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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2837-19**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

TYWON M. MOSS,

Defendant-Appellant.

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Argued December 21, 2022 – Decided April 21, 2023

Before Judges Vernoia, Firko and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Indictment No. 18-08-1847.

Daniel S. Rockoff, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Daniel S. Rockoff, of counsel and on the briefs).

Frank Muroski, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Frank Muroski, of counsel and on the brief).

PER CURIAM

On May 15, 2018, after observing defendant driving a vehicle matching the description of a car used in the commission of several recent armed robberies, the Camden County police conducted a motor vehicle stop. The police thereafter transported defendant and his girlfriend, Moriel Williams, who was a passenger in the car, to the police station to speak with detectives. During a search of the vehicle the police seized a BB gun<sup>1</sup> along with a mask and gloves.

At the police station, the interviewing detectives administered defendant his Miranda<sup>2</sup> warnings, which he waived. Defendant initially denied his involvement in the robberies but later admitted between February and May 2018, he used the BB gun to rob numerous victims, while Williams was in the car, and at times driving, one of which he targeted because the victim was Mexican and who defendant believed was more likely to carry cash. Following denial of his motion to suppress his recorded statement, defendant pled guilty to four counts of first-degree robbery, N.J.S.A. 2C:15-1(a)(2), and one count of first-degree bias intimidation, N.J.S.A. 2C:16-1(a)(1).

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<sup>1</sup> A BB gun is a type of air gun that fires small round metal pellets called BBs.

<sup>2</sup> Miranda v. Arizona, 384 U.S. 436 (1966).

Before us, although framed as a single issue, defendant asserts three arguments supporting his contention the court erred in denying his suppression motion. For the first time, he maintains his Miranda waiver was neither knowing nor voluntary because the police failed to inform him prior to his waiver that he had been arrested for armed robbery. Second, he contends the interrogating officers failed to scrupulously honor his verbal and non-verbal attempts to end the interrogation and remain silent. Third, he maintains the police contradicted the Miranda warning by, among other comments, falsely promising to "help" him and Williams if he provided a statement.

Having reviewed the record before us, including the recorded interview, and in light of the applicable law, we agree with the trial court's determination defendant did not invoke his right to remain silent during the interrogation, either through his words or actions. We reach a different conclusion, however, regarding certain statements made by the detectives which contradicted defendant's Miranda rights and conclude a portion of defendant's recorded statement should have been suppressed. We accordingly affirm in part, reverse in part, and remand the matter so an appropriate order granting suppression of defendant's May 15, 2018 statement may be entered consistent with this opinion,

and defendant provided an opportunity to withdraw his plea and proceed to trial, or otherwise dispose of the matter through a negotiated plea.

## I.

As noted, in May 2018, members of the Camden County Police Department were in the midst of investigating a series of armed robberies. At approximately 11:00 p.m. on May 15, 2018, officers conducted a traffic stop of a car driven by defendant that they believed was connected to those robberies. The police later drove defendant, and a handcuffed Williams, to the police station where they were separated and interviewed regarding the robberies.

Defendant's interview began at approximately at 2:00 a.m. and was conducted by two different pairs of detectives, detectives Prince Reed and Keith Hogle, from the Shooting Response Team, and detectives Theodore Desantis and Edward Pineiro from the Robbery Task Force.<sup>3</sup> Detectives Reed and Hogle were the first to interview defendant, during which detectives Desantis and Pineiro remained in an adjacent room, where they viewed the active recording

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<sup>3</sup> Defendant refers to his recorded statement as occurring on May 15, 2018. As noted, however, defendant was stopped by the police at approximately 11:00 p.m. on May 15, 2018, but his interrogation did not begin until 2:00 a.m., and he therefore, provided his statement on May 16, 2018. As defendant refers to his recorded statement as occurring on May 15, 2018, we refer to it as such throughout this opinion.

of the interrogation via a television monitor. For purposes of our opinion, we characterize the interview as having occurred in six phases.

In the first phase of the interrogation, encompassing pages one through seventeen of the interview transcript, prior to engaging in any substantive questioning, Detective Reed provided defendant with a written Miranda form, read defendant his Miranda rights, and confirmed defendant understood them. In response, defendant orally waived those rights, and signed a written waiver in which he confirmed not only his "desire to waive" his rights but also "answer questions or give a statement."

Detective Reed informed defendant that Williams was "very scared" and she did not "know what [was] going on." He also noted defendant and Williams were "in a very sticky situation obviously [based on] what happened today." When asked if there was anything in the car, defendant confirmed the presence of the BB gun, and explained he took the gun from his nephew several days before and forgot to return it.

Upon hearing this information, Detective Reed commented it "d[id not] look . . . good" as defendant admitted to possessing the gun, and the police also recovered a mask and a pair of gloves in the car. Detective Reed asked defendant what those facts suggested, and defendant responded, "[I]ike shoot somebody or

something?" Detective Reed replied "[s]hoot somebody or . . . just . . . stick up kids." While defendant indicated he understood what the detective was implying, he nevertheless denied involvement in any robbery.

