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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0937-22**

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

AMANDEEP K. TIWANA,

Defendant-Respondent.

Argued January 24, 2023 – Decided February 8, 2023

Before Judges Sumners and Fisher.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 21-02-0237.

Andrew M. Baginski, Assistant Prosecutor, argued the cause for appellant (Esther Suarez, Hudson County Prosecutor, attorney; Andrew M. Baginski, on the brief).

Emily K. Graham, Assistant Deputy Public Defender, argued the cause for respondent (Joseph E. Krakora, Public Defender, attorney; Emily K. Graham, of counsel and on the brief).

PER CURIAM

In this interlocutory appeal, we consider the admissibility of a statement defendant gave to police while hospitalized following the incident in question and the ability of the State to utilize for impeachment purposes a statement coaxed from defendant by police the following day after she invoked her right to remain silent. For the reasons that follow, we affirm the order under review.

I

To put the issues in perspective, we note the events that gave rise to this prosecution.

The State alleges that as three police officers responded to an overturned vehicle on Route 139 near the Holland Tunnel in the early morning hours of April 28, 2020, a vehicle operated by defendant struck one of the officers, who was directing traffic around the overturned vehicle. Defendant's vehicle allegedly struck that officer and collided with two police vehicles, causing injuries to another officer. Data obtained from a search of defendant's vehicle revealed she was traveling eighty-one miles-per-hour prior to the crash; the speed limit at this location was forty-five miles-per-hour. Defendant's blood alcohol content, obtained after the collision, was .268%, well above the legal limit.

Defendant and the injured officers were all taken to a nearby hospital. Soon after, a detective, present with two other officers, introduced himself to defendant and informed her that he was investigating the collision. Defendant was not advised of her Miranda¹ rights and, in response to the detective's introduction, she complained of chest pain and informed the detective "she only had two shots prior to the crash." The detective told her not to make any other statements.

The next day, defendant reported to the prosecutor's office as requested. There is no dispute that defendant invoked her Miranda rights; notwithstanding that unequivocal assertion of her right to remain silent and not incriminate herself, officers continued to pressure defendant, saying repeatedly it would "help" if she answered their questions. The State concedes the interrogating officers violated defendant's Miranda rights, and the State agrees it may not use the resulting recorded statement in its case-in-chief.

In pretrial proceedings, the trial judge suppressed the statement defendant gave to police while confined to her hospital bed and the statements given after she asserted her right to remain silent at the prosecutor's office. The judge also

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

held that the latter statement could not be used by the State at trial for impeachment purposes.

The State moved for leave to appeal the suppression of the hospital-bed statement and that part of the order that precluded the State from using the statements extracted from defendant after she invoked her Miranda rights, but only to the extent that it barred use of those statements for impeachment purposes should defendant testify. We granted that motion and now affirm in all respects.

II

Defendant was indicted and charged with second-degree assault by auto, N.J.S.A. 2C:12-1(c)(3)(a), third-degree assault by auto, N.J.S.A. 2C:12-1(c)(3), and fourth-degree assault by auto, N.J.S.A. 2C:12-1(c)(1). The State moved to admit multiple incriminating statements made by defendant, and the judge conducted an evidentiary hearing.

Denying the motion in part, the judge determined that defendant was subjected to "custodial interrogation" when approached by the detective and other officers in the hospital the night of the crash, and that the officer's failure to honor defendant's invocation of her Miranda rights the following day at the

prosecutor's office required suppression of that statement not only during the State's case-in-chief but for impeachment purposes as well.²

The applicable standard of review requires deference to the trial judge's factual findings when supported by sufficient, credible evidence in the record; all legal conclusions are reviewed de novo. State v. Robinson, 200 N.J. 1, 15 (2009).

III

We first consider the parties' arguments about the statement given to police while defendant was hospitalized, and thereafter we consider the statements given the next day at the prosecutor's office after police failed to honor defendant's invocation of her Miranda rights.

A

Police must read a suspect's Miranda rights whenever that suspect is simultaneously in custody and being interrogated by officers. Miranda, 384 U.S. at 444; State v. Knight, 183 N.J. 449, 461 (2005). Whether a person is in custody is determined by whether a reasonable person in the suspect's position would feel free to leave. State v. Ahmad, 246 N.J. 592, 612-13 (2021). Interrogation

² The judge held that statements given by defendant to a hospital nurse could be used at trial. Defendant has not sought our review of that part of the order and, so, we offer no view of that determination.

constitutes either express questioning or its functional equivalent. See State In Interest of A.A., 240 N.J. 341, 352-53 (2020). Whether a suspect is in custody and being interrogated for Miranda purposes is a fact-sensitive question that must take into consideration the totality of the circumstances. State v. Pearson, 318 N.J. Super. 123, 133 (App. Div. 1999).

