include nodding off, shaking, and being keeled over. (2T 36-16 to 25) Santiago can be seen on the video doing all of those at various points, including before, during, and after the interrogation. DiPrimio even had to tell Santiago to stop shaking his leg because the sound it was making was so loud that DiPrimio, who was sitting directly across the table from Santiago, could not hear him talking. Moreover, Santiago told police that he actively abused heroin and crack, and that he was due to go to rehab the same day as the interrogation. (1T 47-2 to 5; 48-6 to 11) His statement to EMS that he had vomited a few times “right before they brought me in here” supports the motion court’s belief that he was sick through the interrogation. (1T 120-15 to 123-25) The court was dismayed by police attempting to show Santiago “one more thing” after he had told them he felt sick and was showing physical signs. (Pa 25-26)

Thus, the State’s argument that Santiago was only ill at the end of the interview (Sb 21) is not supported by the record. Moreover, the motion court found that Santiago had vomited before the interrogation had even started. (Pa 25) The State’s flippant argument that “there was no evidence of that” (Sb 23) is flatly wrong given Santiago’s videorecorded statement to EMS. On appellate review, this Court is to accord these factual findings deference. S.S., 229 N.J. at 374 (citing State v. Gamble, 218 N.J. 412, 424 (2014)). Indeed, a trial

court's factual findings are only to be disturbed if "they are so clearly mistaken 'that the interests of justice demand intervention and correction,'" State v. Elders, 192 N.J. 224, 244 (2007) (quoting State v. Johnson, 42 N.J. 146, 162 (1964)).

The motion court was also right to find that police failed to ask Santiago how long he had been feeling ill despite showing symptoms before and during the interrogation. (Pa 26) Our courts have recognized that being physically ill with heroin withdraw symptoms can influence the veracity of responses to police during interrogation. State v. Granskie, 433 N.J. Super. 44, 56 (2013). That heroin withdrawal could also affect responses to the Miranda waiver is a necessary corollary of this. While police should have been aware of Santiago's symptoms before the interrogation started, once they were undeniable, police should have clarified how ill Santiago was at the inception, and whether or not he was of sufficient clear mind to understand his earlier waiver. Because they did not do so, the record does not disclose what Santiago was feeling at the time, or whether he had a full understanding of the waiver. The motion court was right to find that this factored into the totality of the circumstances test, and that it weighed against waiver.

Santiago did not give an express waiver of his Miranda rights. His repeated refusal to sign the waiver form and the failure of police to clarify the

meaning of his refusal casts great doubt on whether the waiver was knowing and intelligent. At the same time, Santiago was going through heroin withdrawal and showing visible symptoms that the police did not explore. His medical problems also affected his ability to make a knowing and intelligent waiver. For these reasons, the State failed to prove beyond a reasonable doubt that Santiago gave a knowing and voluntary waiver of his Miranda rights under the totality of the circumstances. The motion court's decision should be affirmed by this Court.

**CONCLUSION**

For the reasons stated above, this Court should affirm the motion court's order suppressing Santiago's custodial statement.

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Dated: October 27, 2025

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LETTER REPLY BRIEF  
ON BEHALF OF THE STATE OF NEW JERSEY

Honorable Judges of the Superior Court of New Jersey  
Appellate Division  
Richard J. Hughes Justice Complex  
Trenton, New Jersey 08625

Re: State of New Jersey (Plaintiff-Appellant) v.  
Johnny Santiago (Defendant-Respondent)  
Docket No. A-3983-24 (AM-0613-24)

Criminal Action: On Leave to Appeal an Order Suppressing Defendant's  
Custodial Statement, entered in the Superior Court of New Jersey, Law  
Division, Essex County.

Sat Below: Hon. Marysol Rosero, J.S.C.

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Honorable Judges:

Pursuant to Rules 2:6-2(b) and 2:6-5, this letter reply brief is submitted  
on behalf of the State.