In the interrogation's second phase, pages eighteen through thirty-nine of the interview transcript, Detective Reed expressed a desire to "start over" and explicitly stated he believed everything defendant told him was "bullshit." He advised defendant that Williams was in "a very bad situation" and stated the only way to "get her out" was "by . . . being completely honest." When defendant attempted to respond, Detective Reed cut him off and stated defendant was "in some [trouble] right now . . . [a]nd the only way to save [Williams] if [he] truly love[d] her . . . [was] to be . . . honest."

The detective further stated lying would put both him and Williams "in a sticky situation." When defendant attempted to speak, the detective reemphasized, "[t]o save [Williams]" he would have "to be honest." He alerted defendant to the fact that Williams remained in custody and explained if defendant wanted to "save anybody" or if he wanted to "be selfish" it would be "totally . . . up to [him]."

While still in the second phase of the interview, defendant admitted to "strong arm[ing] somebody," immediately after detectives showed defendant

video evidence of him exiting Williams's vehicle near the crime scene. Defendant also admitted Williams picked him up after that particular robbery, although he denied threatening the victim with the BB gun.

Defendant began to tear up and explained how he needed to steal money because he was "about to get kicked out [of Intensive Supervision Program (ISP)]," his upcoming job was not "coming fast enough," and he had a daughter to support. Detective Hogle attempted to assuage defendant's guilt, observing he "didn't hurt [anybody]," but reiterated defendant and detectives still needed to discuss the robberies further.

Detectives moved to the third phase of the interview, pages forty through forty-six of the interview transcript. Detective Reed again advised defendant if he wanted to "save or alleviate" Williams, he needed to talk about the robberies and be honest, specifically if defendant "used her car in other robberies" without Williams's knowledge. In response, defendant denied involvement in any other robberies, and requested to see any additional videos the police claimed they had of him committing those crimes.

Immediately following this request, the following exchange occurred regarding Williams and defendant:

[DETECTIVE HOGLE]: She's got a big future ahead of her.

[DEFENDANT]: Yeah

[DETECTIVE HOGLE]: I think you do too. I think you . . . get your mind straight, you'll be good. You know what I mean?

[DEFENDANT]: This-this-

[DETECTIVE HOGLE]: You just need that one big break but-

[DEFENDANT]: This is-this- I'm done.

[DETECTIVE HOGLE]: Well-

[DETECTIVE REED]: Hopefully you are.

[DEFENDANT]: Hm?

[DETECTIVE REED]: I said hopefully you are. I hope this-this works.

[DETECTIVE HOGLE]: Hope it wakes you up, man.

[(Emphasis added).]

Detectives then played another video of defendant committing an additional robbery, during which Detective Reed commented on defendant's specific actions in the recording. The following exchange occurred:

[DETECTIVE REED]: What's that date say? What's that- what's that say?

[DEFENDANT]: 2



[DETECTIVE REED]: That's the month. That's February. You picking up what we putting down? I need you to be a hundred with us. This man was just [trying to] get in the house until you robbed him with a gun. How traumatizing do you think that is? No, don't put your head down. Look at it, cause you not done. To me, that's too smooth. How many more victims do we have like this?

[(Emphasis added).]

The detectives continued to inquire about Williams's involvement in other robberies and specifically whether she was present in the car and if she was awake, asleep, or driving. Defendant did not immediately respond but instead remained silent for approximately a minute and a half. During his silence, Detective Reed asked, "[w]hat does your silence mean? What does that mean? Are you thinking? What's going on? Are you apologetic? . . . [Because] right now, [Williams] is in handcuffs and she doesn't deserve to be. So when was the first time?" (Emphasis added). Defendant maintained he did not recall when the first robbery occurred, but when pressed regarding how many robberies he committed, defendant responded "three," although he clarified this included the two robberies for which police possessed video recordings that defendant had just viewed.

Detectives entered phase four of the interrogation, pages forty-seven through sixty of the interview transcript, and attempted to engage defendant in

a more detailed discussion about the robberies, specifically inquiring about those which yielded money from the victims. Following a pause by defendant, the following exchange occurred:

[DETECTIVE REED]: Right now- right now you're probably thinking that if I don't say anything and I don't remember, it would be in my best interest and that's not the case.

[DEFENDANT]: N- no, I'm not worrying about that. I'm really like . . .

[DETECTIVE HOGLE]: . . . [H]ere's the part we told you we need to help exclude your girl outta the ones so she doesn't get caught up in the one- ones she wasn't there for.

[DEFENDANT]: Mhm.

[DETECTIVE HOGLE]: That's what, you know, that's gonna help her. I'm sure you don't wanna get-her getting jammed up for that.

[(Emphasis added).]

