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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3850-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANTWON T. SMITH,

Defendant-Appellant.

Submitted July 25, 2017 — Decided August 4, 2017

Before Judges Reisner and Suter.

On appeal from the Superior Court of New
Jersey, Law Division, Middlesex County,
Indictment No. 14-12-1384.

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

Andrew C. Carey, Middlesex County Prosecutor,
attorney for respondent (Patrick F. Galdieri,
II, Assistant Prosecutor, of counsel and on
the brief).

PER CURIAM

Following the denial of his suppression motion, defendant
Antwon T. Smith pled guilty to first-degree murder, N.J.S.A. 2C:11-

3(a)(1), and was sentenced, per the plea agreement, to a prison term of thirty years without parole. He appeals from the conviction, presenting the following point of argument concerning the suppression issue:

POINT I

BECAUSE SMITH'S FIFTH-AMENDMENT RIGHTS WERE VIOLATED BY THE FAILURE OF THE POLICE TO TERMINATE QUESTIONING, OR TO CLARIFY SMITH'S INTENT, WHEN HE AT LEAST AMBIGUOUSLY ASSERTED HIS RIGHT TO SILENCE, THE ORDER DENYING SMITH'S MOTION TO SUPPRESS HIS STATEMENT SHOULD BE REVERSED. U.S. CONST., AMENDS. V, XIV.

After reviewing the record, including the DVD of defendant's statement to the police, we affirm substantially for the reasons stated by Judge Barry A. Weisberg in his oral opinion issued on September 24, 2015, following the Miranda¹ hearing. We add the following brief discussion.

The case involved the fatal shooting of Robert Bailey in Carteret. The shooting was captured by a security camera, and defendant was one of the individuals in the security video. Defendant, who was twenty-eight years old at the time, was arrested the day after the shooting, based on an outstanding municipal warrant. While he was being questioned about the shooting,

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

defendant was shown two still photos taken from the video. He admitted that he was in the first photo, but claimed he did not know the other individuals in the photo. The police then showed him a second photo, describing it to defendant as: "This is you, this is a gun. All right? You shot this guy in the back of the head. It's on camera." He then asked the police to give him his cell phone so that he could speak with his mother.

Defendant repeated that request multiple times during the interview, assuring the police that they could put the cell phone on speaker mode so they could hear the conversation he would have with his mother. At no point did defendant refuse to speak to the police unless he could speak to his mother first. Nor did he indicate that he wanted her advice. Eventually, defendant explained that he just wanted to tell his mother that he loved her and that, as he put it, he had "fucked up." In other words, he wanted his mother to hear the bad news from him before she heard it from the police.

As the Supreme Court has recently reminded us, our review of the trial judge's factual findings is deferential, and that deference includes trial court findings based on the video of a police interrogation. State v. S.S., __ N.J. __, __ (2017) (slip op. at 16-17) (overruling State v. Diaz-Bridges, 208 N.J. 544, 566 (2012), to the extent that it adopted a de novo standard of

appellate review). In S.S., the Court also reiterated the principle that even an ambiguous assertion of the right to remain silent requires that the police stop questioning the suspect until the ambiguity is resolved.

In that light, "[a]ny words or conduct that reasonably appear to be inconsistent with defendant's willingness to discuss his case with the police are tantamount to an invocation of the privilege against self-incrimination." 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."


[Id. at __ (slip op. at 19) (quoting State v. Bey II, 112 N.J. 123, 136 (1988)).]

Thus, the Court agreed with the trial court's determination that S.S. invoked his right to remain silent when he told the police, "that's all I got to say. That's it." Id. at __ (slip op. at 21). On the other hand, if a suspect's statement cannot fairly be construed as being even an ambiguous invocation of the right to remain silent, the interrogation need not stop. Diaz-Bridges, supra, 208 N.J. at 566-67. S.S. did not affect that portion of the holding in Diaz-Bridges. Thus, merely asking to speak to a parent is not necessarily an invocation of the right to silence. Diaz-Bridges, supra, 208 N.J. at 567.

On this record, we find no basis to second-guess Judge Weisberg's findings that the defendant's confession was voluntary, his will was not overborne, and his requests to speak with his mother were not an expression of his wish to stop answering questions. Similarly to the defendant in Diaz-Bridges, defendant here was asking to speak to his mother so that he could tell her he loved her and let her know that he had done something terrible. See Diaz-Bridges, supra, 208 N.J. at 570. Unlike State v. Maltese, 222 N.J. 525, 546 (2015), defendant did not indicate that he wanted to get his mother's advice or that he wanted to stop talking to the police until he obtained her advice. We find no basis to disturb the trial court's conclusion that, under the totality of the circumstances, defendant was not invoking his right to silence. As a result, the police did not violate defendant's Miranda rights when they continued to question him.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION