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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-5671-16T3

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

ELIJAH L. JOHNSON,

Defendant-Respondent.

Submitted February 1, 2018 – Decided February 20, 2018

Before Judges Haas and Rothstadt.

On appeal from an interlocutory order of
Superior Court of New Jersey, Law Division,
Atlantic County, Indictment No. 15-04-1199.

Damon G. Tyner, Atlantic County Prosecutor,
attorney for appellant (John J. Lafferty, IV,
Assistant Prosecutor, of counsel and on the
brief).

Respondent has not filed a brief.

PER CURIAM

By leave granted, the State appeals from the July 20, 2017
Law Division order granting defendant's motion to suppress a
recorded statement he gave to the police. Having considered the

State's arguments in light of the record and applicable principles of law, we reverse.

The police arrested defendant as a suspect in an armed robbery. A detective later interrogated defendant at the Atlantic County Justice Facility. The interrogation was audio-recorded and this recording was played at the suppression hearing.

Prior to beginning the interrogation, the detective read defendant his Miranda¹ rights from a card used by his department for this purpose. Specifically, the detective advised defendant:

[Detective]: Before we talk, I just gotta read you your Miranda rights, all right?

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 and have [him] with you while you're being questioned.

If you cannot afford to hire a lawyer, one will be appointed to represent you before any questions if you wish.

You can decide at any time to exercise these rights and not answer any questions or make any statements.

At the suppression hearing, the detective testified that he then continued to read from the card and advised defendant that

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

he could waive these rights and make a statement.² The detective also stated that defendant signed the card. However, after the recording was played at the suppression hearing, the detective realized that he had not read the "waiver portion" of the card verbatim to defendant. In addition, the detective stated that he signed the card for defendant because defendant was handcuffed during the interview.

According to the recording, the following colloquy occurred between the detective and defendant after the detective finished reading him the Miranda rights:

[Detective]: Do you understand those rights?

[Defendant]: Yeah.

[Detective]: Do you want to make a statement?

[Defendant]: A statement?

[Detective]: Yeah, do you want to tell me what happened?

[Defendant]: Oh yeah, oh yeah.

[Detective]: All right.

[Defendant]: What do you want me to tell you?
If I did it, I guess?

² This portion of the Miranda card stated: "I have read the above statement of my rights and I understand each of those rights, and having these rights in mind I waive them and willingly make a statement."

[Detective]: Well, we'll just start with some background. [Audio indiscernible]. Just give me a timeline of what went on.

Defendant then made a statement concerning his role in the robbery.

Thereafter, a grand jury charged defendant and two co-defendants with first-degree armed robbery, N.J.S.A. 2C:15-1(b) (count one); second-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2 and N.J.S.A. 2C:15-1 (count two); second-degree unlawful possession of a handgun without a permit to carry, N.J.S.A. 2C:39-5(b)(1) (count three); second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a) (count four); and fourth-degree aggravated assault with a firearm, N.J.S.A. 2C:12-1(b)(4) (count five). Defendant later filed a motion to suppress the statement he gave to the detective.

Following a hearing,³ the trial court rendered an oral decision granting defendant's motion. The court found

there were plenty of indications of voluntariness in this. There were. And the [c]ourt was absolutely ready to note these in noting that there was an intelligent and voluntary and knowing statement by . . . defendant after having been advised of his Miranda rights. It's clear that he did so in a conversational manner. He volunteered information. At times he laughed. He gave a lot of detail.

³ The detective was the only witness at the suppression hearing.

However, the court ruled that because the detective did not read the "waiver portion" of the Miranda card to defendant verbatim and did not have him sign the card, defendant's statement had to be suppressed. This appeal followed.

On appeal, the State contends that the trial court erred in granting the suppression motion in the face of defendant's clear waiver of Miranda rights after he acknowledged that he understood these rights and wanted to make a statement. We agree.

In reviewing a trial court's decision on a motion to suppress for an alleged violation of Miranda, we use a "searching and critical" standard of review to protect a defendant's constitutional rights. State v. Maltese, 222 N.J. 525, 543 (2015) (quoting State v. Hreha, 217 N.J. 368, 382 (2014)). We defer to a trial court's fact findings on a Miranda motion, if supported by sufficient credible evidence. Hreha, 217 N.J. at 381-82 (citing State v. Johnson, 42 N.J. 146, 161 (1964)). Our deference is required even where the court's "factfindings [are] based solely on video or documentary evidence," such as recordings of custodial interrogations by the police. State v. S.S., 229 N.J. 360, 380 (2017). We do not, however, defer to a trial court's legal conclusions, which we review de novo. State v. Rockford, 213 N.J. 424, 440 (2013).

The familiar Miranda warnings are intended to combat the inherent coerciveness of custodial interrogation. State v. P.Z., 152 N.J. 86, 101-02 (1997). Under Miranda, before commencing a police interrogation, the police must advise the suspect that

he [or she] has the right to remain silent, that anything he [or she] says can be used against him [or her] in a court of law, that he [or she] has the right to the presence of an attorney, and that if he [or she] cannot afford an attorney one will be appointed for him [or her] prior to any questioning if he [or she] so desires.

[Miranda, 384 U.S. at 479.]

The warnings are designed to assure that the waiver of the fundamental right to remain silent is voluntary, knowing, and intelligent. Id. at 444.

The State bears the burden to prove beyond a reasonable doubt that the interrogating officer has complied with Miranda. State v. Yohnnson, 204 N.J. 43, 59 (2010). The trial court must examine the totality of the circumstances. State v. Adams, 127 N.J. 438, 447-48 (1992).

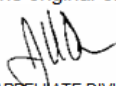
Contrary to the trial court's legal conclusion, a written waiver is not required before a defendant may waive his or her Miranda rights. State v. Faucette, 439 N.J. Super. 241, 262 (App. Div. 2015). Thus, a defendant's failure or refusal to sign a waiver form does not preclude a finding of waiver based on the

totality of the circumstances. State v. Warmbrun, 277 N.J. Super. 51, 63 (1994). Indeed, a suspect who was administered and understood Miranda warnings, but did not invoke his rights, "waives the right to remain silent by making an uncoerced statement to the police." Berghuis v. Thompkins, 560 U.S. 370, 388-89 (2010).

Here, the trial court made strong findings of fact that defendant's statement had all the indicia of voluntariness required for its admission in evidence. The detective read defendant his Miranda rights, defendant acknowledged he understood them, and he proceeded to make a voluntary statement. Because a written waiver of rights was not necessary, that was all that was required to defeat defendant's suppression motion. Therefore, we reverse the trial court's mistaken suppression of the statement and remand for further proceedings.

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