

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5247-15T2

STATE OF NEW JERSEY
IN THE INTEREST OF T.S.S.,
a Juvenile.

Argued January 18, 2018 — Decided April 13, 2018

Before Judges Simonelli, Rothstadt and Gooden
Brown.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket Nos. FJ-02-0589-16 and FJ-02-0632-16.

Brian P. Keenan, Assistant Deputy Public
Defender, argued the cause for appellant
T.S.S. (Joseph E. Krakora, Public Defender,
attorney; Brian P. Keenan, of counsel and on
the brief).

William P. Miller, Special Deputy Attorney
General/Acting Assistant Prosecutor, argued
the cause for respondent State of New Jersey
(Dennis Calo, Acting Bergen County Prosecutor,
attorney; William P. Miller, of counsel and
on the brief).

PER CURIAM

After his motion to suppress his confession was denied, juvenile T.S.S., born July 23, 2000, pled guilty to committing an act of delinquency which, if committed by an adult, would constitute third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4a(1), while preserving his right to appeal the denial of the motion. By way of disposition, on June 29, 2016, the Family Part judge placed T.S.S. on probation for a period of three years, subject to standard and special conditions of probation, and ordered T.S.S. to comply with the requirements of Megan's Law, N.J.S.A. 2C:7-1 to -23.¹

On appeal, T.S.S. raises the following contentions for our consideration:

POINT I

THE MOTION JUDGE ERRED IN DENYING THE JUVENILE'S MOTION TO SUPPRESS BECAUSE THE POLICE DEPRIVED HIM [OF] AN UNBIASED GUARDIAN TO REPRESENT HIS INTERESTS, AND FAILED TO ADEQUATELY INFORM HIM OF HIS RIGHTS, AND THEREFORE, HIS WAIVER WAS NOT VOLUNTARY, KNOWING AND [INTELLIGENT] UNDER THE TOTALITY OF THE CIRCUMSTANCES.

A. THE STATE FAILED TO MEET THE
PRESHA² STANDARD OF REQUIRING PROOF

¹ At the time, T.S.S. was already on probation. He pled guilty to violating the terms of his probation and received a three-year probationary disposition to run concurrent with the probationary term imposed for endangering the welfare of a child.

² State v. Presha, 163 N.J. 304 (2000).

THAT [T.S.S.'] MOTHER WAS UNAVAILABLE OR UNWILLING TO BE PRESENT.

B. THE DETECTIVE'S FAILURE TO READ THE WAIVER SECTION OF THE MIRANDA³ FORM, USE OF DECEPTIVE AND MANIPULATIVE TECHNIQUES, AND PRESENCE OF [T.S.S.'] AUNT ACTING AS AN ASSISTANT TO THE POLICE RATHER THAN HIS PROTECTOR NECESSITATES SUPPRESSION OF HIS STATEMENT.

After reviewing the record in light of the contentions advanced on appeal, we reverse.

We glean the following facts from the evidence presented by the State at the N.J.R.E. 104(c)⁴ hearing conducted on April 25, 2016. On October 30, 2015, Detective Jennifer Rueda of the Bergen County Prosecutor's Office began an investigation into allegations that T.S.S. had taken photographs of himself inserting his tongue into the buttocks of his ten-year-old half-sister. She first contacted T.S.S.' mother, K.P., who provided a statement summarizing the discovery.

³ Miranda v. Arizona, 384 U.S. 436 (1966).

⁴ N.J.R.E. 104(c) provides in pertinent part that "[w]here 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" 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." Ibid.

K.P. told Detective Rueda that a friend contacted her after discovering the photographs in question. After personally viewing the photographs, K.P. confronted T.S.S., who admitted to her "that he had inserted his tongue in [his sister's] buttocks and that he had taken those photographs." Detective Rueda asked K.P. if she could speak with T.S.S. However, K.P. responded that she did not know his whereabouts at the time. After the conversation with K.P., Detective Rueda contacted K.P.'s friend and obtained the photographs.

Three days later, on November 2, 2015, K.P. contacted Detective Rueda to inform her that she had located T.S.S. and was bringing him to the prosecutor's office for an interview. During this conversation, Detective Rueda explained to K.P. that "there was going to be a conflict of interest, because [K.P.] was the mother of [the victim] and the mother of [T.S.S.]." Detective Rueda explained that "in past experiences, [she has] always been instructed . . . that when we have . . . an investigation involving a sexual assault, . . . when we have . . . brother and sister, or brother and brother, the parents should not be . . . in the interview room with them." Detective Rueda asked K.P. "if she had anyone in her family that she wanted to appoint to . . . sit in . . . the interview with [T.S.S.] and [K.P.] said yes." K.P.

responded that she would contact her sister, S.P., to sit in on the interview with T.S.S.

Later that day, at approximately 5:00 p.m., K.P., S.P., and T.S.S. arrived at the prosecutor's office for the interview. Detective Kevin Matthew was assigned to conduct the interview. Just prior to entering the interview room, he introduced himself to the three of them, spoke briefly about the conflict of interest, and then escorted S.P. and T.S.S. into the interview room, which he described as "a regular room with chairs, a table" and equipped with an "audio and . . . video recording device."

At 5:24 p.m., Detective Matthew, joined by North Arlington Detective Anthony Scala, initiated the video-recorded statement by activating the recording device.⁵ At the outset, utilizing the pre-printed juvenile rights form for juveniles at least fourteen-years-old,⁶ Detective Matthew administered the Miranda warnings to T.S.S. as follows:

[DETECTIVE MATTHEW]: [L]et me just go over this with you real quick. These are your right[s]. I'm sure you see on television sometimes where um, people are read their rights. What this means is that you're willing to speak with me without the presence of an attorney, okay? So I'm gonna go over

⁵ The appellate record includes both a video recording of the interrogation as well as a typed transcript, both of which were moved into evidence for purposes of the hearing.

⁶ The form was moved into evidence for purposes of the hearing.

these questions with you and you're gonna answer them for me, yes or no, you understand?

[T.S.S.]: Yes.

[DETECTIVE MATTHEW]: There you go, good job. Um, okay, the first one. It says you have the right to remain silent and refuse to answer any questions, do you understand that?

[T.S.S.]: Yes.

[DETECTIVE MATTHEW]: Good. What I want you to do is take this pen and write the word yes right here on this line for the one you just answered and then put your initials here The second one says anything you say can and will be used against you in the [c]ourt; do you understand that?

[T.S.S.]: Yes.

[DETECTIVE MATTHEW]: Okay. Same thing here. Write the word yes and then put your initials here. Next one says you have the right to talk to an attorney before we ask you any questions and to have him or her present with you during questioning; do you understand this?

[T.S.S.]: Yes.

[DETECTIVE MATTHEW]: Write the word yes and put your initials here. Next one says if you cannot afford to hire an attorney, you may apply to [c]ourt and one will be appointed to represent you before any questioning; do you understand this?

[T.S.S.]: Yes.

[DETECTIVE MATTHEW]: Write the word yes and put your initials here. Uh, you may stop answering questions and request an attorney at any time; do you understand this?

[T.S.S.]: Yes.

[DETECTIVE MATTHEW]: Yes here and your initials again. Thank you. Now, what I explained to you before is basically we're gonna have a conversation in regards to an incident that happened. Um, and you said if you are willing to have a conversation with me; correct?⁷

[T.S.S.]: Yes.

Immediately after administering these Miranda warnings, the following colloquy occurred:

[DETECTIVE MATTHEW]: Okay. . . . I want you to put your date of birth on this line and I want you to circle um, I guess you have here, I do or do not want my parent or guardian present-well, she's present with you, so circle I do here, circle I do here and then sign here. Sign your name and then just put today's date is uh, 11/2/2015 and the time now is 5:27. Good job and we're gonna witness this at the bottom here-I'm sorry, this is for you, the guardian, right? I'm sorry, you are [S.P.], correct?

. . . .

Uh, [S.P.], if you can just sign for me here please. I think this is where the guardian goes and also put today's date and time and you could witness -

⁷ Detective Matthew was referring to a brief rhetorical comment he made to T.S.S. during his introduction prior to entering the interview room, in which Detective Matthew stated "obviously we're gonna have an opportunity to talk . . . about [an] incident that occurred, okay?" T.S.S. did not respond.

[S.P.]: What time is 5:29?

[DETECTIVE MATTHEW]: 5:28. Thank you.⁸

Next, Detective Matthew elicited T.S.S.' pedigree information, inquired about his favorite subject in school,⁹ and then asked:

[DETECTIVE MATTHEW]: Um, we're gonna talk about an incident that happened a couple days ago, October 30th, right? You know, you know what I am talking about?

[T.S.S.]: Yeah.

[DETECTIVE MATTHEW]: Do you know why you're here?

⁸ On cross-examination, Detective Matthew admitted that he did not read or direct T.S.S. to read the waiver portion of the form, which states:

I have read the statement of my rights and they have been read aloud to me. I understand what my rights are. I am willing to answer questions and make a statement without the presence of an attorney. I understand that I have the right to have my parent/guardian present in the room while I speak to the police to make sure that I am treated fairly. If I speak to the police without my parent/guardian present, I can choose at any time to stop the questioning and require that my parent/guardian be present before I continue answering questions. Further, my parent/guardian can enter the room any time he/she desires despite this waiver and regardless of whether or not I request their presence. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

⁹ T.S.S. acknowledged that he had just started the ninth grade.

[T.S.S.]: Uh-huh.

[DETECTIVE MATTHEW]: Tell me . . . what happened? Tell me why . . . you're here?

[T.S.S.]: Because I took a picture.

. . . .

[DETECTIVE MATTHEW]: What did you take a picture of?

[T.S.S.]: My sister.

Detective Matthew continued to question T.S.S. about the photograph, which T.S.S. admitted taking with a cell phone. When T.S.S. hesitated and became emotional about describing the photograph, Detective Matthew reassured him that he wanted T.S.S. "to be comfortable in saying whatever it is that [he] need[ed] to say" and that he "appreciate[d]" T.S.S.' willingness to speak to him because "it takes a big person to say that they have done something" At that point, S.P. interjected:

[S.P.]: Can I say something? You said you want help, right?

[T.S.S.]: Yes.

[S.P.]: Didn't we talk about this on the phone? So the first step to getting help is admitting what you did regardless of how ugly it is we told you we're by your side. We love you, but this has to be done.

Detective Matthew continued to press T.S.S. for details, reassuring him that he did not have to be afraid and explaining

that in order to "deal with it, . . . the first thing we have to do is acknowledge what the situation is" T.S.S. then admitted taking the photograph of his sister's bare buttocks, while "[he] made a gesture making it seem like [he] was licking it." T.S.S. also admitted that he pulled down her clothing to expose her buttocks and that his tongue made contact with her bare buttocks. He explained that the incident occurred at their home in October at around 9:00 p.m. or 10:00 p.m. while his sister was sleeping.

When T.S.S. indicated that this was the first time he had taken a photograph like that, Detective Matthew reminded him "about telling the truth," and assured him that it would not "hurt" him if he told him that he "did it 2, 3, 4 times" T.S.S. eventually admitted that he had taken a similar photograph of his sister in January of the preceding year. He admitted knowing "what [he] was doing was wrong[,]" but explained that his friends had shown him photos of sexual things "they were doing with their girlfriends" and teased him about not having a girlfriend. However, he denied showing the photos to any of his friends or posting them on any type of social media site, and claimed that he deleted the photos from the phone.

When Detective Matthew asked T.S.S. who the phone belonged to, the following exchange occurred:

[S.P.]: That's (inaudible) phone.

[T.S.S.]: Auntie, I just said that. I just said it wasn't my phone like the first time.

[S.P.]: First of all-

[T.S.S.]: Yeah.

[S.P.]: Relax cause you're here because of this situation. So don't get mad at anybody else but yourself.

[T.S.S.]: I understand that, but you-

[S.P.]: But I'm asking you a question.

. . . .

[S.P.]: -is that the phone that [B.'s] looking for? Is that the same phone?

[T.S.S.]: Yes.

After interviewing T.S.S. for approximately thirty minutes, both detectives left the room. At that point, the following exchange occurred between T.S.S. and S.P.:

[S.P.]: Why you mad?

[T.S.S.]: You know, auntie, you know why I'm mad? This is crazy.

[S.P.]: It's crazy, but you said yourself you knew it was wrong. Remember we talked about the fact that you gotta start thinking before you start doing stuff because you're gonna find yourself in a situation. Well, this is that situation I've been praying to God would never happen. This is that situation that I wish you would've listened and thought about things before you did them. There's no turning back from this. Now it has to be

dealt with. When it happened before, we told you it was wrong, did we not?

[T.S.S.]: Yes.

[S.P.]: So why did you allow that to happen again?

[T.S.S.]: I don't know.

[S.P.]: Please (inaudible) we just keep giving you chances.

[T.S.S.]: I know.

[S.P.]: You know what a situation like this, where this can lead you?

[T.S.S.]: Yes.

[S.P.]: And don't be mad at your mother.

[T.S.S.]: I'm not mad at my mother.

[S.P.]: And don't, it wasn't her. It was me. I told you what happened to me when I was a little girl, didn't I?

[T.S.S.]: Yes.

[S.P.]: And I told you before I allow you to do that to somebody else (inaudible) happened to you, well, this is why you're here cause I'm not gonna let you do that to her or nobody else. I am- that happened to me and I told you how I felt about that. As much as I love you, I love you enough to make sure that if you think that this is something that's acceptable, that you get put away that it won't happen to nobody else. You said you want help, thank God that what I went through, it hasn't happened like that to [your sister], so you can get help, but in order to get help, you gotta be honest about everything. I don't care how ugly it is. I don't care if you're embarrassed, put it on the table cause this

is how you can get help now. So you sitting here saying once [or] twice, no. It's more than that cause it's more than that was on that phone and that video. So when he comes back in this room, you need to let him know how many other times it was.

. . . .

[S.P.]: And be honest about it.

At the end of this discussion, both detectives reentered the room and ended the interview. At that point, T.S.S. was detained and ultimately charged as a juvenile with acts of delinquency which, if committed by an adult, would constitute first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1), second-degree sexual assault, N.J.S.A. 2C:14-2(b), second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(b)(4), and third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a)(1).

On May 16, 2016, in an oral decision, the motion judge denied the juvenile's motion to suppress his statement, finding "based on the totality of the circumstances" that Detective Matthew "properly instructed [T.S.S.] of his rights and that [T.S.S.] acknowledged that he understood and was willing to go forward with his statement." The judge also concluded that "[T.S.S.'] rights were not violated by having his aunt present, rather than his mother."

Preliminarily, the judge summarized the juvenile's arguments challenging the procedure utilized and the manner in which the police administered the Miranda warnings. According to the judge, the juvenile asserted that Detective Matthew erred by (1) "start[ing] the questioning with the presumption that [T.S.S.] had already agreed to speak to law enforcement without the presence of an attorney[;]" (2) using the term "good job" as "positive reinforcement for [T.S.S.] to cooperate with law enforcement and give a statement[;]" (3) "instruct[ing] [T.S.S.] to circle and initial various parts of the form" without ensuring that T.S.S. "appreciate[d] that he had the right to say that he didn't understand or did not want to proceed with the . . . interview[;]" (4) "not read[ing] out loud the waiver portion of the juvenile rights form[;]" (5) not advising T.S.S. "that he, in fact, had the right to go forward with the interview without his aunt being present" as his aunt's presence "had the effect of having a second or third [p]rosecutor in the interview . . . based on [S.P.'s] involvement in the interview process[;]" and (6) "having the aunt also sign the form indicating that she understood her rights, as well as the juvenile's rights without explaining those rights to her."

Addressing "the detective's procedure in going through . . . the juvenile's rights[,]" the judge acknowledged that the detective

did speak very quickly. He did give the impression . . . that he was rushing through the rights. Could he have gone more slowly? Possibly. Did he make the rights seem somewhat . . . perfunctory? Perhaps.

But the fact remains and the [c]ourt believes that the . . . [detective] did adequately address each of the rights with the juvenile.

The judge also found that the detective properly accepted T.S.S.' affirmative responses as indicating that he understood each of his rights and the detective was not "required at that time to go into further detail[,]" . . . especially given the fact that [T.S.S.] had a guardian present" As to T.S.S.' understanding "that he could go forward during the interview without [S.P.'s] presence[,]" the judge was satisfied that T.S.S. understood that right based on the fact that both T.S.S. and his aunt signed the acknowledgement form.

Next, the judge rejected the juvenile's argument that "given the circumstances of the case, the juvenile's interests would have . . . potentially been better served if his mother had been present during the interview and not [his] aunt." The judge found that

based on the totality of the circumstances, given the fact that the mother had been

involved in the investigation prior to the interview, the State was correct in concluding that there was an inherent conflict with having her present during the interview . . . [a]nd . . . the State took adequate steps to ensure that [T.S.S.] had a responsible guardian [during] the interview process and that his rights were not violated by having his aunt present, rather than his mother.

The judge also rejected the juvenile's argument that S.P. "assumed the role of a second prosecutor during the interview[,]" determining that it was "unfair . . . to classify" her as such. The judge acknowledged that S.P. "certainly encouraged [T.S.S.] to talk[,]" however, "the tone . . . of her involvement during the interview process . . . was that of . . . what a responsible parent or guardian would take." Acknowledging that S.P. encouraged T.S.S. to "be truthful with law enforcement[,]" and "get help[,]" the judge determined that S.P. "was appropriately concerned with [T.S.S.'s] well[-]being and sought to do what was right for him." The judge concluded that, while it may not be appropriate "in every instance" for a parent or guardian "to encourage their child to speak during an interview," he did not "see anything in [S.P.'s] behavior during the interview process that would lead [him] to believe that [T.S.S.'s] rights were violated or that she acted improperly in her role as a guardian for the juvenile."

Finally, citing Presha, 163 N.J. at 313, the judge determined that under "the totality of the circumstances[,]" T.S.S.'

statement "was voluntarily given[.]" In that regard, the judge considered the juvenile's age, education, intelligence, advice as to constitutional rights, previous encounters with the legal system,¹⁰ as well as the length of the detention, the nature and duration of the questioning, and whether physical punishment or mental exhaustion was involved. The judge noted "this was a fairly short interview" lasting "approximately [thirty] minutes." The judge also found that there was no evidence of "physical punishment or mental exhaustion on the part of [T.S.S.]." The judge concluded that Detective Matthew "adequately advised [T.S.S.] of his rights under [Miranda]" and T.S.S. made a knowing, intelligent and voluntary decision to waive his constitutional rights and provided a statement of his own volition. This appeal followed.

On appeal, the juvenile renews his arguments challenging the administration of the Miranda warnings and the interview process that were rejected by the motion judge. Our review of the motion judge's factual findings in support of a decision on a motion to suppress an inculpatory statement is limited to determining whether the factual findings "are supported by sufficient credible evidence in the record." State v. S.S., 229 N.J. 360, 374 (2017)

¹⁰ Although T.S.S. had a prior adjudication of delinquency based on T.S.S.' violation of probation, there is no indication in the record of the nature of that prior adjudication or the extent of any contact with the police occasioned by it.

(quoting State v. Gamble, 218 N.J. 412, 424 (2014)). We engage in this undertaking mindful that the judge had the opportunity to hear live testimony, observe demeanor, and acquire a "'feel' of the case, which a reviewing court cannot enjoy." Ibid. (quoting State v. Elders, 192 N.J. 224, 244 (2007)).

We apply the same deferential standard of review to the findings the judge makes based on his observation of the video recording of the juvenile defendant's interrogation, because this approach "best advances the interests of justice in a judicial system that assigns different roles to trial courts and appellate courts." Id. at 379. However, "[b]ecause 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)).

Our Supreme Court has long accorded juveniles special protections when they are subjected to interrogation. In Presha, the Court held that, for a juvenile's confession to be admissible, it must satisfy the same standard that applies to adult confessions: that is, "prosecutors must prove beyond a reasonable doubt that the suspect's waiver [of his constitutional rights] was knowing, intelligent, and voluntary in light of all the

circumstances." 163 N.J. at 313. Whether the suspect's will has been overborne is assessed by considering the "totality of circumstances surrounding the arrest and interrogation, including such factors as 'the suspect's age, education and intelligence, advice as to constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature and whether physical punishment or mental exhaustion was involved[,]" as well as the suspect's previous encounters with the law. Ibid. (quoting State v. Miller, 76 N.J. 392, 402 (1978)).

Regarding interrogations of juveniles in particular, the Court recognized the increased emphasis placed on punishment in the juvenile justice system, as opposed to its traditional rehabilitative purposes. Id. at 314. Thus, the Court reaffirmed the principle that a parent or legal guardian should be present during juvenile interrogations and instructed courts to consider the parent's role as a "highly significant factor" in evaluating the totality of the circumstances. Id. at 315. The Court explained

[T]he parent serves as a buffer between the juvenile, who is entitled to certain protections, and the police, whose investigative function brings the officers necessarily in conflict with the juvenile's legal interests. Parents are in a position to assist juveniles in understanding their rights, acting intelligently in waiving those

rights, and otherwise remaining calm in the face of an interrogation.

[Ibid. (citing Gallegos v. Colorado, 370 U.S. 49, 54 (1962)).]

To that end, the Court emphasized that "police officers must use their best efforts to locate a parent or legal guardian before beginning the interrogation[,]" id. at 316, and "when an adult is unavailable or declines to accompany the juvenile, the police must conduct the interrogation with 'the utmost fairness and in accordance with the highest standards of due process and fundamental fairness.'" Id. at 317 (quoting State ex rel. S.H., 61 N.J. 108, 115 (1972)). The Court warned that "to sustain the admissibility of incriminating statements made outside of the adult's presence, prosecutors are required to show to the trial court's satisfaction, . . . that they were unable to locate the adult." Id. at 316.

More recently, the Court elaborated further on a parent's role during the interrogation of a juvenile. In the context of a parent who was both the parent of the juvenile accused of a sexual assault as well as the grandparent of the alleged victim of the offense, the Court emphasized

the mere presence of a parent is insufficient to protect a juvenile's rights, because presence alone cannot be said to provide the buffer between police and the juvenile that we were contemplating in our decision in

Presha. In order to serve as a buffer, the parent must be acting with the interests of the juvenile in mind. That is not to say that a parent cannot advise his or her child to cooperate with the police or even to confess to the crime if the parent believes that the child in fact committed the criminal act.

[State ex rel. A.S., 203 N.J. 131, 148 (2010).]

Although the Court acknowledged that parents are permitted to encourage their children to cooperate with the police, the Court concluded that A.S.' admissions were obtained in violation of her right against self-incrimination because A.S.' parent was effectively serving as an agent of the police and A.S. was provided conflicting, incomplete and incorrect information about her constitutional rights. Id. at 151-52. Nonetheless, the Court rejected imposing "a categorical rule" when "there is perceived clash in the interests of a parent based on a familial relationship with the victim" Id. at 154.

Instead, the Court acknowledged that "[e]ven in cases of such apparent clashing interests, a parent may be able to fulfill the role envisioned in Presha. And, in those cases where a parent is truly conflicted, another adult . . . may be able to fulfill the parental assistance role envisioned by Presha." Id. at 154-55. Moreover,

when it is apparent to interrogating officers that a parent has competing and clashing

interests in the subject of the interrogation, the police minimally should take steps to ensure that the parent is not allowed to assume the role of interrogator and, further, should strongly consider ceasing the interview when another adult, who is without a conflict of interest, can be made available to the child.

[Id. at 155.]

The Court emphasized that "the greatest care must be taken to assure that the [juvenile's] admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair." Id. at 151-52 (alteration in original) (quoting In re Gault, 387 U.S. 1, 55 (1967)). Ultimately, the State must show that, considering the totality of the circumstances, a juvenile's will was not "overborne by police conduct[,]" State ex rel. Q.N., 179 N.J. 165, 172 (2004) (quoting Presha, 163 N.J. at 313), and his or her statement was "the product of a free choice." State in Interest of J.F., 286 N.J. Super. 89, 98 (App. Div. 1995) (quoting S.H., 61 N.J. at 114-16).

Here, after considering the totality of the circumstances, we conclude that T.S.S.' waiver of his Miranda rights was not knowing, intelligent, and voluntary. Notably, Detective Matthew's attempt to inform T.S.S. of his constitutional rights was incomplete because he omitted the entire waiver portion of the

form. While acknowledging the juvenile's argument in this regard, the motion judge did not explicitly address the constitutional implications of this omission. Instead of reading the waiver portion of the form, Detective Matthew stated to T.S.S., "we're gonna have a conversation in regards to an incident that happened you said if you are willing to have a conversation with me; correct." Detective Matthew then directed T.S.S. to sign the acknowledgement. We conclude that this was an improper and unduly suggestive manner in which to elicit a waiver from an adult, much less a juvenile.

In addition, while we do not find fault with the interview technique utilized, we are concerned about the hurried and perfunctory manner in which the Miranda warnings were conveyed, which the motion judge also acknowledged. Under the circumstances, "a clear and easy-to-understand explanation would be necessary to meaningfully inform" T.S.S. of his constitutional rights. A.S., 203 N.J. at 149. Instead, the manner in which the State procured the juvenile's waiver reveals a critically flawed process that had a clear capacity to overbear the juvenile's will. Considering T.S.S.' age in conjunction with these circumstances, we conclude that T.S.S.' confession was not voluntary under the totality of the circumstances test as prescribed in Presha. Thus, we conclude that the State failed to satisfy the "heavy burden" of proving,

beyond a reasonable doubt, that T.S.S. made a knowing, intelligent, and voluntary decision to waive his constitutional rights under Miranda.

For the sake of completeness, we also conclude that S.P. failed to fulfill the parental assistance role envisioned in Presha. We are mindful that a parent or guardian who sits in on a juvenile's interrogation "to serve as a buffer" is permitted to encourage the juvenile "to cooperate with the police or even to confess" if the parent or guardian "believes that the child in fact committed the criminal act." A.S., 203 N.J. at 148. However, S.P.'s bias that was elucidated during her discussion with T.S.S. after the detectives left the interview room impeded her ability to act in the best interests of T.S.S. and serve as a true buffer between T.S.S. and the detectives. Her "competing and clashing interests in the subject of the interrogation" as well as her assumption of "the role of interrogator" prevented her from serving as a suitable "adult, who is without a conflict of interest" Id. at 155. Thus, we conclude that S.P.'s presence in the interview room contributed to a coercive and suggestive atmosphere that gives us no confidence that T.S.S. voluntarily waived his rights.

Reversed and remanded for further proceedings as may be warranted. We do not retain jurisdiction.

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

A handwritten signature in black ink, appearing to be 'JMA', is written over the text 'file in my office.' and extends slightly below the line.

CLERK OF THE APPELLATE DIVISION