SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2297-20

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DEVANTE C. MIMS,

Defendant-Appellant.

———————————————

Submitted October 13, 2022 – Decided April 5, 2023

Before Judges Gooden Brown and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law Division, Burlington County, Indictment No. 19-08-1058.

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

LaChia L. Bradshaw, Burlington County Prosecutor, attorney for respondent (Jennifer Paszkiewicz, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

After the trial judge denied his respective motions to suppress evidence seized without a warrant and exclude a statement given following the administration of Miranda[1] warnings, defendant entered a negotiated guilty plea to third-degree possession of a controlled dangerous substance (CDS) and was sentenced to a three-year term of noncustodial probation. The charge stemmed from an incident that occurred while defendant was incarcerated at the Garden State Youth Correctional Facility (Garden State). During the incident, defendant was forcibly restrained and searched after officers observed defendant receive suspected CDS from a visitor. Subsequently, defendant made incriminating statements when he was interrogated by special investigators about the incident.

On appeal, defendant raises the following points for our consideration:

> POINT I
>
> THE MOTION COURT ERRED IN DENYING SUPPRESSION OF EVIDENCE OBTAINED FROM AN EXCESSIVELY VIOLENT WARRANTLESS SEARCH.
>
> > A. The Special Needs Doctrine Does Not Apply Because the Core Objective of the Search Was to Obtain Evidence in Furtherance of a Criminal Investigation.

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

B. The Violent Beating by Six Officers[] Rendered the Search Unreasonable.

POINT II

THE MOTION COURT ERRED IN DENYING [DEFENDANT'S] MOTION TO SUPPRESS A STATEMENT OBTAINED JUST FOUR DAYS AFTER SIX OFFICERS BEAT HIM AND WHERE INVESTIGATORS FAILED TO SECURE A VALID WAIVER OF HIS RIGHT TO REMAIN SILENT, AND FAILED TO INFORM HIM ABOUT THE PENDING CHARGES.

A. Under the Totality of the Circumstances, the State Failed to Prove that [Defendant] Knowingly, Voluntarily and Intelligently Waived His Right to Remain Silent Beyond a Reasonable Doubt.

B. The Officers Failed to Inform [Defendant] of the Charges that Would be Filed Against Him Prior to Questioning in Violation of State v. Sims, 466 N.J. Super. 346 (App. Div. 2021).

Based on our review of the record and the applicable legal principles, we reject defendant's arguments and affirm.

I.

We glean these facts from the combined testimonial hearing conducted on December 11 and 15, 2020, during which Sergeant Kenneth Newsome, then retired from the New Jersey Department of Corrections (DOC), testified for the

State in connection with the suppression motion, and Investigator Erick Rodriguez, assigned to the DOC's Special Investigations Division (SID), testified for the State in connection with the Miranda motion.

Newsome testified that prior to his retirement from the DOC, he had been responsible for supervising staff and inmates at Garden State. At approximately 2:21 p.m. on October 27, 2018, a subordinate officer reported to him that another officer had witnessed defendant and his visitor engage in a "hand-to-hand exchange of suspected CDS." When the officer made the observation, she was "inside . . . the security booth, stationed at a plexiglass window," and was positioned about "three" to "four feet" away from defendant and his visitor in the visiting area. The security footage depicting defendant's interaction with his visitor was played at the hearing.

Upon receiving the report, Newsome and the subordinate officer approached defendant. When Newsome "directed [defendant] to open his hands," defendant refused, "stat[ing] that he had nothing in his hands." Despite defendant's claim, Newsome "observed [a] purple latex object . . . between [defendant's] cupped hands." In his twenty years of experience as a corrections officer, Newsome had previously observed CDS, particularly marijuana and synthetic marijuana, and had observed the way in which

such items were usually packaged in the prison setting "[m]ore than ten times." He explained that in his experience, illicit drugs were usually packaged in fingers from a latex glove, referred to as "balloons," to facilitate easy ingestion or placement in the anus. He stated that the dangers of having CDS in the facility included "overdose[s]," "chaos, fighting, [and] unrest."

Newsome continued to order defendant to open his hands "[m]ore than five" times. When "[defendant] failed to comply" with Newsome's orders, he was eventually tackled by several officers and forcibly taken to the ground. Once defendant was on the ground, Newsome ordered him "to stop resisting, [to] roll over on his stomach, and [to] place his hands behind his back." Instead of complying with Newsome's "direct orders," defendant "attempt[ed] to place his hand over his mouth." Although defendant did not physically resist, in order to secure defendant, the officers used physical force, including closed-fist strikes, against defendant.

Once defendant was secured in handcuffs, he was escorted out of the visiting area. Ultimately, a pat-down search and a strip search of defendant were conducted, leading to the seizure of "two balloons," between two and

three inches in length, containing suspected marijuana or synthetic marijuana. The pat-down revealed one balloon in "[defendant's] pants," and the strip search revealed the other balloon between defendant's "boxers and . . . pants." In total, six officers were involved in the use of physical force to secure defendant. Following the incident, defendant was treated at the facility's infirmary for "scratches on the face, lower lip, nose, and acute tissue swelling on the frontal head and upper eyelid."

Four days later, on October 31, 2018, SID investigators arrived at Garden State to question defendant about the October 27 incident. Although Special Investigator Rodriguez did not conduct the interview, he assisted another investigator, Investigator John Meszaros, with the interrogation. A video recording of the interview was played during the hearing.

The interrogation began at 10:10 a.m. and was conducted in an interview room while defendant was handcuffed. Rodriguez testified that Meszaros began the interview by reading defendant his Miranda rights from a DOC "Miranda warning form" that was admitted into evidence. The video recording depicted Meszaros reading each right to defendant one at a time, stopping after each right to ask if defendant understood. Specifically, Meszaros advised defendant of his right to remain silent, his right to the presence of an attorney during any

questioning, his right to have an attorney provided if he could not afford to hire one, his right to withdraw his waiver of his rights at any time, and that anything defendant said could be used against him in a court of law. Meszaros also clarified the meaning of withdrawing his waiver by explaining to defendant that he could ask for questioning to stop at any time and the request would be honored.

Defendant acknowledged understanding each right as it was read to him, and, upon prompting from Meszaros, initialed beside each right and signed the form, acknowledging that he had been advised of his constitutional rights. Rodriguez confirmed that defendant never said, either verbally or in writing, that he was giving up his right to remain silent. Instead, after defendant signed the form, Meszaros asked defendant if he "wish[ed] to provide a statement" regarding the October 27 incident in the visitor hall, and defendant answered in the affirmative. Upon questioning, defendant admitted asking his visitor to bring him the CDS in exchange for money. Defendant stated that the CDS was for his personal use only and he had no intention of selling it. He also explained that it was his first time asking his visitor to bring him drugs. At the conclusion of the interview, Meszaros informed defendant that he would be charged with possession of CDS. The interview ended at 10:17 a.m.

Defendant was charged in a three-count indictment with third-degree possession of CDS, N.J.S.A. 2C:35-10(a)(1) (count one); third-degree possession of CDS with intent to distribute, N.J.S.A. 2C:35-5(a)(1) and 2C:35-5(b)(13) (count two); and third-degree conspiracy to distribute CDS, N.J.S.A. 2C:5-2(a)(1) and 2C:35-5(b)(13) (count three).[2] Defendant subsequently moved to suppress all evidence seized during the October 27 incident, and to exclude the statement made during the October 31 interrogation. Following oral argument, in separate orders entered on January 14, 2021, the judge denied both motions.

In an oral opinion, the judge found the testimony of both officers credible and thus made factual findings consistent with their testimony. The judge pointed out that Newsome had failed to independently recall the officers' use of force against defendant during the October 27 incident and had to have his recollection refreshed with his report during cross-examination. The judge stated that while this lapse "did cast a little bit of doubt on that portion of [Newsome's] testimony," his testimony "overall" was "credible."

[2] Defendant's visitor, Tysha Sanders, was also charged in the same indictment but is not a party to this appeal.

Applying the facts to the governing principles, the judge determined that the special needs exception to the warrant requirement, which "typically applies to prison searches given the lesser expectation of privacy that inmates have and the heightened security needs in the prison setting," justified the search. The judge cited the particular "dangers that CDS creates in the facility," including the "risk of overdose, . . . chaos, fighting and just general unrest and violence" as further support that the search served a special governmental need. The judge also found in the alternative that, under the circumstances, the contact between defendant and his visitor was sufficient to generate "probable cause to justify the search." In that regard, the judge relied on his review of the security footage depicting defendant's interaction with his visitor, finding that "at some point there [was] this exchange where the two individuals appear to be shaking hands or there's this hand-to-hand connection."

Turning to defendant's statement, the judge acknowledged that "a Miranda waiver may be made either expressly or impliedly" and noted the court's obligation to "consider the totality of the circumstances, including defendant's characteristics and the circumstances of the interrogation." The judge rejected defendant's argument that he was never asked if he wished to waive his Miranda rights, and distinguished State v. Tillery, 238 N.J. 293 (2019), upon which

defendant relied. After evaluating the requisite factors, the judge concluded there was a valid "waiver of [defendant's] Miranda rights" and that the "statement was made knowingly, voluntarily and intelligently."

In that regard, the judge found that Meszaros "ask[ed] defendant if he understood each individual right" and "specifically asked defendant if he wished to make a statement." Further, Meszaros did not minimize the administration of the rights by "tell[ing] defendant that by signing the card he was only acknowledging that he was reading his rights." The judge also considered that defendant was "approximately [twenty-five] years old" at the time and "of sufficient age to understand his Miranda warnings." Additionally, "defendant had a long history of encounters with law enforcement," both as a juvenile and an adult, and "the interrogation . . . lasted only six minutes." Thus, "[t]here was no delay between the administration of the Miranda rights and the time that defendant made his statement." Because defendant "acknowledge[d]" receiving and understanding his rights and "decided to give a statement to police anyway," the judge concluded "defendant understood" that he had no obligation to speak and the potential consequences for doing so.

On February 5, 2021, defendant entered a negotiated guilty plea to count one and was sentenced in accordance with the plea agreement on March 12,

2021. A conforming judgment of conviction was entered on March 16, 2021, and this appeal followed.

II.

We begin our analysis by setting out some guideposts that inform our review. The standard of review on a motion to suppress is "deferential." State v. Goldsmith, 251 N.J. 384, 398 (2022). We "must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." Ibid. (quoting State v. Ahmad, 246 N.J. 592, 609 (2021)). "We defer to those findings of fact because they 'are substantially influenced by [an] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" State v. Hubbard, 222 N.J. 249, 262 (2015) (alteration in original) (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). On the other hand, a trial court's legal conclusions and "its view of 'the consequences that flow from established facts' are reviewed de novo." Goldsmith, 251 N.J. at 398.

When reviewing a trial court's Miranda ruling, we must similarly "give deference to the trial court's factual findings so long as they are supported by sufficient credible evidence in the record." State v. O.D.A.-C., 250 N.J. 408, 425 (2022) (citing State v. S.S., 229 N.J. 360, 379-81 (2017)). Our deference

even extends to "factfindings based solely on video or documentary evidence." S.S., 229 N.J. at 379. However, "we are not bound by the trial court's determination of the validity of the waiver, which is a legal, not a factual, question." O.D.A.-C., 250 N.J. at 425 (citing Miller v. Fenton, 474 U.S. 104, 110 (1985)).

Informed by the relevant standard of review, we turn to the substantive principles governing this appeal. We first address the suppression motion. Defendant argues that the special needs exception to the warrant requirement does not justify the officers' search because "[t]he search . . . was a part of a criminal investigation of [defendant] and the six officers who executed it used excessive force."

"[A] search conducted without a warrant is presumptively invalid." State v. Hathaway, 222 N.J. 453, 468 (2015) (quoting State v. Frankel, 179 N.J. 586, 598 (2004)). "Because our constitutional jurisprudence evinces a strong preference for judicially issued warrants, the State bears the burden of proving by a preponderance of the evidence that a warrantless search or seizure falls within one of the few well-delineated exceptions to the warrant requirement." State v. Chisum, 236 N.J. 530, 545 (2019) (quoting State v. Mann, 203 N.J. 328, 337-38 (2010)). Among the "recognized exceptions to the requirement to obtain

a warrant for a search and seizure" is the special needs exception. State v. O'Hagen, 189 N.J. 140, 150 (2007). The exception "arises 'when "special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable."'" Ibid. (quoting Skinner v. Ry. Lab. Execs'. Ass'n, 489 U.S. 602, 619 (1989)). As a result, "neither the federal nor the New Jersey constitution requires that probable cause or reasonable suspicion be demonstrated" to justify a search and seizure under the special needs exception. Hamilton v. N.J. Dep't of Corr., 366 N.J. Super. 284, 287 (App. Div. 2004).

In determining whether the special needs exception applies, our courts apply a multi-step balancing test. First, our courts examine the purpose of the search to determine whether "'the core objective of the police conduct serves a special need other than immediate crime detection.'" H.R. v. N.J. State Parole Bd., 242 N.J. 271, 286 (2020) (quoting O'Hagen, 189 N.J. at 160). Once this threshold inquiry is satisfied, courts then balance "the search's 'encroachment on an individual's [privacy] interests against the advancement of legitimate state goals.'" Ibid. (alteration in original) (quoting State ex rel. J.G., 151 N.J. 565, 576 (1997)). "Thus, the second part of the test involves balancing the relevant interests, which include 'the affected [individual's] expectation of privacy, the search's degree of obtrusiveness, and the strength of the government's asserted

need in conducting the search.'" Id. at 287 (alteration in original) (quoting Joye v. Hunterdon Cent. Reg'l High Sch. Bd. of Educ., 176 N.J. 568, 597 (2003)).

Our Supreme Court has stated that "the special needs doctrine applies to prison searches given the lesser expectation of privacy that inmates have and the heightened security needs in the prison setting." State v. Hemenway, 239 N.J. 111, 128 (2019). Our courts have long recognized that the prison setting presents a "host of security problems" that require "an 'intricate balancing of prison management concerns with [a] prisoner's liberty.'" Jackson v. Dep't of Corr., 335 N.J. Super. 227, 233 (App. Div. 2000) (quoting Sandin v. Conner, 515 U.S. 472, 478 (1995)). While "[i]nmates do not shed all of their constitutional rights at the prison gate," id. at 232, we have held that "the necessity of curtailing the use of illegal drugs in state prisons in order to preserve order, safety and the health of the inmate population" may render an inmate subject to searches that would be unjustified in other circumstances, Hamilton, 366 N.J. Super. at 291.

Here, a corrections officer observed defendant, an incarcerated inmate, engage in a hand-to-hand exchange of an object with a visitor. When he refused to open his hand, a senior supervising officer observed a latex object in defendant's cupped hand, which was consistent with the packaging of CDS

in prisons to facilitate easy ingestion. Instead of complying with the officer's orders to stop resisting, defendant attempted to place his hand over his mouth in an apparent effort to ingest the object. Once defendant was eventually secured, a pat-down and a strip search were conducted, leading to the recovery of CDS on his person.

Under these circumstances, we agree with the judge that the search and seizure were justified under the special needs exception, obviating the need for probable cause or reasonable suspicion. Although the judge found probable cause as an alternative ground to validate the search, the search was justifiable without reaching that issue. Recounting Newsome's testimony about the general safety concerns arising from the presence of CDS in prisons, the judge found a cognizable government interest that excused the need for probable cause or a warrant. Indeed, "'prison officials have a "significant and legitimate" interest in preventing unauthorized drug use among prison inmates.'" Id. at 289 (quoting Lucero v. Gunter, 17 F.3d 1347, 1350 (10th Cir. 1994)). We have recognized "the dangers inherent in the presence of drugs in a prison environment and the need for prompt interdiction of drug use." Id. at 291.

Moreover, the pat-down and strip search that defendant underwent were no more intrusive than searches already approved by the courts. See Florence v. Bd. of Chosen Freeholders of Burlington, 566 U.S. 318, 324, 330 (2012) (upholding a jail's policy that required all detainees to submit to a strip search, naked visual inspection, and cavity search upon entry into the jail, regardless of the severity of their alleged offense); Bell v. Wolfish, 441 U.S. 520, 558-60 (1979) (upholding a prison's practice of subjecting any pretrial detainee who had contact with an outside visitor to a visual body cavity search).

Defendant concedes that "prevention of CDS activity within a correctional facility is a valid basis for special needs searches generally," but argues that the exception does not apply to this search because "the facts here clearly establish that the primary objective of the search was ordinary law enforcement." In support, defendant cites the State's assertions during oral argument on the motions "that the search was the result of a law-enforcement investigation into anonymous tips and emails indicating that [defendant's visitor] was bringing CDS into the facility for distribution."

We acknowledge that in addition to the suppression and Miranda motions, the judge had considered the State's in limine motion to admit at trial "[thirteen] emails and . . . two anonymous notes" received by SID "indicating that defendant

was receiving drugs from [his visitor] and distributing them in prison," leading to closer monitoring of "defendant's visits." However, after adjudicating the suppression and Miranda motions, the judge denied the State's in limine application on various grounds, noting that "there was nothing ever presented in either one of the hearings with respect to the emails or the notes."

Likewise, defense counsel had pointed out during oral argument that no evidence of the emails or notes had been introduced during the evidentiary hearings. Neither Newsome nor Rodriguez had been questioned about prior knowledge of defendant's purported involvement with drug distribution in the prison. In fact, during cross-examination, Newsome had acknowledged that he had known defendant for four years and had never had any prior "negative interaction" with him. Thus, there was no competent evidence presented that the officers initiated the search for primarily law enforcement purposes, and, standing alone, the emails and anonymous notes are insufficient to transform primarily safety-related motives into a law enforcement purpose to preclude application of the special needs exception. To hold otherwise would be inconsistent with our courts' repeated calls for "deference and flexibility to corrections officers trying to manage a volatile environment." Jackson, 335 N.J. Super. at 233.

Defendant also argues that even if the special needs exception justified the search, the evidence seized should have been suppressed because it was obtained by excessive force in violation of his Fourth Amendment rights.

An individual's right to be free from unreasonable searches and seizures includes protection against unreasonable use of force in the course of an arrest. See U.S. Const. amend. IV; Baskin v. Martinez, 243 N.J. 112, 125-26 (2020) (citing Graham v. Connor, 490 U.S. 386, 394 (1989)). In determining whether an officer's use of force violates the Fourth Amendment, our Supreme Court has stated:

> The ultimate issue in analyzing any excessive-use-of-force claim under the Fourth Amendment is whether, from the police officer's perspective, the use of force was objectively reasonable under all the circumstances. In making that assessment, a court does not view the events at issue "with the 20/20 vision of hindsight." "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." Among the factors that should be considered in evaluating the reasonableness of an officer's use of force are "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

> [Baskin, 243 N.J. at 126-27 (citations omitted) (quoting Graham, 490 U.S. at 396-97).]

Other considerations may include "the relationship between the need for the use of force and the amount of force used," the "extent" of the injuries inflicted, "any effort made by the officer to . . . limit the amount of force" used, "the severity" of the security risk, and "the threat reasonably perceived by the officer." Kingsley v. Hendrickson, 576 U.S. 389, 397 (2015) (adopting Fourth Amendment objective standard for analyzing excessive force claims by pretrial detainees). This test of reasonableness "'is not capable of precise definition or mechanical application.'" DelaCruz v. Borough of Hillsdale, 183 N.J. 149, 165 (2005) (quoting Bell, 441 U.S. at 559). "Rather, objective reasonableness turns on the 'facts and circumstances of each particular case.'" Kingsley, 576 U.S. at 397 (quoting Graham, 490 U.S. at 396).

In the context of prison settings, the reasonableness standard accounts for the need to defer to "'policies and practices that in th[e] judgment' of jail officials 'are needed to preserve internal order and discipline and to maintain institutional security.'" Ibid. (alteration in original) (quoting Bell, 441 U.S. at 547). Courts allow for the fact that corrections officers "are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving." Jacobs v. Cumberland Cnty., 8 F.4th 187, 195 (3d Cir. 2021) (quoting Kingsley,

576 U.S. at 399). As such, courts have recognized that "'[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,' violates an inmate's constitutional rights." Ibid. (alteration in original) (quoting Hudson v. McMillian, 503 U.S. 1, 9 (1992)). However, the extra tolerance afforded to corrections officers does not grant them authority to use force gratuitously in carrying out their duties. See id. at 195-96 (explaining that the use of gratuitous force beyond what was penologically necessary may qualify as objectively unreasonable force for Fourteenth Amendment purposes).

Applying these principles, we are satisfied that the force used against defendant was not objectively unreasonable under the circumstances and that there was a "relationship between the need for the use of force and the amount of force used." Kingsley, 576 U.S. at 397. Six officers used physical force, including closed-fist strikes, in the course of subduing and securing defendant to further investigate his suspected drug possession and prevent the possible destruction of evidence. Although defendant did not physically resist throughout the encounter and sustained bruising, swelling, and scratches on his face and head, defendant failed to comply with multiple direct orders. If defendant had been compliant and still been subjected to this degree of force, we may have reached a different conclusion. However, the unique policy

concerns implicit in institutional security and inmate management support our conclusion that the force employed was not unconstitutionally excessive.

Turning to the Miranda issue, defendant argues the judge erred in concluding that his waiver was valid and his statement was voluntary. To support his claims, defendant asserts the interrogating officer "failed to inform him of the pending charges . . . prior to inviting him to talk about . . . [the October 27, 2018] incident," "[h]e was never asked if he wanted to waive [his] rights" or "informed" about "the significance of signing the [warning] card," and the interrogation occurred "four days after he had been beaten by six officers in th[e] same facility."

As our Supreme Court recently explained:

> A defendant's statement to the police, made in custody, is admissible if it is given freely and voluntarily, after the defendant received Miranda warnings, and after he knowingly, voluntarily, and intelligently waived his rights. The State must prove beyond a reasonable doubt that a defendant's waiver was valid. Courts look to the totality of the circumstances to assess whether the State has met its burden.
>
> [O.D.A.-C., 250 N.J. at 413 (citations omitted) (citing State v. Sims, 250 N.J. 189, 211 (2022)).]

When applying the totality-of-the-circumstances test, courts may "consider a number of factors to determine if a Miranda waiver is valid." Id. at

421. Such factors may include the suspect's "'education and intelligence, age, familiarity with the criminal justice system, physical and mental condition, . . . drug and alcohol problems,' how explicit the waiver was, and the amount of time between the reading of the rights and any admissions." Ibid. (alteration in original) (quoting Custodial Interrogations, 49 Geo. L.J. Ann. Rev. Crim. Proc. 218, 233-36 (2020)).

"Our law, however, does not require that a defendant's Miranda waiver be explicitly stated in order to be effective." Tillery, 238 N.J. at 316. "A waiver may be 'established even absent formal or express statements.'" State v. A.M., 237 N.J. 384, 397 (2019) (quoting Berghuis v. Thompkins, 560 U.S. 370, 383 (2010)). "Indeed, '[a]ny clear manifestation of a desire to waive is sufficient.'" Tillery, 238 N.J. at 316 (alteration in original) (quoting A.M., 237 N.J. at 397). "Where the prosecution shows that a Miranda warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent." Berghuis, 560 U.S. at 384.

"Beyond the issue of waiver, there are separate due process concerns related to the voluntariness of a confession. Due process requires the State to 'prove beyond a reasonable doubt that a defendant's confession was voluntary and was not made because the defendant's will was overborne.'" O.D.A.-C., 250

N.J. at 421 (quoting State v. L.H., 239 N.J. 22, 42 (2019)). We similarly evaluate voluntariness using "[t]he totality-of-the-circumstances test . . . and '[t]here is a substantial overlap [with] the factors that' apply to a waiver analysis." Ibid. (alterations in original) (quoting Tillery, 238 N.J. at 316).

Here, in upholding defendant's waiver and statement, we are satisfied that the judge's findings of fact are supported by sufficient credible evidence in the record and accord them the deference our law requires. We are also convinced that the judge's application of the totality-of-the-circumstances standard to the facts of the case justified finding a valid waiver and a voluntary statement.

Defendant relies on Tillery to support his argument that his waiver was invalid. In Tillery, detectives presented the defendant with a "Miranda card" before beginning substantive questioning. 238 N.J. at 306. The card had the Miranda rights set forth on the front. Ibid. On the reverse side, where the signature line appeared, the card stated, "I acknowledge that I have been advised of the constitutional rights found on the reverse side of this card." Ibid. The card "included no inquiry regarding defendant's waiver," and when the detective directed the defendant to sign the card, he told the defendant that his signature would simply mean that the defendant had been read his rights. Id. at 308. The

defendant signed the card as directed, then proceeded to make incriminating statements to the police that were later admitted at trial. Id. at 306-07.

In upholding the defendant's convictions for weapons offenses, the Tillery Court stated "the parties' dispute over defendant's Miranda waiver present[ed] a close question" because "[n]either the script set forth on the . . . Miranda card nor the detective's statement to defendant addressed whether defendant agreed to waive his rights before answering questions." Id. at 302. However, the Court concluded "any error in the trial court's admission of the statement was harmless beyond a reasonable doubt." Ibid.

In elucidating its concerns regarding the waiver, the Tillery Court explained:

> [W]e agree with the trial court that the majority of the factors typically considered in the "totality of the circumstances" inquiry favor a finding of implied waiver.
>
> The trial court, however, did not consider two aspects of the administration of the Miranda warnings in this case. First, the Miranda card used by the . . . investigators does not reflect optimal law-enforcement practice. The card accurately recited a suspect's Miranda rights, and mentioned the waiver of Miranda rights in a sentence advising a suspect that his or her decision to waive those rights is not final and may be withdrawn. It did not guide an interrogating officer, however, to ensure that the suspect had waived those rights before questioning began. Instead, the card

ambiguously stated that by signing, the suspect acknowledged that he or she had been "advised of the constitutional rights found on the reverse side of this card." In short, the Miranda card used in this case invited an incomplete inquiry on the question of waiver.

Consistent with Fifth Amendment jurisprudence and state law on the right against self-incrimination, Miranda cards . . . should direct the interrogating officer to address the question of waiver in the Miranda inquiry. Miranda waiver cards and forms should guide an officer to ask whether the suspect understands his or her rights, and whether, understanding those rights, he or she is willing to answer questions. . . .

Second, the advice that [the d]etective . . . gave defendant as to the purpose of his signature on the Miranda card was incomplete. Perhaps misled by the language of the Miranda card, the detective told defendant that by signing the card, he would simply acknowledge that his Miranda rights had been read to him. He urged defendant to "[j]ust sign here that I read you your rights."

To the contrary, a defendant's signature on a Miranda card does much more than acknowledge that law enforcement has recited the Miranda rights. When law enforcement officers request that a suspect sign a Miranda card or form, they should scrupulously avoid making comments that minimize the significance of the suspect's signature on that card or form.

Accordingly, although most of the "totality of the circumstances" factors support the trial court's finding of an implied waiver, the advice that law enforcement gave defendant regarding his constitutional rights weighs against such a finding in this case.

[Id. at 318-19 (sixth alteration in original).]

Like the defendant in Tillery, defendant was presented with a comparable Miranda form that he signed at the direction of the interrogating officer. Moreover, the form similarly indicated that defendant's signature was an acknowledgment that he had been advised of his rights. However, unlike the detective in Tillery, Investigator Meszaros paused after reading each right to ensure that defendant understood what was read to him and made no statements minimizing the significance of defendant's signature acknowledging his understanding of his rights. Further, although Meszaros did not explicitly ask defendant if he was waiving his rights, he explained to defendant that he had the power to end the questioning at any time. He then asked if defendant "wish[ed] to provide . . . a statement," and defendant agreed. We are persuaded that the totality of the circumstances supports the judge's finding of an implied waiver.

We also reject defendant's contention that his statement was coerced by the intimidating prison setting combined with the use of force he had been subjected to four days earlier. It is undisputed that defendant had been incarcerated for two-and-a-half years at the time of the interrogation. However, these factors are insufficient to establish that defendant's will was overborne in the manner prohibited by the Fifth Amendment. See State v. Knight, 183 N.J.

449, 468 (2005) (finding that in the absence of threats or other police misconduct, a "[defendant's] subjective fear did not derive from a threat amounting to coercion under the Fifth Amendment." (first alteration in original) (quoting State v. P.Z., 152 N.J. 86, 115 (1997))).

Defendant's final argument that his waiver was invalid because "the investigators never told [him] about the charges he was facing prior to the interrogation" relies on our decision in Sims, which has since been reversed by our Supreme Court. State v. Sims, 466 N.J. Super. 346, 367-68 (App. Div. 2021), rev'd and remanded, 250 N.J. 189, and reconsideration denied, 250 N.J. 493 (2022). In reversing our decision, the Court declined to adopt a rule requiring officers to tell an arrestee who is not subject to a complaint or arrest warrant what charges he faced before an interrogation and underscored that trial courts should continue to use "the totality-of-the-circumstances standard" as occurred here. Sims, 250 N.J. at 217.

Affirmed.