

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1237-21

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

CALVIN HIGHTOWER,

Defendant-Respondent.

Submitted March 28, 2022 – Decided April 12, 2022

Before Judges Sabatino and Mayer.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Camden County, Indictment No. 21-03-0504.

Grace C. MacAulay, Camden County Prosecutor, attorney for appellant (Kevin J. Hein, Assistant Prosecutor, of counsel and on the brief).

Joseph E. Krakora, Public Defender, attorney for respondent (Timothy W. Dalton, Jr., Assistant Deputy Public Defender, of counsel and on the brief).

PER CURIAM

On leave granted, the State appeals the trial court's November 18, 2021 order suppressing certain self-incriminating statements that defendant Calvin Hightower made to police detectives during the course of a custodial interrogation. We affirm.

Defendant has been charged in a two-count indictment with first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(7), and second-degree sexual assault, N.J.S.A. 2C:14-2(c)(1). The charges stem from an incident outside of the Walter Rand Transportation Center that occurred in the early morning hours of June 19, 2020. After the incident was reported to police, defendant was arrested that same morning. He was taken to the administration building of the Camden County Police Department, given Miranda¹ warnings, and questioned by two detectives. During the second segment of that interrogation, defendant made certain admissions, which the State wishes to admit against him at trial.

Defendant moved to suppress the statements. The trial court conducted an evidentiary hearing at which one of the detectives testified. Upon considering that testimony and other evidence, the court issued an oral opinion concluding that defendant's admissions must be suppressed, because the detectives had

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

improperly induced him during the interrogation to confess. This appeal by the State ensued.

I.

The trial court found the following facts, solely for the purposes of the suppression hearing. We adopt those facts here, likewise for the sole purpose of reviewing the suppression ruling.

From about 11:00 p.m. on June 18, 2020, to about 5:00 a.m. the following morning, K.M., the alleged victim, was sleeping on the steps outside of a bank at the William Rand Transportation Center in Camden with her boyfriend, W.D.² Both K.M. and W.D. were homeless at that time.

At some point, W.D. left to buy cigarettes. In his absence, while K.M. was still asleep, defendant non-consensually put his hands down K.M.'s pants and groped her. She awoke, mistakenly assuming it was her boyfriend. When she turned over and saw defendant, she immediately screamed. Defendant quickly left the scene. When W.D. returned, K.M. told him what happened.

Later that morning, at approximately 9:00 a.m., K.M. spotted defendant at the transportation center. K.M. then told two female friends what she believed

² We use initials to protect the alleged victim's identity.

defendant had done to her earlier that morning. The two friends then told a male friend, who approached defendant and physically assaulted him.

Police were called to the transportation center to respond to that encounter. At approximately 9:18 a.m., K.M. told the responding police officers that defendant had allegedly assaulted her earlier that morning, and that she had seen defendant in the past but that she did not know him.

Defendant was arrested and both he and K.M. were brought to the Camden County Police Department for further questioning.

Upon arriving at the department, Detective Erica DiLolle, of the Camden County Police Department, conducted an audio-recorded questioning of K.M. about the earlier non-consensual incident with defendant.

The detectives began their interrogation of defendant at 10:35 a.m. Defendant was shirtless and remained so during his time in custody.³ The first portion of the interrogation took place between 10:35 a.m. and 10:47 a.m.⁴ The next segment of the interrogation occurred from 11:19 a.m. to 12:17 p.m., at

³ Defendant explained to detectives during the pre-confession interrogation that he left his house that morning without a shirt because he did laundry the night before and his clothes were still wet.

⁴ Defense did not move to suppress any of the statements he made during this first segment.

which point the defendant requested to and did use the bathroom. Towards the end of this segment, defendant admitted that he had engaged in illegal sexual conduct with the alleged victim. When he returned from the bathroom break, the detectives' questioning continued for another forty minutes until 12:57 p.m. We focus on the interrogation from the start of the second segment.

Before the second segment of the interrogation began, the detectives again read to defendant his Miranda warnings, and asked him to write his initials on the accompanying form confirming that he understood his rights. Defendant then waived these rights, both orally and by signing the accompanying form.

As noted, the second segment of the interrogation began at 11:19 a.m. Detectives DiLolle and M. Rivera of the Camden County Police Department conducted the questioning. At the beginning, Detective DiLolle reminded defendant they had spoken briefly with him, approximately thirty minutes earlier, about the alleged victim's allegations against him. The detectives advised defendant that they were going to talk to him now "about a sexual assault and a . . . sexual contact." Detective Rivera explained that in addition to the

alleged incident on which they had previously interrogated him, she planned to interview him about a different alleged sexual assault.⁵

The detectives first asked defendant about what he did that morning. He initially denied walking near the bank in front of which the alleged victim was sleeping. He then backtracked and admitted that he had walked past the bank, but did not go inside. He denied talking to anyone or even stopping in front of the bank.

After Detective DiLolle told defendant that they had video camera footage of him assaulting the alleged victim, he continued to deny stopping at the bank and lying down next to her.⁶ He first denied knowing the alleged victim, but then said he had seen her two times, including the day before, when he had asked her if she had a cigarette or K2, a synthetic cannabinoid.

The following exchange then occurred:

⁵ Defendant did not learn until about an hour later, after he returned from his bathroom break, that Detective Rivera's "separate case" concerned the alleged sexual assault of a fifteen-year-old girl in April 2020. Defendant was not questioned about this other matter until after he returned from the bathroom, and was reissued Miranda warnings. He denied involvement in that incident, and it is not pertinent here.

⁶ Defendant asserted he had not taken any drugs or consumed any alcohol that morning.

DETECTIVE RIVERA: Alright[,] so can you explain to us why they have you on camera at [the] Bank and why they have you laying down with this chick?

DEFENDANT: I don't even know.

DETECTIVE RIVERA: Can you please explain that to me?

DEFENDANT: I'm tryna explain it, I'm explaining now.

DETECTIVE RIVERA: You gotta we, we, try harder.

DEFENDANT: I'm trying.

DETECTIVE RIVERA: We tryna help you out.^[7]

DEFENDANT: I know, I know.

DETECTIVE RIVERA: 'Cause we, we ya know we try, we, we tryna uhm understand why you were there. If you were invite-

DEFENDANT: I asked for K2 or a cigarette, that's why I was there 'cause if they usually have it right there but since they locked down that, locked down the . . . Bank and the parking lot.

[(Emphasis added).]

Detective Rivera then brought the questioning back to defendant's whereabouts that morning. She asked him again whether he knew the alleged

^[7] This is the first comment by Detective Rivera that defendant argues was improper and induced him to make an involuntary confession.

victim or had any interaction with her. Detective Rivera further asked defendant if he had any "urges" that morning that caused him to engage in sexual activity with the alleged victim, which he denied having.

Detective Rivera pressed further, continuing to ask defendant why he was on camera lying next to the alleged victim, and whether she had consented to him doing that. He denied again that he was involved, insisting that he was being "honest" and was telling the detectives "everything [he] kn[e]w."

At that point, defendant admitted that he did see a woman lying down by the bank earlier that morning, and that he asked her if she had any cigarettes or K2, but she told him she did not sell drugs.⁸ Defendant described the woman as "short," "skinny," and "light skin[ned]." Evidently, defendant's description of the woman he saw outside the bank matched the appearance of the alleged victim, because in response, Detective Rivera said, "[W]e [are] doing progress here . . . We [are] doing real good progress." The detective added that she "love[s] it" and that "We're doing good We [are] doing good."

Detective Rivera asked defendant if the woman he saw was under a blanket, and defendant said yes. Defendant assured detectives that after the

⁸ Many times in this exchange defendant said the events happened that morning, and at other times he said they occurred the evening before. His responses were frequently contradictory and hard to follow.

woman told him she did not have any drugs, he left to go buy K2 somewhere else. He claimed he then went home. When asked how he pays for rent, defendant told the detectives he does not work because he receives Social Security disability benefits.

Returning the discussion to the incident, the detectives again asked defendant why he decided to lie down with the alleged victim, and whether he slept with her. Defendant denied both queries, telling the detectives that he had a "girl[friend]." When asked why the alleged victim would lie about him touching her, he responded, "I don't know [why] they don't like me. They say I be stealin' and, and, and I used to be out there homeless." He did not specify who "they" were, and he denied having stolen anything from "them."

Pressing for more details, the detectives asked defendant to describe how the woman was sleeping, whether she was wearing pajamas, and what color her quilt was. Defendant replied that the alleged victim was sleeping under a blue quilt, and she was lying on her side in a fetal position. He told the detectives that he offered her a cigarette, but she told him she didn't smoke, and he went off to buy some K2.

Detective Rivera then asked, "So tell me when you (inaudible) yourself through that blanket," and "[h]ow did you creep up under, underneath the

blanket?" Defendant denied doing either of those things. Detective Rivera became frustrated with him, telling him that he is a "full grown ass man" and that he better tell her the "whole truth."

Defendant repeated that he asked the woman if she sold K2 or cigarettes, she said no, she went back under the covers, and he "walked off." Detective Rivera continued to press him about the "missing piece" he was not telling them:

DETECTIVE RIVERA: Alright . . . the piece that I'm missing is when we see you laying next to her.

DEFENDANT: Yes.

DETECTIVE RIVERA: That's the piece that we're missing.

DEFENDANT: Ok.

DETECTIVE RIVERA: So you're doing good.

DEFENDANT: Yes.

DETECTIVE RIVERA: You're telling me the truth and I respect that.

DEFENDANT: Yes.

DETECTIVE RIVERA: I respect that you telling me the truth at the end of the day, ok? Because this is what we're here for.

DEFENDANT: Yes.

DETECTIVE RIVERA: We're not tryna screw you.^[9]

DEFENDANT: Ok.

DETECTIVE RIVERA: But we need to know what happened.

DEFENDANT: Yes.

DETECTIVE RIVERA: So we can do things right.

DEFENDANT: Yes.

[(Emphasis added).]

After this exchange, defendant admitted to having lain down with the alleged victim because he was tired and cold because he was not wearing a shirt. He stated he felt comfortable enough to lie down next to her because that was his "neighborhood." He explained to the detectives that when he was homeless, it was common practice to lie down with other people who were also experiencing homelessness.

Defendant continued to deny that he touched the woman inappropriately when lying beside her. He said they were positioned "butt-to-butt." When asked if he got aroused, defendant initially said no, and denied that he was physically attracted to her. He said the alleged victim did not say anything to engage him

^[9] This is the second comment that defendant identifies as undermining the Miranda warnings.

in sexual activity. He continued to deny digitally penetrating her and told detectives he knew doing that without her permission is wrong.

Detective Rivera asked defendant if he had accidentally touched the woman, which he also denied. Defendant said he did not get under the covers with her; he just smoked a cigarette and then left.

This prompted Detective DiLolle to ask defendant why he chose to lie down with the woman if he had somewhere to stay. Defendant then changed his answer from before about being tired and cold, and told the detectives he thought he recognized the woman and that she was his friend.

In an effort to pin down defendant's account, the detectives again asked defendant why he touched the woman. In response, defendant admitted that he had thought about touching her:

DETECTIVE DILOLLE: Did you get turned on by something or you kind of looked at her?

DEFENDANT: I think so, no I ain't look at her.

DETECTIVE DILOLLE: Ok you said you might've gotten turned on?

DEFENDANT: Yes.

DETECTIVE DILOLLE: What could've turned you on?

DEFENDANT: Her looks.

Detective Rivera told defendant that it would be okay to touch the woman if she consented, but he continued to deny that he touched her.

DETECTIVE RIVERA: Ok, so we, we do accept the fact that it's wrong to touch her?

DEFENDANT: Yes.

DETECTIVE RIVERA: So were you wrong to touch her?

DEFENDANT: Yeah, yeah I didn't touch her though.

DETECTIVE RIVERA: Yeah you touched her.

DEFENDANT: No . . . you can do [a] DNA test.

DETECTIVE RIVERA: Calvin, Calvin we, we not playing that, we know what we could do.

The interrogation continued in this manner for a while longer, until finally defendant confessed to touching the woman's vagina. Through repeated queries, the detectives prompted defendant to confirm and clarify this admission. Defendant did, but continued to deny that he digitally penetrated her.

Then defendant asked to go to the bathroom. Before allowing him to do so, Detective Rivera asked several more questions, which apparently were related to the April 2020 incident.

After he returned from the bathroom, defendant was re-administered Miranda warnings a third time. During this final segment of questioning,

Detective Rivera made about a half dozen similar assurances to defendant that they were trying to "help" him. In particular, Detective Rivera told defendant that they might be able to refer him to a drug rehabilitation facility, and at the end of that round of questioning, he asked them for its phone number. As we have already noted, the questions during this final segment did not concern the present case.

In his bench ruling, the motion judge concluded that Detective Rivera's comments to defendant violated his constitutional rights by contradicting the protections enumerated in the Miranda warnings, and thereby induced an involuntary confession from him. Specifically, the judge deemed inadmissible the entire contents of the interrogation starting with Detective Rivera's statement, "We're trying to help you out," through the end of the interrogation that occurred after defendant returned from the bathroom.

The judge summarized the course of defendant's admissions as follows:

During the interrogation, the defendant initially denies the sexual assault, consistently answering in the negative when asked if he had any contact with the alleged victim. As the interrogation continu[es] the defendant begins to make small concessions. First the defendant admits to asking the victim for a cigarette or K-2. Then the defendant admits to lying down next to the victim because he was cold and did not have a shirt on. Lastly, the defendant ultimately admits to trying to touch the victim's vagina with two fingers on his right

hand, but she woke up and told him to get off her. At approximately 12:17 [p.m.], defendant is given a bathroom break at his request and is verbally given his Miranda Rights an additional third time

The judge went on to discuss the improper assurances the officers repeated to defendant after he returned from the bathroom. The judge singled out eight comments in total, six of which were said after defendant confessed to the conduct alleged by the victim. The judge concluded that "it is clear that the tactics of the questioning detectives [used] in undermining the Miranda warnings were effective because the defendant actually starts to look to the detectives for help when responding to their questions agreeing he needs the detectives' help for rehab."

The judge elaborated that "[l]ooking at what was said to the defendant during the second question[ing], taken in totality, the court finds the questioning was incorrect and directly contradicted the Miranda warning that anything the suspect says can be used against him a court of law." On this point of law, the judge cited State v. Puryear, 441 N.J. Super. 280, 288, 298 (App. Div. 2015) (holding that a detective's comments, "The only thing you can possibly do here is help yourself out. You cannot get yourself in any more trouble than you're already in. You can only help yourself out here[,] contradicted a key Miranda warning and warranted the suppression of the defendant's confession).

II.

In this ensuing appeal, the State argues that the judge erred in his analysis finding that the detective's comments to defendant undermined the efficacy of the Miranda warnings. The State contends the judge improperly considered the questioning conducted after the bathroom break as being part of the "second" interview, and that such questioning should instead be regarded as part of an independent "third" interview. Separating the interview phases in this manner, the State argues that the court should not have considered any improper statements the detectives said in the "third" segment as affecting the propriety of the questioning and defendant's admissions during the earlier "second" segment.

We consider the issues presented on appeal under well-settled principles of law and appellate review of suppression rulings.

The basic principles of the Miranda doctrine in safeguarding a defendant's privilege against self-incrimination during a custodial interrogation have been repeatedly expounded in case law and statutes. "The right against self-incrimination . . . guaranteed by the Fifth Amendment to the United States Constitution and this state's common law [is] now embodied in statute, N.J.S.A. 2A:84A-19, and evidence rule, N.J.R.E. 503." State v. Diaz, ___ N.J. Super. ___,

__ (App. Div. 2022) (slip op. at 19) (quoting State v. S.S., 229 N.J. 360, 381-82 (2017)).

In Miranda v. Arizona, the United States Supreme Court held that in order to protect the Fifth Amendment right against self-incrimination, a person may not be subjected to custodial interrogation¹⁰ by law enforcement unless he or she is apprised of certain rights. 384 U.S. at 467. In particular, law enforcement must inform such a person:

that he has 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.

[Id. at 479.]

The Court in Miranda further required that statements made to law enforcement during a custodial interrogation be excluded at trial, unless it is shown that the defendant waived his rights "voluntar[ily], knowing[ly] and intelligent[ly]." State v. Hubbard, 222 N.J. 249, 265 (2015). The prosecution bears the burden of proving a defendant's voluntary waiver of his right against self-incrimination beyond a reasonable doubt. Id. at 267. In making that

¹⁰ It is not contested that defendant was in custody at this time or that he received the requisite Miranda warnings.

assessment, our courts must look at the "totality of circumstances" involved. State v. Nyhammer, 197 N.J. 383, 402 (2009).

The waiver of a defendant's right to remain silent during custodial interrogation may at times result in a confession. Such a confession is admissible at trial if, among other things, it was given freely by the defendant, without his will being overborn. State v. Galloway, 133 N.J. 631, 654 (1993).

If a patent constitutional violation has not been shown, courts "look at the totality of the circumstances, including both the characteristics of the defendant and the nature of the interrogation[.]" as well as "relevant factors," including the defendant's

age, education and intelligence, advice [given to him by law enforcement] concerning constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature, and whether physical punishment and mental exhaustion were involved.

[Ibid. (citing Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973)).]

A "free and voluntary confession is not one extracted by threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence." State v. L.H., 239 N.J. 22, 44-45 (2019) (quoting Brady v. United States, 397 U.S. 742, 753 (1970) (internal quotation marks omitted)).

Case law has recognized that law enforcement officers commonly use various tactics to obtain confessions from defendants, some of which are "deceptive." However, "[a] confession induced by deception or trickery is not inadmissible unless the method used was calculated to produce an untruthful confession or was offensive to due process." State v. Manning, 165 N.J. Super. 19, 30-31 (App. Div. 1978). "The fact that the police lie to a suspect does not, by itself, render a confession involuntary." Galloway, 133 N.J. at 655. For example, law enforcement officers are permitted to tell a suspect that they have more incriminating evidence than they actually do. See ibid. (citing Frazier v. Cupp, 394 U.S. 731 (1969)). However, law enforcement officers cannot fabricate incriminating physical evidence and present it to a suspect during an interrogation. See State v. Patton, 362 N.J. Super. 16, 18 (App. Div. 2003).

Interrogating officers are permitted to appeal to a suspect's "sense of decency" and urge a suspect "to tell the truth for his own sake." L.H., 239 N.J. at 44 (citing Galloway, 133 N.J. at 655; State v. Miller, 76 N.J. 392, 405 (1978)). However, "certain lies . . . may have the capacity to overbear the suspect's will and to render a confession involuntary." L.H., 239 at 27. An example of such lies "are false promises of leniency." Ibid. It is also improper for law

enforcement to minimize the severity of the crime that the defendant allegedly committed. Id. at 44.

Further, case law makes clear it is also improper for law enforcement to contradict any of the Miranda warnings in their representations to a suspect during custodial interrogation. See State in Interest of A.S., 203 N.J. 131, 151 (2010) (quoting State v. Pillar, 359 N.J. Super. 249, 268 (App. Div. 2003) ("A police officer cannot directly contradict, out of one side of his mouth, the Miranda warnings just given out of the other.")); see also Puryear, 441 N.J. Super. at 288 (same).

In evaluating the motion judge's application of these interrogation principles here, we are guided by established standards of appellate review. We review a trial court's factual findings from the suppression hearing on defendant's self-incrimination claims under "a deferential standard." State v. Stas, 212 N.J. 37, 48 (2012). Our appellate function, as it concerns the facts, is to consider "whether the findings made could reasonably have been reached on sufficient credible evidence present in the record." Id. at 49 (quoting State v. Locurto, 157 N.J. 463, 471 (1999)). We must give "deference to those findings of the trial judge which are substantially influenced by his opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court

cannot enjoy." Ibid. (quoting Locurto, 157 N.J. at 471). By comparison, our appellate review is plenary "with respect to legal determinations or conclusions reached on the basis of the facts." Ibid.

Applying these principles, we affirm the trial court's sound conclusion that the detectives who conducted the interrogation of defendant improperly contradicted the Miranda warnings issued to him, in a manner that rendered his admissions involuntary and inadmissible as a matter of law.

In analyzing the issues, we need not rely upon the half dozen additional improper assurances Detective Rivera made to defendant after he returned from the bathroom break, which the State calls the "third" phase of the interview. We recognize that those additional improprieties arguably can be considered evidence of an overall design by the officers to contradict the Miranda warnings and coax defendant into making self-incriminating statements. However, we also recognize that these additional improprieties occurred after defendant had already confessed to the conduct on which K.M.'s allegations against him were based. Thus, we shall assume for sake of discussion, without deciding, that those post-confession inducements are not relevant to the analysis of what preceded the confession.

Nevertheless, the improper statements the officers made to defendant before he confessed, i.e., about trying to "help" him and not trying to "screw" him, provide ample factual support for the trial court's decision to suppress defendant's admissions. The trial court correctly regarded those comments as improper and misleading contradictions of the mandated Miranda warnings.

The detective's comments at issue here are similar to comments the Court declared improper in L.H. The defendant in L.H. was taken into custody at 2:30 a.m. on suspicion that he had sexually assaulted two women, and attempted to sexually assault another. 239 N.J. at 28. A three-hour interrogation began at 5:31 a.m. Id. at 30. After an hour, the defendant incriminated himself in all three crimes. Ibid.

During his interrogation, the detectives told L.H. he had a "problem," i.e., a sex addiction. Id. at 31. The Court summarized detectives' suggestions to defendant, "if defendant cooperated and incriminated himself, he would receive counseling and help, not go to jail, and remain free to raise his child." Ibid. The Court found that, "[t]he promises of 'help' and 'counseling' became a consistent theme of the interrogation." Ibid. One of these exchanges included:

DETECTIVE KRENTZ: We want to get you the help that you need.

DETECTIVE FANO: You need some help, dude. You got a problem.

DETECTIVE KRENTZ: We want to make sure you get the right help.

DETECTIVE FANO: We're here to help you.

[Ibid. (emphasis added).]

The Court found these statements in L.H. were "false promises of leniency that assured counseling instead of incarceration," and "conflicted with the Miranda warnings." Id. at 28. These sufficiently "overbore defendant's will," and the State could not prove that his confession was voluntary beyond a reasonable doubt. Id. at 29.

Similarly in this case, after pressing defendant to explain "why they have [him] on camera at [the] Bank . . . laying down with this chic[,]" Detective Rivera assured defendant, "We tryna help you out." After asking defendant to provide the "missing piece," (apparently that being to confess to having lain next to the alleged victim and touching her vagina), Detective Rivera said, "We're not tryna screw you."

By couching her implorations for defendant to confess to the "missing piece" as a form of "help," and assuring him that confessing would not "screw"

him, the detective improperly contradicted and neutralized the Miranda warning that defendant's "words could be used against him."

Although the State's brief attempts to impute a benign interpretation to the detective's terminology, the trial court had reasonable grounds to find the detective's assurances were improper and that they unacceptably undermined the Miranda warnings. Defendant surely was not "helped" in his case by confessing to a serious first- or second-degree crime. That is exactly why the State wishes to admit his confession in its prosecution.¹¹

The detective's improper assurances were made at a pivotal juncture of the interrogation, on the verge of defendant's most self-inculpatory admissions. Up to that point, defendant had wavered and backtracked on much of his narrative.

We are mindful that the motion judge did not find, as the Court did in L.H., that the officers during the second interview segment "minimized" the sexual offenses. We are also cognizant that the judge treated the detective's improper statements as per se grounds to suppress defendant's confession, and that he declined to base suppression upon defendant's alternative argument of a

¹¹ We recognize the State has other proofs of defendant's guilt, including the video and the potential testimony of the alleged victim, and that defendant's confession may not be essential to meeting the State's burden of proof. In any event, the State may not use the statements the trial court justifiably suppressed.

coercive "totality of the circumstances."¹² Even so, we are satisfied the judge had a sufficient factual and legal justification for his suppression ruling. Moreover, the judge's decision is aligned with the public policy concerns expressed in case law, emphasizing the importance of deterring excessive police practices during custodial interrogations. See, e.g., State v. Whittington, 142 N.J. Super. 45, 50 (App. Div. 1976) (noting that suppressing involuntary confessions serves the dual purposes of deterring lawless police conduct and keeping out of trial unreliable evidence).

Affirmed. The matter is remanded to the trial court for continuation of the proceedings in this criminal case.

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



CLERK OF THE APPELLATE DIVISION

¹² As we have noted, in an earlier portion of his ruling, the judge did observe that "[l]ooking at what was said to the defendant during the second question[ing], taken in totality . . . the questioning was incorrect and directly contradicted the Miranda warning that anything the suspect says can be used against him a court of law." (Emphasis added). The oral decision does not reconcile these observations about totality.