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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2533-21**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KHALEEIA BASS, a/k/a
MOLLY T. KHADJRAT,
KHALEELA BASS, KHALIA
BASS, KHALEEIA JACKSON,
and KHALEEIA Q. BASS,

Defendant-Appellant.

Argued March 29, 2023 – Decided June 30, 2023

Before Judges Accurso and Firko.

On appeal from the Superior Court of New Jersey,
Law Division, Atlantic County, Indictment No.
19-01-0149.

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

Katrina M. Koerner, Assistant Prosecutor, argued the cause for respondent (William Reynolds, Atlantic County Prosecutor, attorney; Katrina M. Koerner, of counsel and on the brief).

PER CURIAM

After the trial court granted the State's motion to admit statements defendant Khaleeia Bass made to police, she entered a conditional guilty plea to first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1), and was sentenced to a fifteen-year state prison term subject to the periods of parole ineligibility and supervision of the No Early Release Act, N.J.S.A. 2C:43-7.2. Bass appeals pursuant to Rule 3:9-3(f). She raises two issues for our consideration.

POINT I

THE MOTION COURT ERRED IN DENYING DEFENDANT'S MOTION TO SUPPRESS HER STATEMENT TO THE POLICE.

A. The Two-Stage, Ask First, Warn Later
Tactic Employed by the Detectives
Weighs Heavily Against Finding a
Knowing and Voluntary Miranda Waiver.

B. Affirmatively Misleading Defendant
About the Seriousness of the Criminal
Charges at Issue Weighs Heavily Against
Finding a Knowing and Voluntary
Miranda Waiver.

C. Failure to Cease the Interrogation
After Defendant's Multiple Explicit
Invocations of Her Right to Silence
Requires Suppression.

POINT II

THE SENTENCING COURT'S ERRORS IN
FAILING TO FIND MITIGATING FACTORS
SUPPORTED BY AMPLE EVIDENCE IN THE
RECORD AND GIVING UNDUE WEIGHT TO
AGGRAVATING FACTORS IN IMPOSING A
FIFTEEN-YEAR NERA TERM REQUIRES
REVERSAL.

We agree the detectives violated Bass's Miranda¹ rights by failing to honor her several invocations of her right to silence and accordingly reverse her conviction. We thus do not consider her arguments alleging error in her sentence.

Detective Alvarado of the Atlantic County Prosecutor's Office was the only witness at the suppression hearing. Detective Alvarado testified local police contacted her on November 1, 2018, about a stabbing in Absecon at Bass's father's home.

The victim was Kenneth Fenwick, Jr., who had been stabbed in the chest and later pronounced dead at the AtlantiCare Regional Medical Center. The

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

responding officers found Bass with blood on her clothes near her father's house. They drove Bass to the hospital so she could be treated for an asthma attack, then to the Absecon Police Department, where Detective Alvarado and another detective conducted Bass's interview.

The interview — which was video- and audio-recorded — began at about 2:00 a.m. on November 2, 2018, roughly five-and-a-half hours after the Absecon police were first dispatched. Detective Alvarado testified that at the time of the interview Bass was a suspect in the homicide and was the subject of a search warrant related to the killing, but no warrant for Bass's arrest had issued and she was not the only suspect. Detective Alvarado testified she knew Fenwick had died before she began questioning Bass.

The interview recording, which was introduced at the suppression hearing, shows Detective Alvarado begin the interview by asking Bass for her name, home address, birth date, phone number, and father's address. Detective Alvarado then asked Bass if she knew why she was there:

Defendant: Why?

Alvarado: I'm asking you. Do you know why you're here?

Defendant: Yeah.

Alvarado: Okay, why are you here?

Defendant: Uhh, I don't know, you tell me, what happened?

Alvarado: Okay, that was, if you know why you're here, I'm asking you if you know.

Defendant: Alright, tell me why, come on, I really don't have time. I'm not a child and I don't have time for games.

Alvarado: I agree, I don't have time for games, either.

Defendant: Thank you.

Alvarado: Okay, so you're here in reference to there was a stabbing.

Defendant: Mm-hm.

Alvarado: Correct?

Defendant: Mm-hm.

Alvarado: At your dad's house tonight.

Defendant: Mm-hm.

Alvarado: Okay, we want to talk to you about that.

Defendant: Mm-hm.

Alvarado: Okay?

Defendant: Mm-hm.

Alvarado: That's why you're here. Do you understand that?

Defendant: Mm-hm.

When Detective Alvarado told Bass she was going to read Bass her Miranda rights, Bass asked:

Defendant: So I'm locked up?

Alvarado: No, you're not listening. I want to talk to you —

Second Officer: She wants to talk to you and ask you questions —

Defendant: Wait, hold on, what am I —

Alvarado: Listen, you're getting —

Defendant: When you get read your rights that mean that you're locked up.

Alvarado: No, it's not. Listen, you're getting hysterical and you're jumping before you even let me finish. So, in order for me to talk to you about it's a serious situation that happened to the gentleman tonight that got stabbed.

Defendant: Mm-hm.

Alvarado: Who's that to you?

Defendant: That's my friend.

Alvarado: Okay, what's his name?

Defendant: Uh Lord.²

² Bass referred to Fenwick as "Lord" throughout the interview.

Alvarado: Okay, so that's a serious situation that happened.

Defendant: Mm-hm.

Alvarado: We're trying to put together what happened.

Defendant: I —

Alvarado: You got to let me finish. We don't know what happened. Before we talk to anybody, due to the serious nature of the incident, I have to read you your Miranda rights.

Defendant: Well, that means I'm locked up.

Alvarado: No, it does not mean you're locked up. . . . [Y]ou're not listening. So I'm gonna go through them with you. I'm gonna ask you a couple questions.

Defendant: Mm-hm.

Alvarado: And then we're gonna go from there. If at any point you wish to stop talking to me —

Defendant: Mm-hm.

Alvarado: You just tell me I don't want to talk to you. If I —

Defendant: I don't want to talk now because I don't have nothing to do with that situation —

Alvarado: Okay —

Defendant: [W]hy am I in it?

Alvarado: Okay, so what I'm going to do is, I'm gonna read you these. (Pointing to Miranda card)³ there's a question at the end that says do you wish to talk to me or not talk to me. If you don't want to talk to me, say no.

Defendant: I don't have nothing to say.

Alvarado: Okay, I have to read them to you, you're not understanding, okay?

Defendant: Yes, yes.

Alvarado: So I'm gonna go through them, when we get to this question right here, which is question 7. . . . You have the option to either talk with us and we can talk about what happened tonight and what you may or may not know.

Defendant: Yes.

Alvarado: Or you can tell me you don't want to talk to me, and we'll end the interview right here. Does that make sense?

Defendant: Yes, ma'am, yes, ma'am.

Detective Alvarado asked Bass about her education and whether she understood English, and after Bass answered she had graduated from high school and spoke English, Detective Alvarado informed Bass she had the right

³ The Miranda card has seven bullet points, the first five of which set out the interrogee's rights. The final two bullet points direct the interrogee to check a "yes" or "no" box indicating whether the interrogee understands her rights and whether the interrogee waives such rights, respectively.

to remain silent, to obtain counsel, and to have counsel appointed. Bass told Detective Alvarado she understood those rights before asking whether Detective Alvarado was "taking" her to jail:

Alvarado: No, I'm talking to you about this. You got to just let me get through this first.

Defendant: I don't understand, why are you questioning me, though?

Alvarado: Well, we know you were there at some point tonight.

Defendant: Okay?

Alvarado: So, we want to talk about that and what you may or may not know.

Defendant: I don't know nothing.

Alvarado: You have to let me finish.

Defendant: I apologize, go ahead.

Alvarado: It's okay. You have the right to stop answering questions at any time and have an attorney present.

Defendant: Mm-hm.

Alvarado: So, it says here number 6, I want you to look at this, it says do you understand each of these rights? Which is just saying do you understand what I read to you?

Defendant: Of course I do.

Alvarado: You have to either check yes or no, there's two boxes there, or say yes or no.

Defendant: Got me fucking

Alvarado: No, no.

Defendant: What, what? Yes, I do.

Alvarado: You understand what I —

Defendant: Yeah, I understand very well.

Alvarado: Okay, do you desire to waive your right and answer any questions?

Defendant: I don't have to, first of all, I don't have to answer nothing. . . .

Alvarado: [W]hat I'm asking here . . . is do you wish to talk to us. It's a simple yes or no.

Defendant: You can ask me whatever you want to ask me.

Alvarado: I need you to answer if I, do you wish to speak with us? Yes or no?

Defendant: Yeah, what's up.

Bass checked the boxes on the Miranda card indicating she understood her rights and waived them, and she also signed it.

After signing the card, Bass told Detective Alvarado she was at her mother's house the evening of the stabbing before she went to her father's

house in Absecon, where Fenwick was killed. When Detective Alvarado asked Bass where her mother lived, Bass told her she was "not about to sit here and do all this You said that I'm here for one thing you're gonna ask me. I'm not about to tell you my whole life story for the day." Detective Alvarado then confirmed Bass knew the victim "got stabbed," meaning the interview concerned "a serious situation" and it was necessary to determine "[w]ho factors into the equation and how."

Bass described her version of what happened, claiming she was in the shower in her father's house when she heard an argument start between three or four people elsewhere in the house. According to Bass, when she "heard the scuffling" she left the bathroom to find Fenwick, who she "picked . . . up" and "smacked the shit out of" while telling him to get up. Bass claimed Fenwick then told her to call an ambulance, presumably because he had been stabbed, which she did, before leaving the house because she was scared. After relating her version of events, Bass told Detective Alvarado:

Defendant: I got fucking scared . . . and I fucking left, and that's it, that's all I got to say.

Alvarado: Okay well . . . I don't have a problem with that.

Defendant: And that's it.

Alvarado: That's fine.

Defendant: That's it.

Alvarado: Um . . .

Defendant: I just told you that's it.

Alvarado: Alright well I can tell you right now there's definitely way more things that happened. So . . .

Defendant: Okay, I don't, listen, I don't care what more happened.

Alvarado: Okay, well if you want, we can clear, I can ask you questions and you can tell me yes or no. That's not the whole story, I know that. So, if you want to clear up the situation because I'm not here talking to you just about like a little nonsense stabbing.

Defendant: Mm-hm.

Alvarado: This is . . . a serious situation.

Defendant: Mm-hm.

Alvarado: Do you understand that?

Defendant: Yeah.

Alvarado: Okay. Do you know the current condition of your friend?

Defendant: No.

Alvarado: Okay, well what if I told you he's deceased?

Bass became upset at that point, telling Detective Alvarado, "Don't say that" and getting up from her chair to leave. Detective Alvarado told Bass she could not leave and "this is a serious situation. So we need to hash this out." Bass then returned to describing how several people were dropped off at her father's house the previous day before expressing disbelief that Fenwick died:

Defendant: Don't tell me that.

Alvarado: Well, I'm telling you that.

Defendant: He's deceased?

Alvarado: Yes.

Defendant: For real?

Second Detective: Yes ma'am.

Alvarado: Yeah . . . I wouldn't lie about that to you.

Defendant: You is lying.

Alvarado: Why would I lie?

Defendant: You lying.

Alvarado: Okay uh it's not something anybody lies about. . . . I'm here because he's deceased.

Bass then told Detective Alvarado Bass's mother had driven her and Fenwick to Bass's father's house from Somers Point. Bass continued to claim she was not involved in the argument at her father's house and did not know its

origin, although it appeared to be over money. Bass described interactions with someone named Wu, a drug dealer who allegedly threatened Fenwick on a previous occasion over money and drugs, although she could not specify the amount of money or type of drugs. Bass asked Detective Alvarado to verify Fenwick was truly deceased multiple times, stating she could not believe Fenwick was dead. Bass claimed she and Fenwick never argued during the course of their relationship.

Bass repeated she was in the shower in her father's house while Fenwick, her father, and her cousin Skillz were also in the house when she first heard arguing, and that when she came out of the shower "everything already happened" and Skillz was gone. At another point Bass claimed the argument started when Fenwick was speaking with someone on the phone at her father's house and continued while she was showering. Following Detective Alvarado's attempts to calm Bass down, Bass claimed she fled across the street from her father's house to Fenwick's aunt's house after the stabbing because she had warrants out for her arrest.

Detective Alvarado then asked Bass if she stabbed Fenwick:

Defendant: Hell no. I ain't stab Lord. And you know damn well I ain't stab Lord.

Alvarado: I don't know that.

Defendant: Hell no.

Alvarado: Okay, well let me ask you something:
Why is everyone out there, including Lord's family,
saying that you stabbed him?

Defendant: First of all, word is bond, . . . fuck them,
fuck what they think, you know damn well I ain't stab
Lord.

Alvarado: I don't know that, I don't know you.

Defendant: They fucked up. You can't be, you can't
be whatever you know damn well.

Alvarado: Why would they say that?

Defendant: I don't give a fuck what they say. Why
people say everything they say . . . why Trump says
the shit he say?

Alvarado: What the hell does Trump —

Defendant: What the fuck do somebody think? Did
they see me stab Lord?

Alvarado: I don't know.

Defendant: Hell no.

Alvarado: I'm asking you.

Defendant: Well you kiss my ass.

Alvarado: Why, why are you telling —

Defendant: Because why the fuck would you say that
somebody said I stabbed Lord?

Alvarado: That's the truth. I told you the truth from the beginning.

Defendant: You know what?

Alvarado: You're getting all hostile.

Defendant: Because that's bullshit. Don't you ever come at me like that.

Alvarado: Okay.

Defendant: That's like you said I stabbed my brother.

Alvarado: Okay, well then why would anybody —

Defendant: I don't give a fuck, you ask them why.

Alvarado: Okay, but . . . here's the situation.

Defendant: Here's the situation, here's the situation, I'm a tell you, right? I don't give a fuck what nobody said.

Alvarado: Oh, we need to clear this up to make sure that I can one hundred percent say that you had nothing to do with it.

Defendant: And I said I'm telling you I had nothing to do with that and other than that if you feel as though as I did if you look me in —

Alvarado: You're gonna have to stop throwing your hands in my face.

Defendant: If you look at me in my motherfucking face and tell me, me of all people, somebody that take care of him, that took him out the street?

Alvarado: I don't know you.

Defendant: That I stabbed him? Bitch, you gotta be kidding me.

Alvarado: Alright.

Defendant: And other than that, I ain't got shit else to say if you feel like that.

Alvarado: I don't feel like —

Defendant: I ain't got shit else to say.

Alvarado: Okay, that's fine.

Defendant: You can lock me up and take me to jail if the fuck that's what you want to do, but I ain't got shit else to say after that. You just disrespected me.

The detectives questioned Bass for another seven minutes following this exchange before finally ending the interview.

Detective Alvarado testified the entire interview lasted about forty minutes, and Bass "was very agitated, very aggressive towards" her throughout the questioning. The detective claimed Bass never asked for an attorney, never said "she specifically wanted to stop giving the statement," and that Bass's "excitable" and "aggressive" demeanor did not suggest she wanted to cease answering questions.

The prosecutor asked Detective Alvarado about specific statements Bass made, starting with Bass telling Detective Alvarado she did not want to talk because she had "nothing to do with that situation" before she was Mirandized in the first couple minutes of the interview. When asked why she continued speaking with Bass at that point, Detective Alvarado testified she did so because she wanted to make sure Bass was "advised of her rights and [could] make an informed decision." Detective Alvarado claimed it was common for subjects to make such statements, and she noted Bass continued speaking to her after making it. On cross-examination, Detective Alvarado testified her "general practice" is to continue giving Miranda warnings even if a suspect claims she does not want to speak before Alvarado has finished providing the complete warnings.

Detective Alvarado testified she did not understand Bass telling her she had "nothing to say," that she did not have "to answer nothing," and repeating "that's it" to mean Bass was invoking her right to silence because Bass continued speaking and did not directly answer Detective Alvarado's yes-or-no questions as to whether she wanted to answer questions.

According to Detective Alvarado, when Bass repeatedly told her that "that's it" about nine minutes into the interview after describing fleeing from

her father's house, Bass "was trying to end the interview for me asking any more questions, so she was trying to control the interview. She didn't want us asking the questions. Miss Bass wanted to control the interview and just give the story and that's where she thought it would end." When asked on cross-examination why she didn't end the interview at that point, Detective Alvarado testified, "It's something that's commonly done. People just say that's it, that's all I want to tell you about. So it's our job to continue talking about details that we deem important in the investigation which is what I say afterwards."

Detective Alvarado further testified Bass was not under arrest for charges related to Fenwick's death at the time of the interview, and the reason she told Bass she could not leave was because Bass was under arrest for outstanding warrants. Detective Alvarado did not, however, tell Bass the reason she could not leave was related to outstanding warrants and not Fenwick's death. According to Detective Alvarado, the investigation she conducted after Bass's interview led to charging Bass with Fenwick's murder, which "included going to speak with the individual [Bass] identified as Wu, reviewing surveillance video, and speaking with her father and her mother." Detective Alvarado's investigation concluded at 8:00 a.m. on November 2,

2018, and Bass's arrest warrant was issued two hours later, about seven hours after her interview ended.

The State sought to introduce all but the last seven minutes of Bass's interrogation, conceding the detective should have stopped the questioning when Bass repeatedly said she "ain't got shit else to say." Bass claimed her entire statement should be suppressed because she wasn't advised at the start that Fenwick had died. She also claimed Detective Alvarado should have stopped the questioning the first time Bass invoked her right to silence, not the last time seven minutes before the interview ended. The trial court rejected both of Bass's arguments.

Addressing Bass's claim that she could not voluntarily waive her rights because she wasn't advised she was being charged with homicide, the court looked to State v. Chew, 150 N.J. 30 (1997), instructing "the validity of a waiver of rights must be determined on the specific facts and circumstances of each case." The trial court found "the total circumstances show from the earliest stages of the interview that the victim had been stabbed and had succumbed to his injuries and that the police were interested in the defendant for her involvement." As such, Bass "knew why she was there and knew what the line of inquiry was trying to establish." The trial court found Bass "was

not coerced or promised anything" in the interview, which was "in no way oppressive, unreasonable or overbearing."

As to Bass's invocation of her right to silence, the trial court found that "[a]t no point prior to an indisputable invocation of the right to silence" when Bass repeated she "ain't got shit else to say" did Bass "make an invocation or assertion of her right to silence." The court acknowledged Bass's statement that she didn't "want to talk now," said in response to Alvarado's initial advice to her that "[i]f at any point you wish to stop talking to me . . . [y]ou just tell me I don't want to talk to you," and that "[t]here were similar statements either before the administration of Miranda and one or two during the exchange after Miranda was administered where the defendant appeared to be backing away from a desire to continue with the interview." The court followed that by saying "but both Chew and State v. Nyhammer⁴ instruct the court to consider the totality of the circumstances."

Undertaking that task, the court concluded "Detective Alvarado was attempting to give the Miranda rights clearly and unmistakably to the defendant so that she could make a decision." The judge recounted the detective's testimony that because defendant would need to make "an informed

⁴ State v. Nyhammer, 197 N.J. 383 (2009).

decision, . . . the rights needed to be explained clearly and as such they were usually ritualistically or liturgically recited to the defendant." Noting that "[t]he defense obviously wants to point out specific language that on its face taken alone may have been sufficient for an invocation," the court reiterated "but that's not what the standard of the totality of the circumstances instructs the court to do. The court must look at the total circumstances and the entire exchange between the suspect defendant and law enforcement during the course of the custodial interview."

The court concluded based on Bass's "several statements of 'I don't have nothing to do with that,' 'I don't want to talk about it,' or words like that, it appears that Detective Alvarado was objectively trying to ensure that the defendant was fully advised of her rights." According to the trial court, "[i]t would not have been prudent, reasonable or correct police procedure to permit a criminal suspect to interrupt or derail proper police procedure which in [its] view is what at least the defendant was attempting to do at the beginning." The court found "Detective Alvarado's goal was to ensure the proper administration of Miranda rights so that the defendant knew her rights and could make a decision in light of a clear expression of her understanding of those rights."

The court also added that "[p]olice were confronted with a very excited person who was trying to control the interview," and that "[g]iven the significant fluidity of the defendant's conduct during the interview, the police acted reasonably during a rather emotional and erratic yet bumptious exchange with this defendant." It again reiterated its finding that it was not until Bass said "you can lock me up and take me to jail if the fuck that's what you want to do, but I ain't got shit else to say," that there was "a clear unequivocal indication that she [was] invoking her right to silence." The judge concluded "[b]efore that, it was a waltz, . . . a dance between the two of them where the defendant was trying perhaps to gain as much information as she could before she completed her discussion with police."

On appeal, Bass claims the detectives violated her right against self-incrimination by questioning her before she was read her rights, by ignoring her repeated invocations of her right to silence throughout the interrogation, and by deceiving her about the magnitude of the charges she faced, thereby preventing her from being able to waive her rights knowingly and voluntarily.

Our standard of review on a motion to suppress is well established. State v. Ahmad, 246 N.J. 592, 609 (2021). We "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. Elders, 192 N.J. 224, 243 (2007)). Our review of the trial court's application of the law to the facts, however, is plenary. State v. Hubbard, 222 N.J. 249, 263 (2015).

Bass claims "[t]he detectives violated Miranda from the outset by beginning [her] custodial interrogation without providing any warnings." Although we agree the detectives should not have elicited Bass's knowledge of the stabbing and placed her at the scene of the crime before providing her Miranda warnings, we do not reverse her conviction on that basis. See State v. O'Neill, 193 N.J. 148, 180-81 (2007) (holding "when Miranda warnings are given after a custodial interrogation has already produced incriminating statements, the admissibility of post-warning statements will turn on whether the warnings functioned effectively in providing the defendant the ability to exercise his state law privilege against self-incrimination"). We reverse the conviction because the detectives repeatedly ignored Bass's several invocations of her right to remain silent, which began when Detective Alvarado read Bass her Miranda warnings.

Bass tried to cut off questioning by the detectives several times before her invocation thirty minutes into the interview when the State concedes all further questioning should have ceased. See State v. Hartley, 103 N.J. 252,

273 (1986) (instructing that "if after a suspect avails himself of the Constitution's protections the police violate a right that has been invoked, that violation, by definition, is of constitutional magnitude"). While "police are required to stop a custodial interrogation when a suspect unambiguously asserts his right to remain silent" under federal law in accord with "the United States Supreme Court's interpretation of the Fifth Amendment," the protection is broader under state law, because our Supreme Court has held "under our State law privilege against self-incrimination, a request, however ambiguous, to terminate questioning . . . must be diligently honored." State v. S.S., 229 N.J. 360, 382 (2017) (internal quotation marks omitted) (quoting State v. Bey (Bey II), 112 N.J. 123, 142 (1988)). "[T]he failure to honor a previously-invoked right to silence smacks so inherently of compulsion that any statement following that failure is involuntary by definition." Hartley, 103 N.J. at 278.

"To invoke the right to remain silent, a suspect does not have to follow a prescribed script or utter talismanic words." S.S., 229 N.J. at 383. Rather, "[a]ny words or conduct that reasonably appear to be inconsistent with defendant's willingness to discuss his case with the police are tantamount to an invocation of the privilege against self-incrimination." Id. at 382 (alteration in original) (quoting Bey II, 112 N.J. at 136). Certainly, variations on the

statement, "I have nothing else to say" have been found sufficient to invoke the right to silence here and elsewhere. See id. at 383-84 (canvassing cases from New Jersey, sister state jurisdictions, the U.S. Supreme Court, and lower federal courts).

Bass first invoked her right to silence about three minutes into the questioning. As Detective Alvarado advised Bass that "[i]f at any point you wish to stop talking to me," Bass cut her off, saying, "I don't want to talk now because I don't have nothing to do with that situation." Instead of ending the interrogation, Detective Alvarado persisted in reading Bass the warnings from the Miranda card, prompting Bass to invoke her right to silence for the second time by telling Detective Alvarado, "I don't have nothing to say."

Those were clear, unequivocal invocations of Bass's right to silence under New Jersey law, which the detective failed to honor. See S.S., 229 N.J. at 383-84. As the Court recognized in State v. Bey (Bey I), 112 N.J. 45, 72 (1988), "where the police fail to halt the questioning even temporarily" when the defendant has tried to cut off questioning, "the ensuing danger of coercion and compulsion to confess is great, for the suspect perceives their conduct as an indication that the rights he has just been read mean nothing, and that he is going to be subjected to ongoing interrogation by the police until he talks."

The trial court did not analyze either of defendant's first two attempts to halt the interrogation, or any of the others, in accordance with State v. Hartley, 103 N.J. 252, 260 (1986) and Bey I. Instead of focusing in on each instance in which defendant maintained she tried to cut off questioning, the court zoomed out, ignoring "specific language" it conceded "on its face taken alone may have been sufficient for an invocation" in favor of the wide-angle view of "the totality of the circumstances." That was error. Although the cases make clear "we traditionally look to the totality of the circumstances to assess whether the waiver of rights was the product of a free will or police coercion" in considering the voluntariness of a confession, Nyhammer, 197 N.J. at 402, it does not relieve a court of analyzing whether the defendant's right to silence has been honored in the first place, Hartley, 103 N.J. at 260 (instructing "the question of waiver is an inquiry separate and apart from . . . whether the defendant's right to remain silent has been properly respected in the first instance").

Because Miranda makes "clear that the requirement that the police 'scrupulously honor' the suspect's assertion of his right to remain silent is independent of the requirement that any waiver be knowing, intelligent, and voluntary," our Court has admonished that "[c]are must be taken . . . that there

be no blurring of the separate lines of analysis that are followed in respect of the 'scrupulously honor' requirement on the one hand and the waiver issue on the other." Id. at 261. Here, the court ruled defendant waived her right to remain silent without analyzing whether the detectives scrupulously honored Bass's invocation of her right to remain silent. As the Court has observed in the context of requests for counsel, however, "[n]o waiver is possible if the suspect's original request for counsel was not 'scrupulously honored.'" Ibid. (quoting United States ex rel. Sanders v. Rowe, 460 F. Supp. 1128, 1135 (N.D. Ill. 1978)).

The court further erred in accepting the State's position at the suppression hearing that Bass had to be advised of her Miranda rights before she could invoke her right to silence. The detective testified very specifically she did not honor Bass's right to cut off questioning while the detective was providing Bass her Miranda warnings. When the prosecutor asked why, Detective Alvarado answered, "So that she could be advised of her rights and make an informed decision."

The detective proceeded to testify on cross-examination that even though Bass had said "she doesn't want to talk, I'm still going to go through the card so she can make an informed decision." When asked why she didn't stop

questioning Bass at the end of the Miranda warnings when Bass said "I don't have to answer nothing," the detective explained that Bass would still "have to check the box that says she does not wish to talk to us." Indeed, when asked whether it was her "general practice that if an individual says that they don't want to talk to you but you haven't completed the Miranda warnings, that you always continue until the Miranda warnings have been read in their entirety," Detective Alvarado answered "Yes."

The trial court accepted that testimony, finding "[i]t would not have been prudent, reasonable or correct police procedure to permit a criminal suspect to interrupt or derail" the administration of Miranda warnings by insisting on her right to cut off questioning. The State has not cited any case, however, and we know of none, holding a defendant must wait to invoke her right to silence until police have accomplished their goal, as the trial judge found, "to ensure the proper administration of Miranda rights so that the defendant knew her rights and could make a decision in light of a clear expression of her understanding of those rights." As our Supreme Court noted in Bey I, "[i]f the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." 112 N.J. at 66 (quoting Miranda, 384 U.S. at 473-74).

Just as in Bey I, the record before us "demonstrates that when defendant invoked [her] right to cut off questioning," here while the detective administered Miranda warnings, "the interrogation continued as if nothing had happened." Id. at 68. By refusing to honor Bass's invoked rights in order to persist in reading them to her, the detectives conveyed to Bass those rights were meaningless. Id. at 72.

That message was reinforced when Bass again attempted to cut off questioning about nine minutes into the interview. After Bass described finding Lord stabbed and fleeing her father's house, she repeatedly told Detective Alvarado, "that's it, that's all I got to say." Instead of ceasing her interrogation, however, Detective Alvarado persisted, telling Bass, "there's definitely way more things that happened."

When asked on cross-examination why she didn't end the interrogation at that point, the detective testified she didn't interpret Bass's comments to mean she didn't "want me to ask her anymore questions." Instead, the detective explained:

It's something that is commonly done. People just say that's it, that's all I want to tell you about. So it's our job to continue talking about details that we deem important in the investigation which is what I say afterwards. "Alright, I can tell you right now there's definitely way more things that happened."

It is plain to us on reading this transcript that the judge erred as a matter of law in failing to grant defendant's motion to suppress her statement. Bass repeatedly invoked her right to counsel, and the detectives repeatedly failed to scrupulously honor those requests.⁵ We are not aware of any authority that would permit interrogating officers to violate a subject's privilege against self-incrimination in order to read her rights she has already asserted. See United States v. Kelsey, 951 F.2d 1196, 1198-99 (10th Cir. 1991) (stating "the fact that [defendant] invoked his right to counsel before the police" read him his Miranda rights was "irrelevant," and determining defendant successfully asserted his rights). While the trial judge found on the basis of the detective's testimony that "[p]olice were confronted with a very excited person who was trying to control the interview," he failed to acknowledge that it is a defendant's right to control the interrogation by opting to terminate the questioning. As the Court underscored in Bey I:

⁵ The court did not explain the difference between Bass's "indisputable invocation of the right to silence," in saying she "ain't got shit else to say," and her earlier statement, "that's it, that's all I got to say," which the court found an insufficient invocation of that right. The difference between these two statements for purposes of Miranda is not clear to us. We also note the detectives failed to honor even defendant's "indisputable invocation of the right to silence" by continuing to question her for another seven minutes after that "indisputable invocation."

Through the exercise of [a suspect's] option to terminate questioning he can control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation. The requirement that law enforcement authorities must respect a person's exercise of that option counteracts the coercive pressures of the custodial setting.

[112 N.J. at 69 (alteration in original) (quoting Michigan v. Mosley, 423 U.S. 96, 103-04 (1975)).]

Because of the interrogating detectives' several violations of Bass's invoked right to silence, we need not address Bass's claim that Detective Alvarado "affirmatively misled" her regarding the seriousness of her offense by initially referring to the interview topic as simply a "stabbing" and not a homicide. We note only that the circumstances here are not analogous to the "trickery" we recently condemned in State v. Diaz, 470 N.J. Super. 495, 525 (App. Div.), leave to appeal denied, 251 N.J. 8 (2022). We do not address Bass's sentencing claim.

We reverse the order denying suppression of defendant's statement and remand to the trial court for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

Reversed.

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



CLERK OF THE APPELLATE DIVISION