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**Statement of Procedural History and Facts**<sup>1</sup>

The State relies on its Statement of Procedural History and Facts in its appellant's brief, (Pb1-10), with the following clarifications in response to defendant's brief, (Db).<sup>2</sup>

Regarding defendant's not signing the Miranda form, it bears emphasizing that Detective DiPrimio credibly testified that defendant "advised me that he refused to sign or initial, but I continually asked him if he understood; and he was okay with me -- I asked him if it was okay for me to put my initials, and he said okay." (2T15-7 to 16-5).

Defendant also indicated he had some knowledge of the investigation and was familiar with the photos detectives had previously shown his mother. When shown certain photographs, defendant annotated several of them with markings and signed them. For example, defendant was shown a photo of the victim and wrote "Oscar" on it. Then he signed and dated it. He signed and dated two other photos as well. At one point defendant even took the pen from a detective so he could mark the photos himself. (Pb5-6) (and citations therein). Thus, there was simply no reason to ask defendant "what effect [defendant] believed not signing the waiver form would be." (Db4). There

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<sup>1</sup> These have been combined for the Court's convenience.

<sup>2</sup> This brief continues to use the transcript designations in the State's appellant's brief. See (Pb1 n. 1).

was nothing vague or unclear about what defendant said—he would not sign any papers, see (1T12-4, -6, -9 to 10, 16-9), that’s all. The totality of the circumstances shows that defendant fully understood and knowingly and intelligently waived his rights, that he wanted to speak to the detectives, and then he did so.

As for his claim of going through heroin withdrawal, defendant never told the detectives interviewing him that he had used heroin on the day of the interview. (Db4) (citing 1T47-2 to 5, 48-6 to 11)). What defendant cites to is where defendant explained to the detectives what he meant when he said, “[w]hen I go cop.” (1T46-23). Defendant explained that phrase referred to when he goes and buys heroin or crack, and when he needs credit from his dealer he always gets it because he always pays. (1T47-2 to 9). It wasn’t until much later, when the statement was completed and EMS arrived, that defendant said he last took heroin more than 14 hours earlier. (1T120-25 to 121-6).

Defendant also makes several references to him shaking his leg during his statement, once to the point a detective asked him to stop. (Db3, 4, 5, 11, 14) (referring to 1T27-8 to 10). What he neglects to mention is, despite his moving leg, defendant talks freely without incident throughout the interview. Before the question-and-answer portion of the statement begins, defendant

repeatedly says he understands his rights, wants to proceed despite not wanting to sign anything, and at one point even acknowledges that he may ask for a lawyer later, “but...as of right now, no, I don’t want no lawyer.” (1T11-23 to 17-3). And later on in the statement, as Detective DiPrimio testified, “at one point, [defendant] said he was done; and I clarified at that point what he meant, if he meant that he was done talking and if he -- and then I asked him if he wanted to proceed. And he said, yes, he wanted to continue to talk.” (2T16-19 to 17-50); see also (2T26-4 to 15).

Far more relevant than his leg moving, Detective DiPrimio, well versed in the symptoms of withdrawal from his 15 years as a law enforcement officer, testified that he never saw defendant “nodding off” before the statement began. Defendant’s demeanor throughout the interview was, according to the detective’s credible testimony, “calm, coherent, [and] understanding.” Defendant at no point failed to follow the conversation and provided no reason to suggest that he did not understand what was going on. The detective credibly testified that there was no indication that defendant was under the influence of anything that affected his ability to understand. (Pb4-5) (and citations therein).

## Legal Argument

### Point I

**Defendant’s waiver was knowing, voluntary, and intelligent. He fully understood his rights even if he did not want to sign the Miranda form, and there was no evidence defendant was ill when he waived his rights or during the statement itself, only after it had effectively concluded. The trial court should have ruled the statement admissible.**

The State relies upon its Legal Argument set forth in its appellants brief, (Pb11-25), but adds the following in response to defendant’s contentions, which boil down to two: that it was unclear to defendant what affect defendant not signing the Miranda form had on him, and that he was going through “heroin withdrawal” during the interrogation.

#### A. Defendant’s not signing the Miranda form.

First, defendant argues that it was fatal for the detectives to have failed to ask him “what effect he believed not signing the waiver form would have.” (Db4); see also (Db12, 13, 14). As explained above, they didn’t have to because it was clear from the objective totality of the circumstances that defendant understood his rights, waived them, and then freely provided a statement. The failure to ask this question is not, as defendant suggests, some kind of bright-line prerequisite to a valid waiver. (Db12) (calling this “the critical question for a valid waiver.”).

Instead, courts must look at the totality of the circumstances. See State v. A.M., 237 N.J. 384, 398 (2019); State v. Nyhammer, 197 N.J. 383, 402-03 (2009); State v. McGuigan, 478 N.J. Super. 284, 301 (App. Div. 2024). Here, the totality of the circumstances establishes beyond a reasonable doubt that defendant received his Miranda rights, understood them, and waived them knowingly, voluntarily, and intelligently.

At the outset of the interview, defendant was fully advised of, and said he understood, the charges he was facing. He was familiar with his Miranda rights. As Detective DiPrimio read each right aloud, although defendant was adamant that he would not sign the form, he acknowledged that he understood each right. After saying, “I’m not signing no papers” three times quickly, Detective DiPrimio asked defendant, “if you’re not willing to sign do you still want to proceed and talk?” Defendant answered, “yeah.” Defendant said he would not even initial the form, so Detective DiPrimio said that he would put down his own initials as he read each right to defendant. He also told defendant, “I’m going to read these rights. If you have any questions about these rights then I need you to tell me, I’ll stop, and I’ll explain it to you, okay?” Defendant answered affirmatively. See (Pb16-17) (and citations therein) (emphasis added).

Detective DiPrimio then read defendant each of his rights, with

defendant verbally acknowledging with a “yes” or a “yeah” that he understood each one. The detective initialed each right on the form as he read them. As the judge found, these warnings accurately and completely conveyed the substance of the required warnings. The judge also found that defendant acknowledged these warnings by “nodding his head ‘yes’ and verbally indicating he understood each of the Miranda rights.” See (Pb17-18) (and citations therein).

Defendant confirmed that he could read, write and understand the English language, and that he completed the twelfth grade and his GED. But defendant would not read the waiver on the form, not because he did not understand what was going on, but because he didn’t have his glasses, which were in his sister’s car. See (Pb18) (and citations therein).

Detective DiPrimio then read the waiver out loud to defendant. Defendant acknowledged that he understood the waiver the detective just read to him, saying, “Yeah, yeah, yes, yes, yes.” He also made clear that no pressure had been applied to him, nor had he been threatened. Defendant was equally clear that he wanted to “proceed forward” and understood his rights—even acknowledging he may exercise his right to a lawyer later but not yet—but simply would not sign anything. See (Pb18-19) (and citations therein); accord (Db13) (acknowledging defendant “agreed ‘to proceed’”, which

obviously could only mean he agreed “to proceed” to give a statement).

Defendant explained a recent and personal understanding of the criminal justice process, and a lengthy discussion lasting almost 90 minutes followed. At no point did defendant ask for a lawyer or exhibit any signs of confusion or illness. Defendant was given food and water, which he had no difficulty consuming, and he signed and dated several photos and a property receipt, at one point even taking a detective’s pen to do so. See (Pb19-20) (and citations therein).

These circumstances, when viewed as a whole, establish that although he would not sign or initial the Miranda waiver form, defendant received his rights, understood his rights, and voluntarily waived his rights before giving his statement. As the motion judge did below, defendant mistakenly elevates his refusal to sign the written form over all the other facts and circumstances, which together show a “clear manifestation” of the waiver of his Miranda rights. State v. Tillery, 238 N.J. 293, 316 (2019). There was nothing “muddled” or “confusing” about what defendant said or did: he fully understood his rights, he just didn’t want to sign the form. (Db13). That’s the “effect [defendant] believed not signing the waiver form would have.” (Db4).

State v. Alston, 204 N.J. 614 (2011), is easily distinguishable.

According to defendant’s account of that case, officers there repeated the

Miranda warnings “after the defendant inquired about needing counsel.” (Db13). The Supreme Court found that Alston’s statements were, “in actuality, not an assertion of a right, ambiguous or otherwise[,]” and “[t]he response of the officer, which was entirely appropriate under the circumstances, was a simple request for clarification, in which he asked ‘[do you] want a lawyer?’” 204 N.J. at 625-26. Here, there was no “question, posed to the investigating officer, that amounted to defendant’s request for advice about what the detective thought that defendant should do.” Id. at 626. It was crystal clear what defendant thought he should do because it is what he did do: he waived his rights and gave a statement. As such, “this record, and in particular the inflections and tone revealed by the audio tape recording, [see (Pa28),] demonstrate that defendant's statements to the police were” clear manifestations of a free and educated will of a man who chose to not sign or initial a form but who would freely speak to police. Id. at 627.<sup>3</sup>

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<sup>3</sup> Defendant’s refusal to sign was not a refusal to waive his rights and provide a statement, either in whole or in part, and so State v. Shelton has no relevance here. See 344 N.J. Super. 505, 514-17 (App. Div. 2001) (defendant unequivocally told police “he did not want to give a written statement” but also “did not refuse to speak to” the detective, and then gave an oral statement, which this Court upheld on appeal), certif. denied, 171 N.J. 43 (2002). Defendant here definitely refused to sign the Miranda form, (Db12) (citing Shelton), but that does not preclude the finding of a valid waiver. See (Pb13-15, 14 n. 2) (and cases cited therein).

B. Defendant's alleged heroin withdrawal.

Defendant's second argument focuses on his claim that he was "going through withdrawal symptoms during the interrogation." (Db13). Defendant did show some signs of distress once the interview was over, and of course that is a permissible consideration for a court to consider as part of the totality of the circumstances. But again, defendant, much like the motion judge, unduly elevates this fact at the expense of all others, and in particular fails to adequately account for the timing of this circumstance as part of the analysis.

Importantly, while defendant argues certain things support his claim—his shaking leg, that he was "hunched over a desk, asleep leaning against a wall," and that he "used heroin and crack, and that he was due to enter rehab the same day[,]'" (Db4, 11), the motion judge never referred to any of these things to support her conclusion. Instead, her basis for finding defendant was so ill that he could not have waived his rights was defendant's unsupported statement made after the statement had ended. (Pa24-25).

The totality of the record makes clear that at most this did not become an issue until after the statement had concluded. At the outset of the interview, defendant was clear and cogent. He heard and acknowledged each of his rights, orally concurred when each one was read, and, as the judge expressly found, defendant could be seen on the video "nodding his head 'yes' and

verbally indicating he understood each” of his rights as the detective read them. At one point defendant even explained that although he did not want a lawyer “at this time,” that “maybe going down the line” he would ask for one. (Pb21-22) (and citations therein).

During the statement, defendant clearly understood everything the detectives said and gave responsive answers to their questions, giving a lengthy, detailed statement and engaging fully with the detectives as they discussed the circumstances surrounding Escobar’s death. During a break, defendant ate food and drank water, never once exhibiting any signs of distress or illness.

At the end of the statement, once the detectives left, defendant called out to them and told them to “kiss my ass, man,” calling one detective a “dick head,” and boasting that he would “see you in trial.” It was only after the statement was over and the detectives returned to the room that defendant said he didn’t feel good and was sick. See (Pb22-23) (and citations therein). Nothing before that moment, once the interview had all but concluded, even hints that defendant was sick before or during the interview to the point that his waiver was unknowing, involuntary, or unintelligent.

Although defendant told EMS that he had vomited twice “[r]ight before” the detectives brought him into the video-recorded interview room, there was

no evidence to support that statement.<sup>4</sup> Defendant’s entire time in the interview room—five hours in all, two of which were before the interview began, and all of which were video-recorded and transcribed—gives no indication he was unwell when the interview began or at any time during it. It remains convenient at best to say defendant was ill “right before” the recording started, some five hours earlier. Although defendant claimed he was “dope sick,” that does not mean his will was overborne; as Detective DiPrimio testified and the Supreme Court has often observed, he could have just been nervous now that he knew he was going to jail on a murder charge. See (Pb23) (and citations therein); accord State v. Diaz-Bridges, 208 N.J. 544, 568 (2011) (“[W]e have observed that the recognition by a defendant of the enormity of a crime often provokes an emotional reaction.”); State v. Cook, 179 N.J. 533, 563 (2004) (“Although he was emotionally distraught, his will was not overborne. The emotional distress seems more related to the horrible things he was admitting than to anything else.”).

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<sup>4</sup> Defendant did not testify at the Miranda hearing, and the judge never made a specific credibility finding as to this statement. In fact, the judge never found defendant had vomited, only that he “told EMS” this. (Pa25). Defendant’s aspersions of being “flippant” aside, (Db14), it is a correct statement of the record to say defendant’s post-statement claim of pre-statement sickness is unsupported. But more importantly, even if true, this one fact does not outweigh the totality of the circumstances supporting a knowing, voluntary, and intelligent waiver.

Even if defendant vomited at some point hours before he waived his rights and gave the statement, when he did waive his rights and speak, he was not so ill that he couldn't understand his rights, knowingly, voluntarily, and intelligently waive them, and participate in the interview. See State v. Warmbrun, 277 N.J. Super. 51, 64 (App. Div. 1994) (recognizing that “although defendant was very intoxicated, he was capable of communicating and that he was responsive in answering questions and could answer correctly questions such as his name, age, etc.”) (citations omitted), certif. denied, 140 N.J. 277 (1995).

Nor was he “in distress” at any time during his statement—not when he was hearing his rights and nodding his head in agreement, not when he was answering questions, not when he was explaining what happened with Escobar, not when he marked up and signed photographs, not when he was eating food or drinking water, and not when he boasted about being acquitted in his last case and seeing the “dick head” detectives at trial. The video and transcript of his statement confirm all of this, as does Detective DiPrimio’s credible hearing testimony. Defendant, like the judge below, therefore errs in putting conclusive weight on defendant’s post-statement interaction with EMS to the exclusion of the totality of the circumstances.

State v. Granskie, 433 N.J. Super. 44 (App. Div. 2013), does not help defendant. (Db15). There, this Court considered whether a defendant can “present expert psychiatric testimony concerning the potential impact of defendant's opiate addiction and withdrawal symptoms on the reliability of his confession” at a Miranda hearing. Id. at 46-47. Again, defendant did not testify or present any evidence, expert or otherwise, at the Miranda hearing. (Prb11 n. 4, ante). Importantly, the Court there observed that although a defendant may call an expert at the hearing to attack the reliability of his statement,

a defendant may not place before the jury the facts critical to his defense by relying on included hearsay in his expert’s opinion.... [T]here must be some legally competent evidence that defendant was, in fact, suffering from heroin withdrawal while the police were interrogating him. Otherwise, his expert’s testimony would be irrelevant and a net opinion. [Id. at 56-57.]

Here, all that defendant posits in support of his alleged withdrawal is his shaking leg and his post-statement hearsay remark that he had been ill hours earlier. This is clearly insufficient to support any finding, assuming there was one, that defendant was suffering from “heroin withdrawal,” or that such a finding was so weighty that it overwhelmed the totality of the circumstances of the interaction.

**Conclusion**

For these reasons and those set forth in the State's appellant's brief, this Court must reverse the order suppressing defendant's statement.

Respectfully submitted,

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