

RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2090-13T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

A.M.,

Defendant-Appellant.

APPROVED FOR PUBLICATION

January 23, 2018

APPELLATE DIVISION

Submitted February 1, 2017 – Decided January 23, 2018

Before Judges Fuentes, Carroll and Gooden
Brown (Judge Fuentes concurring).

On appeal from Superior Court of New Jersey,
Law Division, Bergen County, Indictment No.
12-08-1150.

Jane M. Personette, attorney for appellant.

Gurbir S. Grewal, Bergen County Prosecutor,
attorney for respondent (Suzanne E. Cevasco,
Assistant Prosecutor, of counsel and on the
brief).

The opinion of the court was delivered by

FUENTES, P.J.A.D.

A Bergen County grand jury indicted defendant A.M., charging
him with first degree aggravated sexual assault, N.J.S.A. 2C:14-
2(a)(2)(a), second degree sexual assault, N.J.S.A. 2C:14-2(c)(4),

two counts of third degree criminal sexual contact, N.J.S.A. 2C:14-3(a), and third degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a). The victim was defendant's step-granddaughter, who was fourteen years old at the time.

The trial court denied defendant's motion to suppress an inculpatory statement he made while being interrogated by detectives from the Bergen County Prosecutor's Office (BCPO) and the Bergenfield Police Department. Defendant thereafter pled guilty to second degree sexual assault, N.J.S.A. 2C:14-2(c)(4). Pursuant to the plea agreement, the State dismissed the remaining counts in the indictment and the court sentenced defendant to a term of six years, with an eighty-five percent period of parole ineligibility and three years of parole supervision, pursuant to the No Early Release Act, N.J.S.A. 2C:43-7.2. Defendant also reserved the right to appeal the denial of his motion to suppress the inculpatory statement.

After reviewing the record developed before the motion judge and mindful of our standard of review, we reverse the trial court's order denying defendant's motion to suppress his inculpatory statement. The evidence presented by the State at the N.J.R.E. 104(c) hearing does not support the motion judge's findings that the State satisfied "the heavy burden" of proving, beyond a reasonable doubt, that defendant made a knowing, intelligent, and

voluntary decision to waive his constitutional rights under Miranda.¹ See State v. Presha, 163 N.J. 304, 313 (2000). The motion judge's decision upholding the methods used by the interrogating detectives improperly shifted this burden of proof to defendant.

I

Bergenfield Police Detective Richard Ramos was the only witness who testified at the N.J.R.E. 104(c)² hearing to adjudicate defendant's motion to suppress. The interrogation took place on July 24, 2011, at the Bergenfield Police Headquarters. Because defendant's dominant language was Spanish, Detective Ramos, who was then a police officer, acted as defendant's interpreter. Ramos testified that the interrogation was conducted using a

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

² N.J.R.E. 104(c) provides in pertinent part:

Where by virtue of any rule of law a judge is required in a criminal action to make a preliminary determination as to the admissibility of a statement by the defendant, the judge shall hear and determine the question of its admissibility out of the presence of the jury. In such a hearing the rules of evidence shall apply and the burden of persuasion as to the admissibility of the statement is on the prosecution.

[Emphasis added.]

"combination" of English and Spanish. When the prosecutor asked Ramos to provide the motion judge "with a little bit of an idea of [his] background in the Spanish language[,]" Ramos responded:

I grew up in a Spanish [speaking] household. Spanish was my first language spoken at home. I did study Spanish in high school, a couple courses and also in college.

Q. Have you been called upon by your police department in your capacity as a police officer to either help translate statements made in Spanish by witnesses or defendants or to provide a translation of Miranda rights in Spanish ever before?

A. Yes.

Q. And so your department has asked you to do this kind of thing before?

A. Yes.

Q. Again, how would you characterize roughly the number of times you've been called upon, rarely, often?

A. Often.

The appellate record includes both a video recording of the interrogation and a transcript of the questions and answers. The record shows that BCPO Detective Brian Lucas and Bergenfield Police Detective Robert Boria were the two principal interrogators. Officer Ramos's role was limited to acting as an interpreter when necessary. The following colloquy captured how the interrogation was conducted.

