

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3606-19**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ROLLIE S. ELLIS, a/k/a  
ROLLIE E. ELLIS,

Defendant-Appellant.

---

Argued October 25, 2022 – Decided January 18, 2023

Before Judges Sumners and Geiger.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Indictment No. 18-06-1052.

Cody T. Mason, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender; Cody T. Mason, of counsel and on the briefs).

John J. Santoliquido, Assistant Prosecutor, argued the cause for respondent (William Reynolds, Atlantic County Prosecutor; Debra B. Albuquerque, of counsel and on the brief).

## PER CURIAM

On April 11, 2018, at about 7:00 a.m., defendant Rollie Ellis was taken to the Atlantic Regional Medical Center for stab wounds following an altercation at Jennifer and Raphy Rodriguezes' apartment. Raphy and Jennifer also suffered stab wounds.<sup>1</sup> After Jennifer was pronounced dead at about 7:30 a.m., Atlantic City police detectives went to the hospital's emergency trauma room to question defendant about the incident. At the time, defendant, deemed a suspect, was only able to provide her name before becoming "unresponsive" and falling asleep. She was not free to leave the hospital because the detectives saw her as suspect.

Unable to obtain any information from defendant, the police then questioned Raphy, who had been "stabbed several times" and had a collapsed lung. Raphy stated defendant and Jennifer were smoking crack cocaine in the apartment when another man, Richard Gordy, "forced his way" into the Rodriguez home and started "fighting" with defendant, punching her in the head multiple times before leaving. According to Raphy, defendant left the apartment

---

<sup>1</sup> Because the Rodriguezes share a surname, we use their first names for convenience. We mean no disrespect by this informality.

for a short time, and upon returning armed with two knives, she stabbed him and Jennifer.

Later that day, around 12:46 p.m., the same detectives returned to speak with defendant, who was now wearing a neck brace and admitted to the hospital. Two other police officers also entered the room. After waking up defendant, who was groggy and medicated with morphine and codeine sulfate, the police read her Miranda<sup>2</sup> rights while a body cam was recording the process. Defendant refused to speak, stating: "No, I want an attorney. I want a lawyer." The interrogation stopped. Before leaving, Detective Jason Dorn, Atlantic County Prosecutor's Office, said: "We'll probably be seeing you in a little bit, . . . Okay?" Dorn instructed the two police officers that defendant was to be treated as a suspect and was "not to get any phone calls, no visitors."

Seven hours later, defendant—who had yet to speak to a lawyer—was sleeping when the same detectives, along with two other officers, entered her hospital room to place her under arrest for murder, attempted murder, and a weapons offense. Again, a body cam recorded the conversation. After Dorn advised defendant of the charges, he and Atlantic City Police Detective Michael

---

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

Schultz remained in the room while a police officer handcuffed defendant and shackled her to the hospital bed.

Defendant, more attentive and communicative than earlier, became upset, requested to "talk to someone," explaining that she did not have access an attorney. The conversation went as follows:

[Defendant:] Can I just talk to someone about something? I don't know what the hell is going on. I did not stab [Jennifer]. . . . I didn't stab her. I don't understand. How do I get stabbed, stab her and myself? [Unintelligible] he stabbed us.

[Detective:] Okay. Well, . . . these are things that are in debate. I gave you an opportunity to talk and you invoked your right to an attorney. So by law . . .

[Defendant:] [Unintelligible] because I just got up.

[Detective:] . . . I'm not allowed to talk to you.

[Defendant:] I understand that[,] but I just got up. I didn't know what was going on. I see officers there. You . . . guys are in the room, asking me questions. I don't know what was going on.

[Detective:] No, we weren't asking you questions. What we were doing was reading your, your rights as per . . .

[Defendant:] I never have.

[Detective:] . . . Miranda.

[Defendant:] I've never been through anything like that this before. . . . So, of course, I'm gonna say my lawyer. I wasn't, I don't know what was going on. . . . I need to know what is going on. I don't have a lawyer. I don't even have contact to a lawyer. I don't have no money for a lawyer. I just need to know what's going on. I know I didn't stab her.

[Detective:] Okay. So, are you saying it's your desire to talk to us?

[Defendant:] Yes.