Detectives Reed and Hogle then exited the interrogation room, and detectives Theodore Desantis and Edward Pineiro entered and conducted the remainder of the interview, beginning phase five, pages sixty-one through eighty-two of the interview transcript. Upon entering, Detective Desantis told defendant that they were going to "go through" the robberies and the detectives

would "try to help [defendant] out." Detective Pineiro added if defendant were to lie "we can't help."

Detectives questioned defendant about an April 3, 2018 robbery, which he admitted, bringing the total to four robberies defendant admitted committing at that point in the interrogation. While discussing a possible fifth robbery, Detective Desantis stated he was going to "help [defendant] with this stuff," but defendant had to "be straight" with him and also explained "[t]hat's why [the detectives] [had] the map" on the wall to assist defendant in identifying the locations of the robberies. Throughout the remaining discussion in phase five, defendant denied his involvement in two robberies, but admitted committing an additional one, thereby implicating himself in a total of five robberies.

The interview proceeded to phase six, pages eighty-three through eighty-eight of the interview transcript, when the detectives told defendant he was not a "bad guy" and had "some morals," specifically, referencing that he abandoned one of the alleged robberies upon the discovery his victim was carrying a baby. During this phase, Detective Desantis stated, "[a]t this point, it don't matter. We're just asking you to be honest." (Emphasis added). Following this statement and further questioning by the detectives, defendant admitted to two additional robberies.

As a result of the interrogation, defendant admitted to committing seven robberies, including two to which the police possessed video evidence that defendant viewed. He also admitted to one attempted robbery and told the police Williams participated in one of the robberies. Based on defendant's statement, an arrest warrant was issued on May 16, 2018.

A Camden County grand jury returned an indictment charging defendant with six counts of first-degree robbery, N.J.S.A. 2C:15-1(a)(2), seven counts of first-degree bias intimidation, N.J.S.A. 2C:16-1(a)(1), two counts of first-degree attempted robbery, N.J.S.A. 2C:5-1 and 2C:15-1(a)(2), second-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2 and 2C:15-1(a)(2), second-degree attempted burglary N.J.S.A. 2C:18-2(a)(1), and eight counts of fourth-degree possession of an imitation firearm, N.J.S.A. 2C:39-4(e). Williams was also charged as a co-defendant on the conspiracy charge along with one count of first-degree robbery.<sup>4</sup>

Before the court, defendant moved to suppress his May 15, 2018 recorded statement on two, limited bases. Relying on State v. Puryear, 441 N.J. Super. 280 (App. Div. 2015), and State ex rel. A.S., 203 N.J. 131 (2010), defendant

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<sup>4</sup> Williams pled guilty to these two charges and was expected to testify against defendant.

argued his waiver was neither knowing nor intelligent because detectives Reed and Hogle contradicted the Miranda warnings when they told him by providing a statement he would be "help[ing]" him and his girlfriend. Defendant also contended at oral argument that his statement "This is, this is, I'm done" was a request to remain silent which the detectives failed to scrupulously honor.

On March 27, 2019, the court conducted an evidentiary hearing, at which detectives Reed and Desantis testified and where the State introduced the video of defendant's statement, as well as an accompanying transcript of the interview. The officers who conducted the initial motor vehicle stop were not called to testify at the suppression hearing. In pertinent part, Detective Reed testified when defendant stated "I'm done" he understood it to mean that "[h]e was done robbing people." Detective Reed explained that "around that time . . . [defendant] was talking about how he didn't want to actually do what he was doing . . . [a]nd that's what he led up with that statement." Further, he stated that he was confident that he understood defendant properly and did not need to clarify or ask follow-up questions.

Detective Desantis testified that he and Detective Pineiro utilized a map of Camden when interviewing defendant and acknowledged defendant was provided his Miranda rights prior to questioning. On cross-examination, the

detective described his prior training with respect to interviewing suspects including a technique he called "minimization." Although the detective was unable to precisely define the term, he confirmed counsel's characterization as when you "tell[]someone [they are] not a bad guy, [they are] not a monster, but [they] may have made a mistake."

After considering the aforementioned testimony, the recorded interview, and accompanying transcript, along with the parties' written submissions and oral arguments, the court denied defendant's motion and issued a corresponding order and an extensive written opinion on April 5, 2019. The court initially rejected defendant's arguments that the detectives' statements throughout the interrogation undermined defendant's Miranda warnings, and concluded his waiver was given both knowingly and intelligently.

In support of its determination, the court relied upon the fact that Detective Reed began questioning defendant about the robberies, prior to any references to providing him with "help." Specifically, the court cited to defendant's incriminating statements about his involvement in the robberies after being shown video evidence by the detectives and determined defendant's confession was elicited based on "observing himself on video, with a gun in his hand, . . . committing a robbery." The court further noted throughout the

interrogation, "detectives questioned . . . [d]efendant in a calm manner," and also commented that defendant "appear[ed] relaxed and conversational."

The court also distinguished A.S., 203 N.J. at 131, and Puryear, 441 N.J. Super. at 280, explaining in both those cases, the detectives provided, "incorrect assessments of the law," that contradicted defendants' constitutional rights against self-incrimination. The court further noted that in A.S., defendant was a fourteen-year-old juvenile with diminished intellectual capacity, and in Puryear, the detectives' contradictory statements about defendants' right were made immediately before the detective issued Miranda warnings.

The court found the detectives' statements made regarding defendant helping himself, as well as assisting Williams, as "one of the many psychological techniques which . . . are permitted . . . during an interrogation." It further determined the detectives' statements "did not negate the Miranda warnings . . . immediately administered to defendant," and relying on State v. Miller, 76 N.J. 392, 404-05 (1978), reasoned they were "not carried out to excess in time and persistence thereby crossing the intangible lines and becoming improper on the grounds that the detectives' statements overbore . . . [d]efendant's will."

The court also rejected defendant's argument that he invoked his right to remain silent when he stated "I'm done" based on the context in which the statement was made. Specifically, the court explained immediately prior to defendant's statement, Detective Hogle commented defendant "had a big future ahead of him, and that if he got his mind straight he would be good." The court determined defendant's assertion "could be interpreted as an indication of a realization of the issues he was facing or that he was done committing crimes." In sum, the court concluded, in light of defendant's words and actions, he did not invoke his right to remain silent clearly and unequivocally.

Following the court's ruling on defendant's motion to suppress, defendant pled guilty in accordance with his plea agreement to four counts of robbery and one count of bias intimidation and was sentenced to an aggregate sixteen-year custodial term subject to the No Early Release Act, N.J.S.A. 2C:43-7.2. This appeal followed.

## II.

As noted, defendant raises the following argument, which includes three distinct substantive claims that the court erred in declining to suppress his May 15, 2018 recorded statement:



**POINT I: THIS COURT MUST REVERSE THE  
DENIAL OF DEFENDANT'S MOTION TO  
SUPPRESS HIS RECORDED STATEMENT.**

First, defendant claims that his Miranda waiver was invalid because the detectives failed to alert him that he was being questioned regarding first-degree offenses and improperly implied that he was only suspected of the possession of an imitation firearm offense, relying on State v. Diaz, 470 N.J. Super. 495 (App. Div. 2022), leave to appeal denied, 251 N.J. 8 (2022).<sup>5</sup> Specifically, defendant contends that in light of the police seizing the BB gun at the time of his arrest accompanied by Detective Reed's statement that "[y]ou guys are in a very sticky situation obviously what happened today," the detectives "objectively conveyed to [defendant] that [the] detectives were investigating the singular incident from that day, i.e. possession of an imitation firearm at the vehicle stop, and not incidents from previous days, e.g., a series of armed robberies that may have happened in the past."

Second, defendant argues the detective "failed to scrupulously honor [his] verbal and nonverbal attempts to end the interrogation and remain silent." He asserts by stating "I'm done" and remaining silent for periods of time, he invoked

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<sup>5</sup> In defendant's initial brief he relied primarily on our now reversed decision in State v. Sims, 466 N.J. Super. 346, (App. Div. 2021). In his reply brief, he primarily relies on Diaz, 470 N.J. Super. at 495.

his right to remain silent and that in response the detectives should have stopped the interrogation or asked questions to determine whether he was willing to continue.

Finally, defendant claims the detectives "impermissibly burdened [his] exercise of his right to remain silent by contradicting the Miranda warning that his statements would be used against him, and by falsely promising [him] that they would 'help' him if he spoke," relying, as he did before the court, on Puryear, 441 N.J. Super. 280, and A.S., 203 N.J. at 131. In particular, he points to Detective Reed's statement "right now you're probably thinking that if [you] don't say anything and [you] don't remember, it would be in [your] best interest [but] that's not the case."

We disagree with defendant's first and second arguments. We agree, however, in part with defendant's third argument and accordingly reverse in part, due to impermissible statements made by the detectives during defendant's interrogation which contradicted defendant's Miranda rights.

### III.

"We review the trial court's factual findings as to defendant's Miranda waiver in accordance with a deferential standard." State v. Tillery, 238 N.J. 293, 314 (2019). In conducting that review, we "defer to the factual findings of the

trial court so long as those findings are supported by sufficient evidence in the record." State v. Hubbard, 222 N.J. 249, 262 (2015). "[A] trial court's findings should be disturbed only if they are so clearly mistaken 'that the interests of justice demand intervention and correction.'" State v. A.M., 237 N.J. 384, 395 (2019) (quoting State v. Elders, 192 N.J. 224, 244 (2007)). "That standard governs appellate review even when the trial court's findings are premised on a recording or documentary evidence that the appellate court may also review." Tillery, 238 N.J. at 314. Legal conclusions drawn from those facts, however, are reviewed de novo. State v. Radel, 249 N.J. 469, 493 (2022).

It is well-settled that "[c]onfessions obtained by the police during a custodial interrogation are barred from evidence unless the defendant has been advised of his or her constitutional rights." State v. Knight, 183 N.J. 449, 461 (2005). A waiver of the constitutional right against self-incrimination must be voluntary, knowing, and intelligent. Ibid. (citing Miranda, 384 U.S. at 444). "[A]ny clear manifestation of a desire to waive is sufficient." Tillery, 238 N.J. at 316 (quoting State v. Hartley, 103 N.J. 252, 313 (1986)). The burden is upon the State to prove the validity of a Miranda waiver beyond a reasonable doubt. State v. O'Neill, 193 N.J. 148, 168 n.12 (2007).

When determining whether the State satisfied its burden that a waiver was knowing, intelligent and voluntary, a court must consider the "totality of the circumstances," which includes factors such as the defendant'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." Knight, 183 N.J. at 463 (quoting State v. Galloway, 133 N.J. 631, 654 (1993)). Additionally, a court may consider the defendant's "previous encounters with law enforcement, and the period of time between 'administration of the [Miranda] warnings and the volunteered statement.'" Ibid. (alteration in original) (quoting State v. Timmendequas, 161 N.J. 55, 614 (1999)). Further, "it is well-established that the question of whether Miranda rights are knowingly, intelligently and voluntarily waived is a fact specific[] analysis." Puryear, 441 N.J. Super. at 299.

The focus of an analysis regarding a suspect's waiver of their Miranda rights should be on whether the defendant had a clear understanding and comprehension of those rights based on the totality of the circumstances. Id. at 297 (citing State v. Nyhammer, 197 N.J. 383, 402 (2009)). "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." Tillery, 238 N.J. at 316 (quoting Berghuis v. Thompson, 560 U.S. 370, 384 (2010)).

However, a defendant signing a waiver of his rights, which were read to him prior to being questioned, cannot be accepted as evidence of a waiver where the interrogating officer minimized the importance or contradicted those rights. Id. at 319 (concluding that a defendant's signature to a waiver form that only acknowledged his rights were read to him did not establish a waiver of his rights). See also Puryear, 441 N.J. Super. at 298-99; State v. O.D.A.-C., 250 N.J. 408, 422 (2022).

We have also observed "[a] police officer cannot directly contradict, out of one side of his mouth, the Miranda warnings just given out of the other." Puryear, 441 N.J. Super. at 296-97 (quoting State v. Pillar, 359 N.J. Super. 249, 268 (App. Div. 2003)). In Puryear, we held defendant's ensuing statement inadmissible where the interrogating officer neutralized the Miranda warning by representing to defendant, "[t]he only thing you can possibly do here is help yourself out. You cannot get yourself in any more trouble than you're already in. You can only help yourself out here." Id. at 288, 298-99. Further, in A.S., the Court held an "interrogating officer violated a juvenile['s] . . . rights by telling her that answering questions 'would actually benefit her'—an assertion at

direct odds with the Miranda warning 'that anything she said in the interview could be used against her in a court of law.'" State v. L.H., 239 N.J. 22, 44 (2019) (quoting A.S., 203 N.J. at 151).

In obtaining a waiver, the interrogating officer must conduct an adequate inquiry. See Tillery, 238 N.J. at 318. To that end, the interrogating officer should "ask whether the suspect understands his or her rights, and whether, understanding those rights, he or she is willing to answer questions." Ibid. During an interrogation, if a person makes "a request, 'however ambiguous,' to terminate questioning or to have counsel present[,] [it] must be diligently honored." Hartley, 103 N.J. at 263 (quoting State v. Kennedy, 97 N.J. 278, 288 (1984)). If the police are unsure if a suspect invoked the right, they must either "(1) terminate the interrogation or (2) ask only those questions necessary to clarify whether the defendant intended to invoke [their] right to silence." State v. S.S., 229 N.J. 360, 383 (2017).

Further, when determining whether the right to remain silent was invoked, a court must analyze "the totality of the circumstances, including consideration of the suspect's words and conduct." State v. Maltese, 222 N.J. 525, 545 (2015). "The . . . statement [must be] evaluated in the full context in which [it was] made." Ibid. "Any words or conduct that reasonably appear to be inconsistent

with defendant's willingness to discuss his case with the police, however, are tantamount to an invocation of the privilege against self-incrimination." S.S., 229 N.J. at 382 (quoting State v. Bey, 112 N.J. 123, 136 (1988)).

Our Supreme Court has acknowledged "[b]eyond the issue of waiver, there are separate due process concerns related to the voluntariness of a confession." O.D.A.-C., 250 N.J. at 421. The State is therefore also required to "prove beyond a reasonable doubt that a defendant's confession was voluntary and was not made because the defendant's will was overborne." L.H., 239 N.J. at 42 (quoting Knight, 183 N.J. at 462). This inquiry also employs a totality of the circumstances analysis, and therefore "there is a substantial overlap," Tillery, 238 N.J. at 316-17, between the factors considered under a suspect's waiver analysis.