DETECTIVE LUCAS: [N]ow, my understanding is that you . . . speak English, but you're most comfortable in Spanish?

DEFENDANT: In Spanish.

DETECTIVE LUCAS: Is that correct? Have you understood everything that I am saying so far, . . . where . . . I work and my name and everything?

DEFENDANT: Yeah.

DETECTIVE LUCAS: Okay . . . this is Detective Robert Boria. He works for the Bergenfield Police Department and this is Officer Rich Ramos. Right?

OFFICER RAMOS: Yep.

DETECTIVE LUCAS: He also works here for Bergenfield and what he's going to do, he's [going to] help us out if you don't understand anything in English, he's [going to] be able to step in and . . . speak to you in Spanish.

DEFENDANT: Okay.

From this point forward, the video recording shows that Officer Ramos interpreted Detective Lucas's questions to defendant from English into Spanish and defendant's answers from Spanish into English. After asking defendant a series of questions concerning his age, place of residence, and immigration status,³

³ Defendant told Detective Lucas that he was born in Mexico and was in this country as a lawful permanent resident. At the plea hearing conducted on June 17, 2013, defendant acknowledged that as a consequence of this conviction, his legal residency status could be revoked and he could be deported to Mexico.

Detective Lucas gave defendant a Miranda rights waiver form written in Spanish. Lucas then gave defendant the following explanation of the significance of the form.

DETECTIVE LUCAS: All right. What I have here is, uh, your [Miranda] Rights. Do you understand what those are?

DEFENDANT: Uh-

DETECTIVE LUCAS: Okay. What these are, these are, these tell you what, uh, these, basically, the guidelines of . . . us talking to one another. Okay? These are going to tell you what, what your rights are, and you have the right to an attorney, and, uh, speaking with us is voluntary. Okay? Do you understand that, what I've said so far?

DEFENDANT: Um, yeah.

DETECTIVE LUCAS: Okay. This form I have, I have one of these in English, but you said you're most comfortable in Spanish, so-

DEFENDANT: In Spanish.

. . . .

DETECTIVE LUCAS: So, rather than me read it, what I'm going to ask, uh, [O]fficer Ramos to do, is if he can read you your rights in Spanish.

[Emphasis added.]

The video recording shows Officer Ramos reading in Spanish the Miranda rights and waiver form. However, the transcript of this part of the video recording is written in English. According to the transcript, after Officer Ramos completes reading aloud the

list of Miranda rights, he purportedly tells defendant to write his name and sign the waiver form. The cover page of the transcript of the video record shows it was prepared by Evelyn Mosquera, Clerk Typist, BCPO. Mosquera did not sign the transcript document or certify that it was a true and accurate translation of the audio part of the video record. The record does not contain any evidence attesting that Mosquera received any training or had any experience translating audio records.

The only indication of the accuracy and reliability of the transcript is in Officer Ramos's testimony at the evidentiary hearing.

Q. Now, when you reviewed the videotape, were you able to compare a transcript of the discussion on the videotape with what was said on the videotape?

A. Yes.

Q. And to the best of your ability does the transcript adequately reflect what was said in the video?

A. Yes.

This line of questions concerning Officer Ramos's competency to interpret continued on cross-examination.

Q. . . . You said that you have some familiarity with the Spanish language, correct?

A. Yes.

Q. Have you ever taken a test to officially translate?

A. No.

Q. So, for example, like we have two court interpreters here that have taken tests employed by the State. Have you ever done a proficiency test like that?

A. No.

Q. Have you ever written anything like a police report or a letter, anything in Spanish?

A. No.

Q. Have you ever been called to translate a document, for example, let's say somebody sends you a police report from a Spanish speaking country or Spanish statement, has anybody ever called you to do that?

A. Yes.

Q. When have they called you to do that?

A. As far as my regular patrol to translate statements.

Q. But I'm saying like an official document. Would you feel comfortable, let's say, if I gave you a Spanish book, like a novel, would you be comfortable translating that word for word?