After getting clearance from an Atlantic County assistant prosecutor to question defendant, the detectives read defendant her Miranda rights. Defendant waived her rights and gave a statement, saying she had stabbed Raphy and Jennifer in a rage after Gordy had assaulted her. Defendant was subsequently indicted for first-degree murder, N.J.S.A. 2C:11-3(a)(1), first-degree attempted murder, N.J.S.A. 2C:5-1(a)(1) and 11-3(a)(1), and third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d).

Defendant unsuccessfully moved to suppress her statement to police. The motion court found defendant understood and voluntarily waived her Miranda rights because she did not "appear to be under the influence" or to be suffering from a "neurological problem" based on the body cam recording. The court also found defendant's confusion appeared to relate to the charges and the events that led up to those charges, rather than her rights: therefore, the police did not

denigrate her rights. Additionally, the court found defendant did not re-invoke her right to counsel when she asked to "call someone" while being shackled, because there was "no indication" she "want[ed] to, in fact, speak to a lawyer."

Applying Edwards v. Arizona, 451 U.S. 477 (1981), State v. Chew, 150 N.J. 30 (1997), and State v. Mallozzi, 246 N.J. Super. 509 (App. Div. 1991), the court determined the police did not violate Miranda by talking to defendant after she had earlier invoked her right to speak to an attorney because she initiated the conversation culminating in her confession. The court reasoned:

I mean, the police left as soon as [defendant] invoked her right to counsel the first time. They came back, they told her what the charges are, and she was the one who engaged them. She was the one who continued to ask them about, you know, what the underlying facts were. They told her they couldn't speak to her, you know, unless she waived her rights. . . . They came back in after a period of time and . . . furnished fresh Miranda warnings which she then, from my observation, knowingly and voluntarily waived. Again, she wasn't under the influence, she didn't seem to be suffering from any physical or mental condition, and she seemed to understand what was going on. She seemed to want to speak to police about it.

So[,] I think under the totality of the circumstances there is proof beyond a reasonable doubt that [defendant] knowingly and voluntarily waived her rights, that she re-initiated contact with the police. They reacted appropriately by re-Mirandizing her and . . . so therefore, I'm going to deny the defense's motion for all the reasons I set forth on the record.

Defendant subsequently entered a conditional guilty plea to an amended count of first-degree aggravated manslaughter, N.J.S.A. 2C:11-4(a)(1), and an amended count of second-degree aggravated assault, N.J.S.A. 2C:12-1(b)(1). She was sentenced to an aggregate twenty-year prison term subject to the No Early Release Act, N.J.S.A. 2C:43-7.2. Defendant reserved her right to appeal the denial of her suppression motion. R. 3:9-3(f).

Before us, defendant argues:

#### POINT I

THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT DEFENDANT VALIDLY WAIVED HER RIGHTS AND GAVE A STATEMENT TO THE POLICE WHERE, AMONG OTHER THINGS, SHE REQUESTED COUNSEL, WAS ISOLATED FOR HOURS, EXPRESSED CONFUSION ABOUT HER RIGHT TO COUNSEL, AND MADE A SECOND, AMBIGUOUS REQUEST FOR COUNSEL.

A. The State Failed to Prove Beyond a Reasonable Doubt that Defendant Initiated Conversation Without Prompting from the Police.

B. The State Failed to Prove Beyond a Reasonable Doubt that Defendant Knowingly, Intelligently, and Voluntarily Waived Her Rights.

C. The Detectives Failed to Clarify Defendant's  
Second, Ambiguous, Request for Counsel.

POINT II

RESENTENCING IS REQUIRED BECAUSE THE  
COURT ERRED IN ITS ANALYSIS OF  
AGGRAVATING FACTORS THREE, SIX, AND  
NINE, AND MITIGATING FACTOR FOUR.

We reverse the denial of defendant's motion to suppress her statement to police that she stabbed Jennifer. The statement was obtained in violation of her Miranda rights when the police reinitiated conversation with her after she previously refused to talk without an attorney and had not done so. Hence, defendant is entitled to withdraw her guilty plea, and the matter is remanded to the trial court for further proceedings. Consequently, we need not address defendant's resentencing argument.