Because neither party contests that defendant was in custody during her hospital admission, we focus on whether the detective's approach and introduction to her constituted an interrogation. For Miranda purposes, interrogation occurs when the defendant is "subject[ed] to either express questioning or its functional equivalent." A.A., 240 N.J. at 352. Courts must determine whether the officer knew or should have known that his actions were likely to elicit an incriminating response from the suspect. Id. at 352-53. If that is the case, and the suspect was not advised of the rights guaranteed by Miranda, then any incriminating statement that follows is inadmissible. On the other hand, the statement may be admissible if the suspect makes unsolicited or spontaneous statements not in response to any interrogative questioning. State v. Beckler, 366 N.J. Super. 16, 25-26 (App. Div. 2004).

The State first argues that the trial judge misinterpreted the relevant facts. The State claims that the detective was not flanked by the two other officers as

he approached defendant, but that – as the detective testified – the two officers were already in the hospital room with defendant when he entered. The State also argues that defendant's statement about having "two shots" was spontaneous and did not result from custodial interrogation. The State claims that these circumstances are important because the judge's holding "yields the absurd result of requiring law enforcement officers to administer Miranda warnings every time they approach someone prior to introducing themselves." The State also claims the judge applied the wrong legal standard in that, rather than determining whether "the police should know [that their actions] are reasonably likely to elicit an incriminating response from the suspect," Rhode Island v. Innis, 446 U.S. 291, 300-02 (1980), the trial judge instead looked to "whether the officers could have known whether [their] words or actions could possibly prompt an incriminating response." According to the State, it was unforeseeable that defendant would make an incriminating response as soon as the detective introduced himself, and the fact that, after defendant made the statement, the detective immediately advised her not to make any more statements until a recorded interview, supports the argument that he did not foresee defendant making any incriminating statements after he introduced himself.

In furtherance of its arguments, the State compares the detective's actions to those of the officers in State v. Ward, 240 N.J. Super. 412 (App. Div. 1990), and State v. Ramos, 217 N.J. Super. 530 (App. Div. 1987). In Ward, we held that showing a suspect photographs of two others who had been arrested in connection with a crime constituted the functional equivalent of interrogation, as the officer's intent behind this act was to elicit a statement from the suspect confessing he knew the two men in the photos. 240 N.J. Super. at 415-16. Conversely, in Ramos, we found no custodial interrogation when an officer, knowing a suspect wore glasses, asked him where his glasses were. 217 N.J. Super. at 537. The State argues that, like the officer in Ramos, the detective could not have anticipated defendant's remark about the "two shots" and, even so, the detective's introduction did not even rise to the level of Ramos since he did not ask any questions. The present matter is also distinguishable from Ward – claims the State – because the detective did not present defendant with any information regarding the collision with the intent of soliciting further information from her.

We reject the State's arguments. The trial judge was entitled to find that the presence of the three officers in defendant's hospital room following the accident was likely to elicit an incriminating response, and it does not matter to

our determination whether the two other officers were already in the room or that they entered when the detective entered.³ And, as for the detective's lack of direct questioning, defendant argues that the judge correctly found – and we agree – that "actions, rather than words alone, by detectives or officers may [] satisfy the requirement of interrogation." Like the officer in Ward, the detective acted in a manner that was reasonably likely to elicit an incriminating response even without asking any express questions. The detective and two officers were not there to render medical treatment; the only reasonable understanding of their presence was to obtain information about a criminal investigation. Under the circumstances, the judge's finding that defendant was subjected to custodial interrogation the moment the detective entered her hospital room was based on correct legal principles and was supported by the evidence found credible.

B

The day after the incident outside the Holland Tunnel, defendant appeared at police headquarters as requested. She was read her rights, which she invoked, but the police continued to question defendant, as the following reveals:

Q. So knowing these rights, right, we brought you here for the accident. We want to know your version of the event. Knowing your rights, would you like to tell me

³ Our standard of review, however, requires our acceptance of the judge's finding since it is supported by credible evidence.

your side of the story? Would you like to tell me what happened?

A. Actually not today because like I'm having too much pain in my body still.

Q. Okay. So you . . .

A. Yeah.

Q. . . . you don't want to talk to us today?

A. No.

Q. Okay. That's fine.

A. That's why like yesterday I told him like (unintelligible) we can talk about it then.

Q. That's fine. I just have to go through all of the steps.

A. Okay.

Q. Okay. So you're, you, you're [in]voking your rights? You don't want to speak to us right now?

A. Yeah.

The officer, however, continued questioning defendant. After explaining that she was going to be processed, the officer told defendant that "[w]e're gonna give you an opportunity to talk right before you leave . . . [bec]ause your side of the story is gonna be very helpful, because really only you know what happened inside your car, right?" The officer further persisted, despite defendant's

repeated statements that she was in pain, asking her "to tell us what happened." She then gave statements that the State believes it is entitled to use should defendant testify at trial.

There is no doubt that defendant's invocation of her rights should have ended the interrogation. See, e.g., State v. Wade, 252 N.J. 209, 219 (2022). The officers were obligated – but failed – to "diligently honor" defendant's invocation of her rights. State v. S.S., 229 N.J. 360, 382 (2017). In the trial court, the State acknowledged that it may not offer defendant's statements in its case-in-chief. But the State claims the right to use those statements to impeach defendant should she take the stand. We conclude that the trial judge correctly rejected the State's argument.

In following Harris v. New York, 401 U.S. 222 (1971), our Supreme Court recognized an exception to the exclusionary rule and held that a statement obtained after a suspect has invoked the right to remain silent may be used for impeachment purposes subject to certain limitations. State v. Burris, 145 N.J. 509, 533 (1996).

To fall within that exception, the statement must be trustworthy, and whether it is trustworthy "entails an examination of the voluntariness of the statement," which "in turn depends on whether the suspect's will was overborne

and whether the confession was the product of a rational intellect and a free will." Id. at 534; see also State v. L.H., 239 N.J. 22, 42 (2019). This inquiry requires the employment of a due process voluntariness analysis, Burris, 145 N.J. at 527, which "takes into consideration the totality of all the surrounding circumstances – both the characteristics of the accused and the details of the interrogation." L.H., 239 N.J. at 42.

The State argues that the trial judge failed to take into consideration the totality of the circumstances and instead focused solely on the Miranda violation. We disagree. The facts do reveal defendant was twenty-seven-years-old at the time of the collision, possessed an understanding of the English language, was not in serious pain following the collision, was not taking any medications that would affect her judgment, and joked with detectives at certain points of the interrogation. The State claims that defendant's overall demeanor at the time she made the recorded statement suggests that, despite the Miranda violation, she gave the statement freely and voluntarily.

But the State was required to prove beyond a reasonable doubt that her statement was voluntary. L.H., 239 N.J. at 42. And, while those facts provide some support for the State's position, it cannot be overlooked that not only did the officers fail to scrupulously honor defendant's invocation of her right to

remain silent, but the officers also improperly "minimized the importance of the Miranda warnings, by informing defendant that it would 'help' if she gave a statement," the very type of cajoling the Court recently found improper in State v. O.D.A.-C., 250 N.J. 408, 422 (2022). Just as the police here minimized Miranda's importance when they spoke with defendant the day after the car crash, the State here minimizes how the statements made by the police to defendant after she invoked her right to remain silent "can mislead suspects about the consequences of speaking." See, e.g., L.H., 239 N.J. at 44; State v. Pillar, 359 N.J. Super. 249 (App. Div. 2003).

In O.D.A.-C., the Court held that a defendant's statement could not be used for impeachment purposes because, to solicit the statement, the officer told the defendant that Miranda warnings were a "formality." 250 N.J. at 422. Other cases in which an officer encouraged a defendant to give a statement because it would "help" have resulted in the statement being inadmissible for impeachment purposes, because such characterization contravenes the Miranda warnings. See, e.g., State v. ex rel. A.S., 203 N.J. 131, 151 (2010) (finding that the interrogating officer wrongly told the defendant that answering questions "would actually benefit her," an assertion at direct odds with the warning "that anything she said in the interview could be used against her in a court of law"); State v. Puryear,

441 N.J. Super. 280, 298 (App. Div. 2015) (finding impermissible an interrogator's representation to the defendant that he "could not hurt himself and could only help himself by providing a statement" because it "contradicted a key Miranda warning"). As in these cases, the officers who interrogated defendant told her, on multiple occasions, that talking would only help, starkly contradicting the Miranda warnings.

In sum, we find no reason to second-guess the trial judge's determination that defendant's recorded statement should not be admissible even for impeachment purposes.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION