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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3166-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WILLIAM A. SPARROW, a/k/a
JONATHAN TAYLOR, DAVID GIBSON
and ILL WILL,

Defendant-Appellant.

Submitted April 4, 2017 — Decided August 2, 2017

Before Judges Ostrer and Vernoia.

On appeal from the Superior Court of New
Jersey, Law Division, Hudson County,
Indictment No. 12-12-2128.

Joseph E. Krakora, Public Defender, attorney
for appellant (Frank Pugliese, Assistant
Deputy Public Defender, of counsel and on the
brief).

Esther Suarez, Hudson County Prosecutor,
attorney for respondent (Eric P. Knowles,
Assistant Prosecutor, of counsel and on the
brief).

PER CURIAM

Defendant William A. Sparrow appeals his convictions following a guilty plea for leaving the scene of a fatal motor vehicle accident and possession of a handgun by a person not permitted to possess weapons. More particularly, he challenges the trial court's denial of his motion to suppress statements he made during a custodial interrogation. We affirm.

I.

Jersey City police officers responded to a report of guns being fired in the parking lot of a diner. They discovered a fatally injured man wedged between a motor vehicle and the diner's wall. It was reported the vehicle's driver and passenger were involved in an exchange of gunfire with others in the parking lot, during which the vehicle crashed into the wall causing the victim's death. The vehicle's driver, who was identified as defendant, left the scene before the police arrived.

About two months later, the police located defendant and when they approached him, he fled on foot and reportedly dropped a handgun. Defendant was apprehended, found in possession of heroin, and taken into custody. During a recorded custodial interrogation of defendant, he acknowledged being the vehicle's driver at the diner.

Defendant was charged in an indictment with criminal offenses related to the diner incident and the events at the time of his

arrest. He moved to suppress the statements made during his interrogation, claiming the police failed to properly advise him of his Miranda¹ rights and honor an alleged invocation of his right to remain silent.

During the evidentiary hearing on defendant's motion, the State presented testimony from Detective Roberto Aviles, one of the officers who interrogated defendant. A recording of the interrogation was admitted in evidence.

The recording showed defendant was interrogated by Aviles and Detective Jeff Kearns. Aviles told defendant that prior to asking any questions, he wanted to advise defendant of his rights and that defendant must understand his rights. Aviles then read to defendant the following from a Miranda rights form:

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer for advice before we ask you any questions, and to have him or her with you during questioning. If you cannot afford a lawyer, one will be appointed for you at the point of questioning if you wish. If you decide to answer questions without a lawyer present, you would still have a right to stop questioning at any time. You also have the right to stop answering at any time until you talk to a lawyer.

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

After Aviles read the Miranda rights to defendant, Kearns asked defendant if he understood everything Aviles told him. Defendant nodded his head affirmatively and said "yes."

Aviles gave defendant the Miranda rights form. It included the following paragraph:

I have read the statement of my rights and understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me, and no pressure or coercion of any kind has been used against me.

Aviles asked defendant to read the paragraph aloud and defendant did so.

When defendant concluded reading the paragraph, Kearns explained that "basically" what it meant was:

. . . (inaudible) ask you a couple of questions about our investigation, maybe clear some things up. No one is taking you and beating you up, making any promises. I just have a couple of questions I wanted to ask you so we can get it out of the way and we can go about our business.

That's all basically what paragraph states in that you're here. We want to talk to you about the reason why down here. And no one basically threatened you or beat you up and said sign this paper or we'll [sic] going to kick your ass if you don't talk to us.

The detectives then asked if defendant was willing to talk to them, and defendant said they could ask him questions. Defendant

signed the Miranda rights waiver form and the detectives began the interrogation.

During the interrogation, Kearns and defendant discussed the diner incident. Kearns advised defendant that the police had a recording showing defendant in the diner parking lot holding a handgun. Defendant challenged the existence of the recording and exchanged banter with Kearns about whether there actually was a recording. Finally, defendant stated, "I do not want to talk about this anymore, all we going to do is go back and forth about the situation." The interrogation then continued for approximately an hour.

The judge denied the suppression motion, finding that based on his review of the recording, defendant was fully informed of his Miranda rights, and knowingly, voluntarily and intelligently waived his rights. The court rejected defendant's claim that he invoked his right to remain silent during the interrogation. The judge found that based on the totality of the circumstances and considering the context of defendant's statement, "I do not want to talk about this anymore," defendant did not invoke his right to remain silent, but instead clearly expressed only a desire to end the debate about the existence of the recording.

Defendant subsequently pleaded guilty to second-degree leaving the scene of a fatal accident, N.J.S.A. 2C:11-5.1, and

second-degree certain persons not to possess weapons, N.J.S.A. 2C:39-7(b). The court imposed concurrent five-year sentences. The sentence on the certain persons offense is subject to the requirements of the Graves Act, N.J.S.A. 2C:43-6(c), (d). This appeal followed.