A. To the best of my ability, yeah.

Q. Have you ever done that like in an official capacity, listened to a statement and typed it out in English?

A. No.

Q. Have you ever testified as an interpreter before?

A. No.

The video record shows defendant appearing to read to himself the waiver part of the Miranda form that was written in Spanish. Officer Ramos acknowledged that he did not read the waiver paragraph in the Miranda form to defendant. Officer Ramos pointed to the sections in the waiver form and told defendant: "Write your name in the line -, complete. And you have to sign here, the line is not there, but you have to sign."

Officer Ramos also testified that he paraphrased many of defendant's answers to questions dealing directly with defendant's alleged sexually inappropriate interactions with the victim. By way of example, during the interrogation defendant was asked about an incident in which he allegedly asked the victim to model a swimsuit. Defense counsel quoted the following colloquy that Ramos translated during the interrogation:

"OFFICER RAMOS: . . . now, tell me about the thing with the bathing suit?

[DEFENDANT]: So then, she says no, yes it fits me. Okay. I told her that's fine, so then I'm going to tell your grandmother to, to buy you one. So then I came hug her and she turned around and I grabbed her like this and that's when she says that I touched her chest."

DEFENSE COUNSEL: Do you recall that section?

OFFICER RAMOS: Yes.

DEFENSE COUNSEL: And then here you're translating for the officers and your translation of that says,

"OFFICER RAMOS: He's saying that she tried it on and she said yeah it, it doesn't fit so that's when he said okay I'll tell your grandmother to buy you another bathing suit and that's when he went to hug her."

Do you recall that?

OFFICER RAMOS: Yes.

DEFENSE COUNSEL: Is that a translation of [what the defendant] actually said?

THE COURT: Is that verbatim or did you paraphrase it?

OFFICER RAMOS: Paraphrased it.

THE COURT: That happened several times during the transcript, is that correct?

OFFICER RAMOS: Yes.

DEFENSE COUNSEL: For example, here when he's saying that she says "no, yes it fits me" you translated that as "Yeah, it doesn't fit"?

OFFICER RAMOS: I must have misheard what he said.

When asked by defense counsel whether he had any discussion with the detectives or with defendant about whether he was required to translate verbatim or paraphrase "what anyone was saying," Officer

Ramos answered: ". . . I would try to translate as best as possible."

Against this record, the motion judge denied defendant's motion to suppress. After quoting the English version of the Miranda waiver form, a document defendant did not read because it was not provided to him by the detectives who interrogated him, the judge found "defendant wrote his name in the space provided and further signed his name below the paragraph to indicate that he had both read and attested to the same." With respect to Officer Ramos's failure to read the Miranda waiver aloud, the judge found: "[I]t is clear from reviewing the video tape that defendant was given an opportunity to read the waiver paragraph and signed the waiver portion, and did in fact review the waiver portion before signing it."

The motion judge found the video record showed that defendant appeared "alert and cognizant while the [Miranda] form [was] explained to him and while he signed the form, stopping the officers on multiple occasions to ask questions, repeatedly acknowledging his comprehension of the process, and correcting the officers when they misunderstood what he [had] said." Ultimately, the judge found it was defendant's duty to inform the detectives if he "had any problems reading the waiver portion of the [Miranda] form, written in Spanish as he had requested[.]" Based on these

findings, the judge concluded that "[n]othing in the record suggests that the waiver was made under duress, coercion or intimidation." Furthermore, defendant "has put forth no credible evidence of specific police misconduct which would render the statements involuntary."

II

Defendant now appeals raising the following arguments.

POINT ONE

THE COURT BELOW ERRED IN FAILING TO SUPPRESS DEFENDANT'S STATEMENT BASED UPON CLEAR VIOLATIONS OF MIRANDA V. ARIZONA.