Our courts have acknowledged a suspect's "'natural reluctance' to furnish details implicating [themselves] in a crime." L.H., 239 N.J. at 43 (quoting Miller, 76 N.J. at 403). As a result, officers are permitted to engage in certain interrogation tactics to overcome this reluctance. Id. at 43-44. For example, an officer may "[a]ppeal[] to [the suspect's] sense of decency and urg[e] him to tell the truth for his own sake." Miller, 76 N.J. at 405. In Miller, 76 N.J. at 403-04, the Court squarely considered

whether an interrogating officer can appeal to a suspect by telling him that he is the suspect's friend and wants to help him . . . . Does the officer have the right to tell the suspect that he must help himself first by telling the truth and then the officer will do what he can to help the suspect with his problem?

The Court conceded "this technique moves into a shadowy area and if carried to excess in time and persistence, can cross that intangible line and become improper." Id. at 404. However, "[e]fforts by an interrogating officer to dissipate" a suspect's "natural reluctance to admit to the commission of a crime" "and persuade the person to talk" are proper unless the suspect's will is overborne. Id. at 403. We have also concluded officers may even lie in some capacity to the suspect during their questioning. L.H., 239 N.J. at 44.

Particular lies, however, have the "capacity to overbear a suspect's will and to render a confession involuntary." Ibid. These include false promises of leniency that, under the totality of circumstances, have the capacity to overbear a suspect's will. See State v. Hreha, 217 N.J. 368, 383 (2014) (holding a promise of leniency was impermissible where officers told suspect he would avoid "traditional criminal prosecution" and receive "a slap on the wrist" if he confessed). "[W]here a promise is likely to 'strip[ ] defendant of his "capacity for self-determination"' and actually induce the incriminating statement, it is not voluntary." L.H., 239 N.J. at 45 (quoting State v. Fletcher, 380 N.J. Super. 80,



89 (App. Div. 2005)). However, in Pillar, 359 N.J. Super. at 269, where a defendant admitted to a crime based on the interrogating officer's assurance that their conversation was off the record, we observed that "a misrepresentation by police does not render a confession or waiver involuntary unless the misrepresentation actually induced the confession." With these guiding principles in mind, we turn to defendant's arguments addressing each in turn.

#### IV.

##### A.

Defendant's contention that the detectives' failure to alert him that he was being questioned with regard to first-degree robbery offenses negated the voluntary nature of his waiver is procedurally deficient and substantively without merit. Procedurally, this argument was never raised before the court. It is well settled that "[p]arties must make known their positions at [a] suppression hearing so that the trial court can rule on the issues before it," State v. Witt, 223 N.J. 409, 419 (2015), and when the State or defendant fails to do so, we "decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest," State v. Robinson, 200 N.J. 1, 20 (2009) (quoting Nieder v. Royal

Indem. Ins., 62 N.J. 229, 234 (1973)). This is so because, "the points of divergence developed in proceedings before a trial court define the metes and bounds of appellate review." Id. at 19; see also State v. Andujar, 462 N.J. Super. 537, 550 (App. Div. 2020).

These principles are especially applicable where, as here, defendant's failure "denied the State the opportunity to confront the claim head-on; it denied the [motion] court the opportunity to evaluate the claim in an informed and deliberate manner; and it denied [this] court the benefit of a robust record within which the claim could be considered." Robinson, 200 N.J. at 21. Indeed, before the court, defendant decided to focus solely on two arguments: (1) the police contradicted the Miranda warning and diluted its prophylactic language when it informed defendant his statement could "help" him and his girlfriend, and (2) the police failed to scrupulously honor his alleged invocation to remain silent when he stated, "I'm done."

It was thus unnecessary for the court to make the credibility determinations and fact-findings necessary for resolution of the newly-minted claim his exculpatory statement was involuntary because the police did not advise him they suspected him in the series of armed robberies. On this point, we note the record fails to establish if defendant was arrested, or detained, at the

scene of the motor vehicle stop, or what was said to him. The evidence at the suppression hearing did not include testimony from the police who stopped defendant's vehicle, who were not the investigating officers, and we therefore do not know what, precisely, was said to defendant.

In any event, we are satisfied based on the record before us defendant's argument fails on the merits. Since the initial briefing in this case, the Supreme Court reversed our decision in Sims, 250 N.J. at 197. There, the Court instructed "[i]f a complaint-warrant has been filed or an arrest warrant has been issued against a suspect whom law enforcement officers seek to interrogate, the officers must disclose that fact to the interrogee" before beginning their questioning. Id. at 213. "The officers need not speculate about additional charges that may later be brought or the potential amendment of pending charges." Id. at 214. The Court directed that trial judges are to consider a defendant's claim that police delayed lodging charges in order to avoid having to advise him of the charges he faced "as part of the totality of the circumstances test." Id. at 216-17.

Here, although detectives stated defendant and Williams were "in a sticky situation obviously [based on] what happened today" there was no obligation on them to inform defendant he was a suspect in multiple armed robberies. Even assuming he was arrested for an imitation weapons offense as defendant now

argues, the record does not support that either he or Williams had been charged with that offense, or any crime, when he was questioned by the detectives. In fact, the warrant that is contained in the record, dated May 16, 2018, signed by Detective Reed, expressly relies on statements defendant made during the interrogation, and clearly was not issued before the interrogation began.

Defendant's reliance on Diaz, 470 N.J. Super. 495, is also misplaced as it is clearly distinguishable from the matter before us. In that case, the defendant was suspected of first-degree strict liability for drug-induced death, N.J.S.A. 2C:35-9, due to his sale of heroin to a woman who subsequently overdosed and died. Id. at 502, 504. The police requested that the victim's roommate contact defendant and ask for "the same stuff" that he provided previously and arrested the defendant when he left his apartment. Id. at 505. After the arresting detective recited the Miranda rights to the defendant, defendant asked what his arrest "was about," and the detective responded "we [are] conducting an investigation involving narcotics." Id. at 506.

Upon arriving at the police station, another detective questioned the defendant and he admitted to supplying the heroin. Id. at 507. After obtaining that admission, the detective alerted the defendant for the first time that the victim had died and that he was being questioned in connection with her death.

Id. at 507-08. On appeal, we determined that "the decision to withhold information about the overdose death . . . was part of a deliberate and designed investigative plan to induce defendant to waive his right against self-incrimination." Id. at 524. We concluded that, viewed under the totality of the circumstances, the detective's misleading statement regarding the reason the defendant was taken into custody undermined the voluntary nature of his Miranda waiver. Id. at 519-20, 525.

Nothing in the record before us remotely approached the chicanery we condemned in Diaz. Indeed, there is no support for the claim the detectives initiated the interrogation to deliberately mislead defendant in "a planned investigative strategy to elicit incriminating statements," id. at 503. Further, the record does not indicate defendant inquired about the reason for his arrest or interrogation, nor that the detectives misled him in that regard. To the contrary, the detectives began questioning defendant about the armed robberies early in the interrogation and shortly after mentioning the BB gun obtained from his car. Finally, the detectives did not elicit any information from defendant connecting him to the robberies until after they indicated they suspected him of committing those offenses.

B.

Defendant next argues that his statement "I'm done," as well as his "long silences" were attempts to invoke his right to remain silent, which the detectives failed to honor. Specifically, defendant claims Detective Reed's response to defendant's statement he was "done," evidenced the detective "fully understood [defendant] was trying to end the interrogation." We disagree.

As the court properly found, prior to asserting "I'm done," Detective Hogle described the need for defendant to "get his mind straight," and how he "just needed that one big break." We agree with the court's conclusion that defendant's assertion, he was "done," placed in context, was not an attempt to invoke his right to remain silent, but rather an indication that he no longer wished to engage in criminal activity, and he was aware of the issues he was facing. Because the court's finding was supported by the record, it is entitled to our deference. Hubbard, 222 N.J. at 262.

We also disagree with defendant's contention the detectives "fully understood [defendant] was trying to end the interrogation," based on Detective Reed's statement, "No, don't put your head down. Look at it, cause you not done." Again, we rely on the context in which the statement was made in reaching our conclusion. A careful review of the interrogation indicates

Detective Reed's statement occurred while both the detectives and defendant were viewing video evidence of defendant committing a robbery. It is apparent that when the detective stated defendant was "not done" he was referring to defendant's specific actions in the recorded video having not been completed. We acknowledge Detective Reed's choice of words, when viewed in isolation appear problematic. Viewing this statement in such a truncated manner, however, is not the standard by which we review a claimed invocation of the right to remain silent. Rather, as noted, we review the statement in the totality of the circumstances and evaluate it in the "full context in which [it was] made." See Maltese, 222 N.J. at 545.

Nor do we find convincing defendant's claim that his pauses before answering questions indicated his invocation to remain silent. We acknowledge, at times, defendant did not immediately respond to the detectives' questions. Even so, these delayed responses are just one aspect to be considered in a totality of the circumstances analysis, and are not dispositive when conducting the necessary inquiry as to whether defendant invoked his right to remain silent. We further note, at one point Detective Reed questioned defendant regarding his silence, to which defendant began to interact and respond to detectives' line of questioning. In sum, we are satisfied the court's determination that defendant's

words and actions were not an invocation of the right to remain silent is fully supported by the record.

C.

Finally, defendant argues the detectives "impermissibly burdened" his exercise of his right to remain silent. Specifically, he maintains the references to providing "help" to defendant or Williams alluded to the detectives' assistance with defendant's "penal consequences," and impermissibly induced defendant to offer incriminating statements. He further argues Detective Reed contradicted the Miranda warnings when he stated "[r]ight now you're probably thinking 'if [you] don't say anything . . . it would be in [your] best interest' and that's not the case." We agree, in part, with defendant.

Although, as the trial court found, the detectives properly administered Miranda warnings, which defendant understood and acknowledged, we conclude Detective Reed's statement, "[r]ight now you're probably thinking 'if [you] don't say anything . . . it would be in [your] best interest' and that's not the case," impermissibly contradicted defendant's Miranda warnings and induced defendant to give incriminating information, rendering those subsequent statements involuntary and thus inadmissible. The detective's statement, however, does not require suppression of the entirety of defendant's recorded



interview and we accordingly conclude defendant's incriminating statements from phase one through phase three, pages one through forty-six of the interview transcript, are admissible.

We agree, in part, with the trial court, that any references to helping defendant and Williams during phases one through three of the interview were acceptable "psychologically oriented technique[s]," specifically appealing to defendant's "sense of decency." Miller, 76 N.J. at 405. We find further support in our conclusion, based on the recurrent theme during phases one through three of the interrogation, which constituted an appeal to defendant's morality, as a truthful statement from him would eliminate Williams from being implicated in robberies to which she did not directly participate. We further agree with the trial court, that these tactics did not "overbear . . . [d]efendant's will." L.H., 239 N.J. at 44.

As such, we discern no basis to exclude defendant's admissions regarding the robberies admitted during those phases. Even if we were to assume any reference to "helping" Williams qualified as misrepresentations by detectives, it is clear those statements did not induce defendant's admissions in phases one through three, as defendant's confessions occurred immediately following him

being confronted with video evidence showing his involvement in at least two robberies.

We disagree with the trial court, however, and conclude suppression is warranted for any incriminating statements made by defendant following Detective Reed's improper statement in phase four, "[r]ight now you're probably thinking 'if [you] don't say anything . . . it would be in [your] best interest' and that's not the case," pages fifty-nine through eighty-eight of the interview transcript. While we note the trial court engaged in a conscientious analysis of the interrogation, it appears to have overlooked Detective Reed's statement directly contradicted defendant's Miranda rights, as well as the problematic references to "helping" defendant only made by detectives Desantis and Pineiro, during phases five through six of the interrogation.

We conclude the aforementioned combination of statements, promises, and representations rendered defendant's subsequent incriminating statements involuntary, and they therefore should have been suppressed. See L.H., 239 N.J. at 44 (stating an officer's contradiction of Miranda warnings "may have the capacity to overbear a suspect's will and . . . render a confession involuntary").

Detective Reed's statement posed such a contradiction. Indeed, on one hand, the detective initially informed defendant any elicited statement could be

used against him, and on the other, he improperly informed defendant that refusing to speak about his involvement in crimes would not be in his "best interest." As noted, this is in direct conflict with a key tenet of defendant's Miranda warnings and from that point on, served to induce defendant to supply incriminating information. See Puryear, 441 N.J. Super. at 296-97 (stating a detective "cannot directly contradict, out of one side of his mouth, the Miranda warnings just given out of the other" (quoting Pillar, 359 N.J. Super. at 268)).

Further, the numerous references to exclusively "helping" defendant, absent any mention of Williams, made by detectives Desantis and Pineiro during phases five through six of the interrogation are similarly problematic, particularly when coupled with Detective Reed's impermissible contradiction, as these statements clearly did not appeal to defendant's sense of morality. Rather, the detectives' repeated assurances and promises such as "we're going to try and help you out"; "[a]nd we can't help you"; "I'm gonna help you with this stuff"; and "[a]t this point, it don't matter. We're just asking you to be honest," moved into the "shadowy area," and in fact, "carried out to excess . . . thereby cross[ing] that intangible line . . . becom[ing] improper," overbearing defendant's will. See Miller, 76 N.J. at 404, 402.

These recurring declarations and promises of assistance, as well as being informed by detectives it would be in defendant's "best interest" to be honest, presented an overwhelming enticement to supply incriminating information, as evidenced by defendant confessing to four additional first-degree crimes after the impermissible statements were made. See L.H., 239 N.J. at 52 (concluding detectives undermined Miranda warnings that defendant's words could be used against him by stating the "truth would set [him] free"); O.D.A.-C., 250 N.J. at 417, 424 (suppressing a statement where detectives undermined Miranda by stating "anything [defendant] say[s] . . . is only going to help you, it's not going to hurt you"); A.S., 203 N.J. at 140, 151 (suppressing a statement in which a detective told a juvenile "[t]he truth is only going to help you," among other things); Fletcher, 380 N.J. Super. at 88 (suppressing a statement where detective promised defendant if he gave a statement "it will help you. It is good for you to cooperate" and also promised defendant could speak to the officer "off-the-record").

In sum, having undertaken "a searching and critical review of the record," Hreha, 217 N.J. at 381-82, we conclude Detective Reed's statement contradicting defendant's Miranda rights, as well as the prevalent and consistent offers to help defendant by detectives Desantis and Pineiro, rendered any

confessions throughout phases four through six of the interview involuntary. See, e.g., L.H., 239 N.J. at 44, 52. As such, those statements were inadmissible, and should have been suppressed.

To the extent we have not specifically addressed any of defendant's remaining arguments, it is because we have concluded they lack sufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(2).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. 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