POINT I

DEFENDANT'S STATEMENT SHOULD BE SUPPRESSED BECAUSE IT WAS TAKEN IN VIOLATION OF [MIRANDA]; U.S. CONST. AMENDS. V, XIV; N.J. CONST. ART. I, PARA. 1.

A. Defendant's Miranda Waiver Was Not Knowing and Intelligent Where He Was Not Permitted To Finish Reading A list of His Rights To Himself And Where He Was Misleadlingly Told That Waiver Was Just A Formality Before Questioning Could Begin.

B. Defendant's Fifth Amendment Rights Were Violated by the Failure of the Authorities to Terminate Questioning When Defendant Expressly Stated "I Don't' Want to Talk About That No More." U.S. Const., amends V, XIV.

II.

We "engage in a 'searching and critical' review of the record" when reviewing the trial court's denial of a Miranda motion. State v. Maltese, 222 N.J. 525, 543 (2015) (quoting State v. Hreha, 217 N.J. 368, 381-82 (2014)), cert. denied, ___ U.S. ___, 136 S. Ct. 1187, 194 L. Ed. 2d 241 (2016). We defer to the trial court's findings supported by sufficient credible evidence in the record,

particularly when they are grounded in the judge's feel of the case and ability to assess the witnesses' demeanor and credibility. State v. Robinson, 200 N.J. 1, 15 (2009); State v. Elders, 192 N.J. 224, 243-44 (2007). Our deference is required even where the motion court's "factfindings [are] based on video or documentary evidence," such as recordings of custodial interrogations by the police. State v. S.S., __ N.J. __, __ (2017) (slip op. at 18, 24-25).

We will not reverse a motion court's findings of fact based on its review of a recording of a custodial interrogation unless the findings are clearly erroneous or mistaken. Id. at 16-17. We review issues of law de novo. Id. at 25; State v. Shaw, 213 N.J. 398, 411 (2012).

"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. Nyhammer, 197 N.J. 383, 399, cert. denied, 558 U.S. 831, 130 S. Ct. 65, 175 L. Ed. 2d 48 (2009). "Confessions obtained by the police during a custodial interrogation are barred from evidence unless the defendant has been advised of his or her" Miranda rights. State v. Knight, 183 N.J. 449, 461 (2005).

At a hearing challenging the admission of statements made during a custodial interrogation, the "state must prove beyond a reasonable doubt that a defendant's confession was voluntary and was not made because defendant's will was overborne." Id. at 462. The State must also prove "the defendant was advised of his rights and knowingly, voluntarily and intelligently waived them." State v. W.B., 205 N.J. 588, 602 n.3 (2011).

Defendant first argues the court erred by denying the suppression motion because the police failed to fully inform him of his Miranda rights. We find no support in the record for the contention. Aviles read each of the defendant's Miranda rights,² Kearns asked if defendant understood everything Aviles said, and defendant responded in the affirmative. The record supports the court's finding that defendant was advised of his Miranda rights and understood them.

Defendant also argues Kearns misled defendant when, following defendant's reading of the waiver paragraph, Kearns said "basically what the paragraph states" is that no one "beat up,"

² A suspect must be advised of "the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." Miranda, supra, 384 U.S. at 479, 86 S. Ct. at 1630, 16 L. Ed. 2d at 726. A defendant must be afforded the "[o]ppportunity to exercise these rights . . . throughout the interrogation." Ibid.

threatened, or made any promises to defendant. Defendant argues the statement was inaccurate and the court therefore erred by finding defendant knowingly waived his Miranda rights. We disagree.

Kearns's statement did not misinform defendant about his Miranda rights or contradict Aviles's statement of defendant's rights. Cf. State v Pillar, 359 N.J. Super. 249, 268 (App. Div.) ("A police officer cannot directly contradict, out of one side of his mouth, the Miranda warnings just given out of the other."), certif. denied, 177 N.J. 572 (2003). To the contrary, Kearns's statement pertained solely to the waiver paragraph on the Miranda rights form. Kearns said only that he was explaining what "that paragraph" said.

Also, Kearns's statements were consistent with the waiver paragraph. In part, the paragraph states that defendant had not been threatened or coerced, no pressure had been used against him, and no promises were made to him. That is precisely what Kearns told defendant.

The paragraph includes additional information concerning defendant's waiver of his rights that Kearns did not mention, and thus it may be argued his statement was incomplete or otherwise inaccurate because he also said that he was describing what the paragraph "basically" provided. We reject the argument because the

record shows that independent of Kearns's statements, defendant actually read the waiver paragraph before he signed it. Thus, there was sufficient credible evidence that defendant was fully informed of the complete content of the waiver paragraph and indicated his agreement to waive his rights by signing the waiver rights form after he read it.

Moreover, any inadequacies in Kearns's statement concerning the waiver paragraph do not require a reversal of the court's denial of defendant's suppression motion because a written waiver of defendant's Miranda rights was not required, and the record otherwise shows that even without defendant's execution of the waiver form, he knowingly waived his Miranda rights.

A written waiver was not required for defendant to knowingly waive his Miranda rights. State v. Faucette, 439 N.J. Super. 241, 262 (App. Div.), certif. denied, 221 N.J. 492 (2015). "Failure to sign a form of waiver does not preclude a finding of waiver, nor does it make further questioning a violation of [a] defendant's constitutional rights." State v. Warmbrun, 277 N.J. Super. 51, 63 (App. Div. 1994) (quoting United States v. Filiberto, 712 F. Supp. 482, 487 (E.D.Pa. 1989)), certif. denied, 140 N.J. 277 (1995). "The voluntariness of [a] defendant's waiver is tested by the totality of all the surrounding circumstances," only one of which is defendant's execution of a written waiver. Id. at 62-

63; see also North Carolina v. Butler, 441 U.S. 369, 373, 99 S. Ct. 1755, 1757, 60 L. Ed. 2d 286, 292 (1979) ("An express written or oral statement of waiver of the right to remain silent or of the right to counsel is usually strong proof of the validity of that waiver, but is not inevitably either necessary or sufficient to establish waiver.")

A waiver of Miranda rights "need not take a designated legal form nor need it be expressed in designated legal terminology." State v. Yough, 49 N.J. 587, 596 (1967). "Any clear manifestation of a desire to waive is sufficient." State v. Kremens, 52 N.J. 303, 311 (1968). Here, the court reviewed the recording showing the detectives' interactions with defendant, and considered the totality of the circumstances surrounding defendant's waiver of his Miranda rights. In addition to defendant's execution of the waiver form, there was other sufficient credible evidence supporting the court's finding defendant knowingly waived his Miranda rights. As noted, Aviles read the Miranda rights to defendant and defendant understood them. Moreover, defendant read the waiver paragraph aloud. The detectives then asked defendant if he was willing to talk to them, defendant said they could ask him questions, and he thereafter responded to the questions. Based on the totality of the circumstances presented, we are therefore convinced there was ample support for court's determination that

defendant knowingly waived his Miranda rights. S.S., supra, slip op. at 27.

We are also not persuaded by defendant's argument that the court erred by rejecting his claim that he invoked his right to remain silent when he said "I do not want to talk about this anymore." The police are required to stop a custodial interrogation when a suspect unambiguously invokes the right to remain silent and to "diligently honor[]" a request, however ambiguous, to terminate questioning. S.S., supra, slip op. at 29 (quoting State v. Bey, 112 N.J. 123, 142 (1998)). "In those circumstances in which the suspect's statement is susceptible to two different meanings, the interrogating officer must cease questioning and 'inquire of the suspect as to the correct interpretation.'" Ibid. (quoting State v. Johnson, 120 N.J. 263, 283 (1990)).

However, it is "[n]ot merely the words spoken, . . . but the full context in which they were spoken [that] have to be considered in determining whether there has been an invocation of the right to remain silent." State v. Roman, 382 N.J. Super. 44, 64 (App. Div. 2005), certif. granted, 188 N.J. 219 (2006), certif. dismissed as improvidently granted, 189 N.J. 420 (2007). In determining whether the right to remain silent has been invoked, the totality of the circumstances are considered, including "the words used and the suspect's actions or behaviors," to discern whether "the


investigating officer should have reasonably believed that the right was being asserted." State v. Diaz-Bridges, 208 N.J. 544, 565 (2012). Officers need not cease their interrogation if the defendant's "words or conduct could not reasonably be viewed as invoking the right to remain silent," but if the officers "are reasonably uncertain whether the person is asserting the right to remain silent, they may only ask questions directed to resolving that uncertainty." State v. Burno-Taylor, 400 N.J. Super. 581, 590 (App. Div. 2008).

The court thoroughly reviewed the totality of the evidence presented here. Nyhammer, supra, 197 N.J. at 402. It carefully considered the context in which defendant stated that he did "not want to talk about this anymore" and determined defendant expressed only a desire to end his short debate with Kearns over whether a videotape existed, and not that he wished to invoke his right to remain silent or end the interrogation. Indeed, defendant's statement is part of a longer assertion, "I don't think you can even show me a video of me with a gun, but I'm saying we gonna, I do not want to talk about this anymore, all we going to do is go back and forth about the situation." Further, as found by the court, after making the statement defendant continued his discussion with the officers without hesitation or any indication he wanted to remain silent.

Based on our review of the record, we find nothing clearly mistaken or erroneous in the court's findings of fact. S.S., supra, slip op. at 27. We therefore defer to the court's findings and discern no basis to reverse the court's conclusion that defendant's statement was not an invocation, ambiguous or otherwise, of his right to remain silent.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION