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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0800-22**

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

TRE BYRD,

Defendant–Respondent.

Submitted May 3, 2023 – Decided May 30, 2023

Before Judges Currier and Mayer.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 21-10-1915.

Theodore N. Stephens II, Acting Essex County Prosecutor, attorney for appellant (Lucille M. Rosano, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

Dughi, Hewit & Domalewski, attorneys for respondent (Brandon D. Minde, on the brief).

PER CURIAM

By leave granted, the State appeals from an October 3, 2022 order denying its request to admit defendant Tre Byrd's custodial statement made to police. Because defendant's inquiries regarding witness protection and protective custody during his custodial statement were not ambiguous requests for counsel requiring clarification, we reverse.

We recite the facts from the testimonial hearing on the State's motion to admit defendant's June 22, 2020 statement.

On June 20, 2020, defendant was arrested following a robbery in Essex County. At the time, defendant was one of four occupants in a stolen vehicle. Police investigators subsequently learned the stolen car might have been involved in two shootings in Bloomfield on June 19.

On June 22, 2020, officers from the Bloomfield Police Department (Department), Detective Salvatore Cordi and Lieutenant Anthony Sisco, went to the Essex County Correctional Facility to interview defendant.

Before the interview began, Detective Cordi read defendant the Miranda¹ rights from a Department form. Defendant acknowledged he understood his rights. Defendant read the Miranda waiver form out loud and confirmed his willingness to speak with the officers about the robbery and shootings.

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

Defendant also confirmed his ability to read, write, and understand English, and stated he had a twelfth-grade education. Detective Cordi asked defendant if he was "willing to speak with [them] in regards to this incident" and defendant replied, "[y]es."

Immediately after defendant expressed his willingness to speak with the officers, the following exchange occurred:

DET. CORDI: All right. What I'm going to ask you to do is --

DEFENDANT: The only thing is could y['all] guarant[ee] me witness protection?

DET. CORDI: Let's sign this and then as soon as you sign this, I'll answer your question. [], that's the correct spelling of your name, correct?

DEFENDANT: Correct.

DET. CORDI: Could you just sign underneath that.

DEFENDANT: I got a son I got to get home to, bro. I ain't playing

DET. CORDI: And then the time, just write the time is 2:53 right underneath. Yeah. And the date is June 22nd. Right next to the --

DEFENDANT: Oh, [] my bad.

DET. CORDI: That's okay. No worries. 22 '20. Thank you. All right, []. What was that initial question that you had asked? If [we] can guarant[ee] witness protection. In regards to what exactly? What do you want to --

LT. SISCO: Excuse me. Just slide back.²

DEFENDANT: Oh, I'm sorry.

LT. SISCO: That's all right. Just because of the angle.
All right.

DEFENDANT: Nah, cause to be honest they keep saying -- they keep saying talking about something about a shooting or something that happened. And I ain't gonna lie. I'[ll] be honest with y['all]. You feel me. I was in the car, yes, I was. I was in the car when it happened.

Immediately thereafter, without waiting for a response to his question about witness protection, defendant admitted he "was in the car when" the crimes occurred and was involved in the robbery and shootings. Defendant also identified Tysean Hoover, known by the nickname "Twava," as one of the individuals who participated in the crimes.

About ten minutes into his statement, defendant said: "The only reason why I . . . said the protective custody because I've heard about Twava. Twava is dangerous." Twenty minutes later, when Detective Cordi asked defendant how he knew Twava, defendant explained: "Over there by my house, they look up to

² Lieutenant Sisco asked defendant to move his chair into the view of the police body camera. Due to the lack of video recording equipment at the Essex County Correctional Facility, the officers used a body camera to record defendant's interview.

him. I don't know why. But they look up to him. That's why I asked y[all] for protective custody because they say he's dangerous."

During the recorded statement, defendant never invoked the words "attorney," "lawyer," or "counsel." Toward the end of the interview, the officers addressed defendant's concerns about protective custody. The following exchange occurred:

DET. CORDI: . . . [I]s there anything else that you want to add? I mean it's just going to come out once we continue with the investigation. Is there anything else you want to get off your chest now? . . .

DEFENDANT: No. I just want to be protected.

DET. CORDI: All right.

DEFENDANT: I just want protection. Because I know they gonna come after my family and me.

DET. CORDI: When you tell these guys that work in the jail whoever you need to talk to that, you know, you're looking for a specialized area or whatever.

LT. SISCO: When you say that, when you say they?

DEFENDANT: His family.

LT. SISCO: Okay. But nobody knows that we have him as a suspect yet.

DEFENDANT: Mhm.

LT. SISCO: So we could call the [assistant prosecutor].

DET. CORDI: Mhm.

LT. SISCO: And see if they can make arrangements. We can't get that authorization. Our assistant prosecutor, we'll run it by him who we're already in contact with, all day we were.

DET. CORDI: And we'll let him know that you were cooperative.

LT. SISCO: Now, the protocol [is] I'll let the sergeant out there know. But is there any reason to believe that anybody else in this jail, the four that you were locked up with you would be afraid of?

DEFENDANT: No, not them. He got family in here. You get what I'm saying. . . . [A]ll of them, they're in here. He's the only brother that's out. You hear what I'm saying. They're dangerous.

Five times during the interview, defendant asked about witness protection or protective custody for himself and his family. Defendant expressed concern for his safety and the safety of his family because he participated in the Essex County crimes with Twava, who was a "dangerous" individual. The officers told defendant they were not responsible for protective custody requests within the jail but agreed to inform the jail about defendant's safety concerns. Before concluding the interview, defendant confirmed his statement was voluntary.

On October 4, 2021, defendant was indicted on charges related to the June 2020 crimes in Essex County. The State moved to admit defendant's custodial

statement into evidence. On September 19, 2022, a judge conducted a testimonial hearing on the admission of defendant's statement.

At the hearing, Detective Cordi testified that defendant appeared calm, respectful, and willing to speak with the officers about the crimes. The detective had no concerns regarding defendant's well-being or defendant's understanding of his Miranda rights. He further testified that neither he nor Lieutenant Sisco made any promises or threats to induce defendant to waive his rights and provide a statement.

On cross-examination, the detective confirmed he was trained to clarify an interviewee's questions about the Miranda rights. Detective Cordi explained it was his practice to require a signed waiver form before answering any questions. Detective Cordi testified that he never placed an individual in witness protection or protective custody. Because he did not know the procedures for protective custody, the detective believed he was not responsible to explain such procedures to suspects.

Detective Cordi further testified he never interpreted defendant's inquiry about witness protection as a request to consult with an attorney. Rather, the detective equated "witness protection" with defendant's request for his safety inside the jail. Detective Cordi also believed defendant would have to speak

with corrections personnel, not an attorney, regarding any safety concerns while in jail.

Detective Cordi testified he intended to explain to defendant that witness protection was not his responsibility and defendant should discuss the issue with corrections personnel. However, the detective never answered defendant's question because Lieutenant Sisco asked defendant to adjust his position for the body camera. Without pausing to wait for Detective Cordi to answer his question about witness protection or protective custody, defendant started discussing the crimes.

In an October 3, 2022 order, the judge denied the State's motion to admit defendant's recorded statement. She stated the narrow issue before the court was whether defendant's "inquir[ies] regarding [w]itness [p]rotection and/or protective custody, several times during the taking of the statement" amounted to "an ambiguous invocation of his right to counsel that required the [d]etective to cease all questioning and seek clarification."

After hearing the testimony, the judge found defendant never expressly requested a lawyer during his statement. However, the judge found that defendant conditioned the waiver of his right to remain silent on receiving witness protection or protective custody. She noted defendant asked Detective

Cordi about protection at least five times during the recorded statement. The judge concluded defendant's questions about witness protection amounted to an ambiguous invocation of the right to counsel, requiring the detective to cease questioning and clarify whether defendant was requesting counsel. The judge explained "[o]nly a lawyer could[] [have] explained to the defendant the vagaries of the [s]tate [w]itness [p]rotection [p]rogram and the import of a detainee's request for protective custody, when housed in a correctional facility." Thus, she found Detective Cordi abdicated his responsibility to honor defendant's Miranda rights by failing to stop the questioning or seek a clarification from defendant before proceeding.

On November 14, 2022, we granted the State's motion for leave to appeal from the denial of the motion to admit defendant's custodial statement.

On appeal, the State raises the following arguments:

POINT I

THE TRIAL COURT ERRED WHEN IT SUPPRESSED DEFENDANT'S STATEMENT TO POLICE BECAUSE DEFENDANT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED HIS MIRANDA RIGHTS AND GAVE A STATEMENT TO POLICE OF HIS OWN FREE WILL. DEFENDANT'S INQUIRIES ABOUT WITNESS PROTECTION AND PROTECTIVE CUSTODY WERE NOT EQUIVOCAL REQUESTS FOR COUNSEL, WHICH THE OFFICERS WERE

OBLIGATED TO CLARIFY BEFORE PROCEEDING WITH THE INTERROGATION.

A. DEFENDANT'S INQUIRIES ABOUT WITNESS PROTECTION AND PROTECTIVE CUSTODY WERE NOT AMBIGUOUS REQUESTS FOR COUNSEL AND DID NOT IMPLICATE HIS MIRANDA RIGHTS.

B. DEFENDANT KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY WAIVED HIS MIRANDA RIGHTS AND GAVE A VOLUNTARY STATEMENT TO POLICE.

C. EVEN ASSUMING DEFENDANT'S INITIAL QUESTION ABOUT WITNESS PROTECTION COULD ARGUABLY BE INTERPRETED AS AN AMBIGUOUS REQUEST FOR COUNSEL, DEFENDANT WAIVED THE RIGHT WHEN HE REINITIATED THE INTERVIEW.

Our review of a trial court's decision to suppress a defendant's custodial statement to police is limited. State v. Francisco, 471 N.J. Super. 386, 409 (App. Div. 2022). When reviewing a motion to suppress, we defer "to the trial court's factual findings that are supported by sufficient credible evidence in the record and will not disturb those findings unless they are 'so clearly mistaken that the interests of justice demand intervention and correction.'" State v. Rivas, 251 N.J. 132, 152 (2022) (quoting State v. S.S., 229 N.J. 360, 374 (2017)). However, the trial court's legal conclusions are reviewed de novo. State v. Hubbard, 222 N.J. 249, 263 (2015). We are not bound by the trial court's legal conclusions

regarding "the validity of the defendant's waiver of constitutional rights or the voluntariness of a confession." Rivas, 251 N.J. at 152.

The Fifth Amendment to the United States Constitution guarantees that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. In New Jersey, the privilege against self-incrimination "is deeply rooted in this State's common law and codified in both statute and an evidence rule." State v. Andrews, 243 N.J. 447, 481 (2020) (quoting State v. Muhammad, 182 N.J. 551, 567 (2005)). Miranda warnings serve as "safeguards to . . . counteract the inherent psychological pressures that might compel a person subject to custodial interrogation to speak when he would not otherwise do so freely." Rivas, 251 N.J. at 153 (internal quotation marks omitted) (alteration in original) (quoting State v. Wint, 236 N.J. 174, 193 (2018)).

We first consider the State's argument that defendant's inquiries regarding witness protection and protective custody were not ambiguous requests for counsel. We agree.

If a suspect requests counsel during an interview, "the interrogation must cease until an attorney is present." Miranda, 384 U.S. at 474. Questioning may not resume "until counsel has been made available [or] unless the accused []

initiates further communication, exchanges, or conversations with police." State v. Chew, 150 N.J. 30, 61 (1997) (alterations in original) (quoting Edwards v. Arizona, 451 U.S. 477, 484-85 (1981)).

In federal courts, law enforcement must only stop questioning if a suspect's request for counsel is "unambiguous or unequivocal." Davis v. United States, 512 U.S. 452, 461-62 (1994). However, under New Jersey law, even an ambiguous assertion is sufficient to require police to cease questioning. State v. Gonzalez, 249 N.J. 612, 629 (2022). "[A] suspect need not be articulate, clear, or explicit in requesting counsel; any indication of a desire for counsel, however ambiguous, will trigger entitlement to counsel." Id. at 630 (quoting State v. Reed, 133 N.J. 237, 253 (1993)). "[A]n equivocal request for an attorney is to be interpreted in a light most favorable to the defendant." Chew, 150 N.J. at 63 (citing Reed, 133 N.J. at 253).

If a suspect makes an ambiguous assertion that is "susceptible to two different meanings, the interrogating officer must cease questioning and 'inquire of the suspect as to the correct interpretation.'" S.S., 229 N.J. at 382-83 (quoting State v. Johnson, 120 N.J. 263, 283 (1990)). However, "[n]ot every reference to a lawyer . . . requires a halt to questioning." State v. Dorff, 468 N.J. Super. 633, 647 (App. Div. 2021). The court must review the totality of the

circumstances, "including all of the suspect's words and conduct," to determine whether a mention of a lawyer invokes the right to counsel. Ibid. (quoting State v. Diaz-Bridges, 208 N.J. 544, 569 (2011)).

Having reviewed the transcript of defendant's custodial statement and considering the totality of the circumstances, we are satisfied that defendant's inquiries regarding witness protection and protective custody were not an equivocal request for counsel. Twice during the interview, defendant told the officer that he was concerned for his safety and his family's safety because Twava was known to be a dangerous individual. At no time during the interview did defendant mention the words "attorney," "lawyer," or "counsel." Defendant never refused to speak with the officers. Further, an objective review of his words and conduct demonstrated defendant's willingness to speak with the police.

Next, we consider the State's argument that defendant knowingly, voluntarily, and intelligently waived his Miranda rights before admitting his involvement in the June 2020 crimes. We agree.

"Our law maintains 'an unyielding commitment to ensure the proper admissibility of confessions.'" State v. Sims, 250 N.J. 189, 211 (2022) (quoting State v. Vincenty, 237 N.J. 122, 132 (2019)). Defendants may waive their

Miranda rights, but the waiver must be "knowing, intelligent, and voluntary in light of all of the circumstances" for the statement to be admissible. State v. A.M., 237 N.J. 384, 397 (2019) (quoting State v. Presha, 163 N.J. 304, 313 (2000)). The State must prove beyond a reasonable doubt that a defendant's waiver satisfies these requirements. State v. Tillery, 238 N.J. 293, 316 (2019).

To determine "whether the waiver of rights was the product of a free will," the court must consider the totality of the circumstances. State v. Nyhammer, 197 N.J. 383, 402 (2009). The trial court may consider factors such 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." A.M., 237 N.J. at 398 (quoting State v. Miller, 76 N.J. 392, 402 (1978)).

Here, Detective Cordi read the Miranda warnings verbatim from a Department form and defendant stated that he understood those rights. Defendant also read the waiver out loud, which included the statement: "I do not want a lawyer at this time but understand that I may have one at any time I so desire."

Additionally, defendant agreed to speak with officers about the crimes. He spoke freely during the interview, even after mentioning witness protection

and protective custody. Defendant had a twelfth-grade education and he read, wrote, and understood English. During the interview, defendant was not handcuffed, physically restrained, or injured. The interview lasted approximately one hour. Based on the transcript of the recorded statement, the officers did not threaten defendant or make any promises to him in exchange for his statement. At the end of the statement, defendant affirmed the voluntariness of his statement.

Under these circumstances, we are satisfied that defendant knowingly, intelligently, and voluntarily waived his Miranda rights when giving his statement to police. Thus, the judge erred in suppressing defendant's statement.

Even if we agreed that defendant's inquiries regarding witness protection amounted to an invocation of his right to counsel, which we do not, defendant waived this right when he reinitiated the interview by continuing to speak to the officers about his involvement in the crimes. We do not agree with defendant's contention that his statements to the police were conditioned on a guarantee that he receive witness protection.

The police must "'scrupulously honor' the invocation of the right to counsel." State v. Melendez, 423 N.J. Super. 1, 29 (App. Div. 2011). However, "[i]f an accused does initiate a conversation after invoking his rights, that

conversation may be admissible if the initiation constitutes a knowing, intelligent, and voluntary waiver of the accused's rights." Chew, 150 N.J. at 61. The inquiry is whether the suspect "was inviting discussion of the crimes for which he was being held." Id. at 64 (quoting State v. Fuller, 118 N.J. 75, 82 (1990)). The suspect need not make an "'explicit statement'" indicating a willingness to reinitiate conversation; rather, "'[a]ny clear manifestation of a desire to waive is sufficient,' and . . . we look for a 'showing of knowing intent.'" A.M., 237 N.J. at 397 (quoting State v. Hartley, 103 N.J. 252, 313 (1986)).

Here, defendant admitted his involvement in the crimes without waiting for a response to his inquiry regarding witness protection. By stating he "was in the car when it happened," defendant invited a discussion about the crimes. Based on that statement, the officers reasonably believed defendant intended to speak and therefore properly continued their questioning. We are satisfied that defendant waived his Miranda rights by continuing to speak with the officers and the judge erred in suppressing his custodial statement.

Having reviewed the record, we are satisfied that defendant knowingly, intelligently, and voluntarily waived his Miranda rights when he gave a statement to police in which he admitted his involvement in the June 2020 crimes. Additionally, defendant's questions about witness protection and

protective custody did not implicate his right to an attorney, nor could the officers have reasonably interpreted defendant's questions as ambiguous requests for counsel requiring clarification. Under the totality of the circumstances, defendant's statement to the police was admissible.

The order on appeal is reversed and the case is remanded for further proceedings. 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