- a. General legal principles.
- b. The Court below erred in finding that there had been a valid waiver by [A.M.] of his [Miranda] rights.
- c. The Court below erred in determining that the questioning of [A.M.] at his home did not violate Defendant's Fifth Amendment protections and did not taint the subsequent statement.
- d. The Court below erred in finding that Defendant was not denied due process and equal protection based upon the wildly inaccurate translation that occurred during the interrogation.
- e. The Court below erred in finding that the presence in the interview room of a gun, pepper-spray and handcuffs did not create a coercive environment sufficient to warrant suppression of [A.M.'s] statement.

Our Supreme Court recently reaffirmed that "[t]he right against self-incrimination is guaranteed by the Fifth Amendment to the United States Constitution and this state's common law, now embodied in statute, N.J.S.A. 2A:84A-19, and evidence rule, N.J.R.E. 503." State v. S.S., 229 N.J. 360, 381-82 (2017) (quoting State v. Nyhammer, 197 N.J. 383 (2009)). Furthermore, in determining whether incriminating statements are admissible, the State must "prove beyond a reasonable doubt that the suspect's waiver [of rights] was knowing, intelligent, and voluntary[.]" State v. Yohnnson, 204 N.J. 43, 59 (2009) (quoting Presha, 163 N.J. at 313). A reviewing court must determine whether the State has satisfied this "heavy burden" of proof, State v. Hartley, 103 N.J. 252, 260 (1986) (quoting Miranda, 384 U.S. at 444), based upon an evaluation of the "totality of the circumstances[.]" Nyhammer, 197 N.J. at 402.

A "totality-of-the-circumstances" analysis requires the motion judge to consider such factors as a defendant's "age, education and intelligence, advice as to constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature and whether physical punishment or mental exhaustion was involved." Ibid. (quoting Presha, 163 N.J. at 313). The Court in S.S. also clarified our standard of review in cases such as this, where the motion judge's factual findings in support

of his decision to deny or grant a motion to suppress a defendant's inculpatory statement are based on both: (1) the video record of the defendant's interrogation; and (2) the live testimony of a law enforcement agent who was involved in the interrogation, stating:

Generally, on appellate review, a trial court's factual findings in support of granting or denying a motion to suppress must be upheld when "those findings are supported by sufficient credible evidence in the record." In the typical scenario of a hearing with live testimony, appellate courts defer to the trial court's factual findings because the trial court has the "opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy."

We have cautioned that a trial court's factual findings should not be overturned merely because an appellate court disagrees with the inferences drawn and the evidence accepted by the trial court or because it would have reached a different conclusion. An appellate court should not disturb a trial court's factual findings unless those findings are "so clearly mistaken that the interests of justice demand intervention and correction."

[S.S. 229 N.J. at 374 (internal citations omitted).]

Of particular relevance here, the Court in S.S. also decided to reexamine and ultimately reverse its holding in State v. Diaz-Bridges, 208 N.J. 544, 565-66 (2011), that permitted reviewing appellate courts not to give any deference "to another court's factual findings based solely on a video-recorded interrogation."

S.S. 229 N.J. at 375. In rejecting the de novo approach it endorsed in Diaz-Bridges, the Court concluded "that a standard of deference to a trial court's fact[-]findings, even fact[-]findings based solely on video or documentary evidence, best advances the interests of justice in a judicial system that assigns different roles to trial courts and appellate courts." Id. at 379. However, the Court also reaffirmed an equally important countervailing principle of appellate jurisprudence: "Because legal issues do not implicate the fact-finding expertise of the trial courts, appellate courts construe the Constitution, statutes, and common law 'de novo -- with fresh eyes -- owing no deference to the interpretive conclusions' of trial courts[.]" Id. at 380 (quoting State v. Morrison, 227 N.J. 295, 308 (2016)).

Thus, our review is limited to determining whether the motion judge's factual findings are supported by sufficient credible evidence in the record. We engage in this undertaking mindful that the judge had the opportunity to hear Detective Ramos's testimony, observe his demeanor, and acquire a "feel of the case" which, as a reviewing court, we cannot enjoy. We will also apply the same deferential standard of review to the findings the judge made based on his observation of the video recording of defendant's interrogation.

However, we will review de novo the constitutional implications of these facts. As framed by the motion judge in his memorandum of opinion: "The critical issue is whether defendant voluntarily, knowingly, and intelligently waived his Miranda rights." The judge concluded that the totality of the circumstances showed "defendant's waiver was valid." We disagree. The judge found that "[n]othing in the record suggests that the waiver was made under duress, coercion or intimidation." We agree. The critical flaw in the manner the State procured defendant's "waiver" is not based on "police misconduct" but on the failure of the State to prove, beyond a reasonable doubt, that defendant made a "knowing and informed" decision to waive his Fifth Amendment rights.

The audio-video record of the interrogation shows that Officer Ramos read aloud the section in the Spanish version of the BCPO Miranda-rights form the rights⁴ the Supreme Court described in Miranda, and asked defendant to write "Si" in the line provided

⁴ The BCPO's Miranda form states: (1) you have the right to remain silent and not answer any questions; (2) anything you say may be used against you in a court of law; (3) you have the right to speak to an attorney at any time and have the attorney present with you during questioning; (4) if you cannot afford to pay for an attorney, one will be assigned to represent you before questioning if you so desire; and (5) you have the right to stop answering any questions or ask to have an attorney at any time. Do you understand? Answer _____ Initials _____.

next to: "Do you understand?" The video also shows Officer Ramos did not continue to read aloud the section in the form that contains the waiver provision. The motion judge found:

In response to this [waiver] paragraph, defendant wrote his name in the space provided and further signed his name below the paragraph to indicate that he had both read and attested to the same. Although Detective Ramos acknowledged at the Miranda hearing that he did not read the waiver portion of the form aloud, it is clear from reviewing the video tape that defendant was given an opportunity to read the waiver paragraph and signed the waiver portion, and did in fact review the waiver portion before signing it.

[Emphasis added.]

On cross-examination at the N.J.R.E. 104(c) hearing, Detective Ramos conceded that he: (1) did not ask defendant about his level of education; (2) did not make any efforts to determine whether defendant was literate in Spanish; (3) did not ask defendant to read the waiver provision out loud to create a video record of what defendant actually read; and (4) did not mention the word "waiver" or any other word or phrase that has the same or similar meaning. He merely told defendant "to sign this [and] put his name in there[.]" The motion judge did not address any of these omissions. On the contrary, the judge stated: "If defendant had any problems reading the waiver portion of the form,

written in Spanish as he had requested, it is clear to this court that he would have voiced such difficulty."

The judge's analysis improperly shifts the burden of proof to defendant to alert the interrogating officers about any difficulty he may be having understanding the ramifications of a legal waiver. This reveals a fundamental misunderstanding of the legal principles governing a motion to suppress under Miranda. It is the State's "heavy burden" to prove beyond a reasonable doubt that defendant's waiver of rights was knowing, intelligent, and voluntary. Yohnnson, 204 N.J. at 59. A "totality-of-the-circumstances" analysis provides additional grounds for rejecting the motion judge's conclusion. The judge failed to consider the State's failure to present any evidence of defendant's educational background. Instead, the judge assumed that defendant was literate in Spanish without a proper evidential foundation.

This case also illustrates the difference between knowing a foreign language and being able to accurately and competently interpret the critically important words spoken by a witness in the course of an interrogation. In response to the motion judge's questions, Officer Ramos conceded that he merely "paraphrased" defendant's statements. Officer Ramos candidly admitted that he: (1) has never tested to determine his ability to translate or assess his proficiency in Spanish; (2) has never written a police

report or a letter in Spanish; (3) had never before been asked to interpret a Miranda interrogation; and (4) had never interpreted in a judicial proceeding.

With respect to the video record, the transcription of the interrogation was prepared by a "clerk typist" employed by the BCPO. The record presented to the motion judge does not contain any information concerning this person's qualifications in translation. The mere fact of having a Hispanic last name does not create a rational basis to infer anything about a person's linguistic abilities. Finally, and equally as important, both Officer Ramos and Ms. Mosquera, the clerk typist, are law enforcement employees. Neither is an impartial participant.

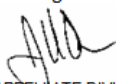
Officer Ramos's admitted shortcomings in the manner he "interpreted" defendant's answers, together with his status as a police officer, are factors that should have been considered by the motion judge in determining whether, under the "totality-of-the-circumstances," the State proved beyond a reasonable doubt that defendant knowingly and intelligently waived his rights under Miranda.

Based on the record developed before the motion judge, we conclude the State did not prove, beyond a reasonable doubt, that defendant knowingly and intelligently waived his rights under Miranda. We therefore reverse the order of the trial court denying

defendant's motion to suppress the incriminating statement he made on July 24, 2011. We remand for such further proceedings as may be warranted.

Reversed and remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION

FUENTES, P.J.A.D., concurring.

I write separately to express my views on what I believe are the inherent constitutional flaws associated with relying on untrained, presumptively partial police officers to act as interpreters during custodial interrogations of limited English proficient suspects. In my view, Detective Ramos's role as defendant's interpreter cast a shadow of unreliability over the interrogation and added an independent factor to question the efficacy of defendant's waiver, as well as the accuracy of his alleged incriminating statements. The magnitude of this problem is revealed by reviewing the role interpreters play in our criminal justice system.

Before an individual may act as an interpreter in a judicial proceeding, the judge is obligated to "determine the qualifications of a person testifying as an interpreter. An interpreter shall be subject to all provisions of these rules relating to witnesses and shall take an oath or make an affirmation or declaration to interpret accurately." N.J.R.E. 604. Pursuant to Rule 1:14, the Supreme Court adopted a Code of Professional Conduct for Interpreters, Transliterations,¹ and Translators (the

¹ Transliterations are individuals who are trained to represent letters or words in the corresponding characters of another

Code), which characterizes "[i]nterpreters, transliterators, and translators as highly skilled professionals who fulfill an essential role in the administration of justice." Code of Professional Conduct for Interpreters, Transliterations, and Translators, Pressler & Verniero, Current N.J. Court Rules, Appendix to Part I at 598 (2018) (emphasis added). Pursuant to these Canons of ethical conduct, interpreters are required to "faithfully and accurately reproduce in the target language the closest natural equivalent of the source-language message without embellishment, omission, or explanation." Ibid. Interpreters are required to "be impartial and avoid any appearance of bias or favoritism." Id. at 599. In short, it is now generally accepted that interpreters are viewed by the judiciary as "something potentially indispensable to the discharge of justice rather than some frivolous, burdensome, or evasive machination." State v. Rodriguez, 294 N.J. Super. 129, 139 (Law Div. 1996).

Twenty-three years ago, our Supreme Court acknowledged "[t]he problem of communicating Miranda rights to non-English-speaking defendants is important, particularly in a state with so diverse a population." State v. Mejia, 141 N.J. 475, 503 (1995). Thus,

alphabet. Transliterate, Webster's II New College Dictionary 1171 (2001).

[t]o assist local law-enforcement officers in meeting their constitutional obligation, the Attorney General should develop appropriate bilingual Miranda warnings. In making that recommendation, we recognize that law-enforcement officials cannot print Miranda warnings for all linguistic minorities. But that should not prevent the State from preparing cards for the larger segments of the non-English speaking population.

[Ibid.]

As this case illustrates, the Attorney General heeded the Court's call to action by providing our State's law enforcement community with a Spanish-version of the uniform Miranda rights and waiver form. This is the form the BCPO utilized here. However, the question here is not whether defendant was provided with the proper Miranda waiver form. The issue here is whether defendant's signature on the waiver section of the form constitutes sufficient evidence to establish, beyond a reasonable doubt and under the totality of the circumstances, that defendant made a knowing, informed decision to waive his rights under Miranda.

In State v. Marquez, 202 N.J. 485, 512 (2009), the Court addressed a different aspect of Mejia's legacy. In Marquez, a motorist who spoke only Spanish was convicted of refusing to submit to a breath test to determine his blood alcohol content (BAC), in violation of N.J.S.A. 39:4-50.4a. Writing for the Court, Chief Justice Rabner described the police officer's "good faith, but

surreal, effort to inform [the] defendant of the consequences of refusing to submit to a breath test," by "read[ing] aloud a detailed, eleven-paragraph, standard statement--all in English." Marquez, 202 N.J. at 489. Despite not understanding anything that was read to him, the defendant was convicted "of refusing to submit to a breath test both in municipal court and on de novo review at the trial court, and his conviction was affirmed by the Appellate Division." Id. at 490.

The Court reversed the defendant's conviction, holding that the "reading of the standard statement to [the defendant] in English failed to 'inform' [the] defendant of the consequences of refusal, as required." Id. at 514. As Justice Pollock noted fifteen years earlier in Mejia, Chief Justice Rabner recognized in Marquez that:

[m]any different languages are spoken in our State. According to statistics for the court year 2007-08, 87,766 court events required translation services in 81 languages. However, the vast majority of cases involved a limited number of languages. Spanish translations, for example, accounted for 74,762, or about 85%, of the translated sessions.

[Id. at 510 (internal citations omitted).]

Today, the judiciary's website includes a Language Services Section (LSS) designed to support "the Judiciary's goal of ensuring that persons who are Limited English Proficient (LEP) or who are

deaf or hard of hearing have equal access to court proceedings, programs and services."² The LSS is replete with information describing a variety of resources that make professionally trained and duly certified interpreting and translation services accessible and available statewide in a plethora of languages. These services keep the doors of our courthouses open to all without compromising the integrity and impartiality of the judicial process. Modern technological advancements make these resources practically and readily accessible to local police departments throughout our State. Municipal courts are already the beneficiary of these services.

The Canons of ethical conduct for interpreters adopted by the Supreme Court make clear that the manner in which an interpreter carries out his or her duties directly affects the integrity of the process. These ethical standards require interpreters used by the judiciary to be completely neutral and without interest of any stripe in the outcome of the proceedings. See In Interest of R.R., 79 N.J. 97, 118 (1979).

I have engaged in this discussion to highlight the role professionally trained, impartial interpreters play in the

² Language Services Section, N.J. Courts, <http://www.judiciary.state.nj.us/public/langsrv.html>.

judiciary's mission to "provide equal access to a fair and effective system of justice for all without excess cost, inconvenience, or delay, with sensitivity to an increasingly diverse society."³ I recognize that under our tripartite system of government, the judiciary does not have the authority to dictate policy or establish protocols that mandate law enforcement agencies to use professionally trained interpreters whenever they interrogate a limited English proficient suspect. However, the deferential approach to the prerogatives of the Executive Branch the Supreme Court adopted in Marquez concerning the enforcement challenges posed by N.J.S.A. 39:4-50.4a exemplifies the approach I believe should be followed here:

Many different languages are spoken in our State.

. . . .

The executive branch, and not the courts, is best-equipped to respond to those concerns and still satisfy the statutory command to "inform . . . motorists of the consequences of refus[al]." N.J.S.A. 39:4-50.2(e). We defer to the executive branch agency, specifically, to the chief administrator of the MVC, to fashion a proper remedy with the assistance of the Attorney General.

[Marquez, 202 N.J. at 510-11.]

³ See Vision Statement, N.J. Courts, <https://njcourts.gov/public/mission.html?lang=eng>.

Thus, it is up to the Attorney General to develop appropriate guidelines to assist county prosecutors and municipal police departments on how to interrogate limited English proficient suspects to avoid the constitutional pitfalls identified in this case. Until this issue is addressed in a uniform manner befitting its importance, the constitutional right against self-incrimination of limited English proficient suspects remains dependent on how well untrained, presumptively partial individuals interpret the interrogators' questions and the suspects' responses.

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



CLERK OF THE APPELLATE DIVISION