Defendant was hospitalized when she initially exercised her right not to speak to the police about the incident without talking to an attorney. Police were stationed outside her hospital room with the directive that defendant was not allowed to leave the room.

About seven hours later, when the police re-entered her hospital room to arrest her for murdering Jennifer and related offenses, defendant's previously invoked right to remain silent until consulting with counsel remained "to guarantee full effectuation of the privilege against self-incrimination." State v.



McCloskey, 90 N.J. 18, 25 (1982) (citation and internal quotation marks omitted). The police could not further question her unless she "initiate[d] further communication, exchanges, or conversations with the police." Edwards, 451 U.S. at 484-85; see also State v. Rivas, 251 N.J. 132, 155 (2022) (recognizing that Edwards "set forth a 'bright-line rule' that all questioning must cease after an accused requests counsel.") (quoting Smith v. Illinois, 469 U.S. 91, 98 (1984)). Defendant did not initiate further contact with the police by inviting them into her hospital room to discuss the incident. See Chew, 150 N.J. at 64 (citation omitted) (holding further communication is initiated if the suspect invites "discussion of the crimes for which he [or she] was being held"). The police reinitiated contact to arrest her. This did not overcome defendant's initial exercise of her right remain silent by re-Mirandizing her before questioning her again. Edwards, 451 U.S. at 484 ("[A] valid waiver of [the] right to counsel cannot be established by showing only that [the accused] responded to further police-initiated custodial interrogation even . . . [after being] advised of his [or her] rights."). Since defendant did not consult with an attorney, the police were not permitted to re-initiate interrogation to obtain a statement about the incident. Rivas, 251 N.J. at 154-55 ("[O]fficials may not reinitiate interrogation without

counsel present, whether or not the accused has consulted with his attorney." (quoting Minnick v. Mississippi, 498 U.S. 146, 153 (1990))).

After being told she was arrested for murder and expressing her confusion about what was happening and her lack of legal counsel, defendant waived her rights when Dorn asked her: "Okay. So, are you saying it's your desire to talk to us?" Indeed, defendant only waived her rights upon being contacted by the detectives for the third, separate time. She did not seek out the police to talk about the incident. Cf. Chew, 150 N.J. at 64-65 (finding defendant's rights were not violated because she initiated contact when he "asked to speak with" a detective about the case); State v. Fuller, 118 N.J. 75, 82-83 (1990) (holding defendant initiated contact where "within a minute or two" of invoking he "broke the brief silence and began asking the detective questions about the investigation."). Moreover, at the end of her second encounter with the detectives, she was told they would speak to her again, despite her refusal to speak without talking to an attorney. We find it troubling that, before she eventually waived her right to remain silent, defendant wanted to "talk to someone," but she was not afforded the opportunity to clarify if she still wanted to talk to an attorney.

The State's burden to prove defendant initiated contact without any undue influence requires proof beyond a reasonable doubt. State v. Melendez, 423 N.J. Super. 1, 30 (App. Div. 2011) (citation omitted). We cannot agree with defendant that her statement was akin to that of the defendant's suppressed statement in State v. Ward, 240 N.J. Super. 412 (App. Div. 1990). There, we held the defendant's statements prior to being advised of his Miranda rights were "not simply a spontaneous outburst elicited casually or innocently without the State's purposeful enticement or encouragement" because he was not told of the robbery charges against him before police showed him pictures of his alleged two cohorts arrested. Id. at 416-17, 419. Nevertheless, we conclude the State failed to meet its burden of proving defendant's statement was the product of undue influence. Defendant eventually relinquished her right to remain silent after being: isolated in the hospital for over thirteen hours (entered hospital at 7:00 a.m., arrested at hospital around 7:50 p.m.) without being allowed to speak to anyone or have any visitors, despite requesting to speak to an attorney; repeatedly punched in the head by Gordy and suffering from a knife wound; treated with morphine and codeine sulfate; high on crack cocaine the night before; and questioned by the same officers who unsuccessfully attempted to question her two previous separate times.

Under the totality of these circumstances, defendant did not initiate contact with law enforcement after she exercised her right not to speak before speaking to counsel. Therefore, her statement is suppressed. Given this conclusion, we need not address her arguments that her statement should also be suppressed because the State failed to prove beyond a reasonable doubt that she knowingly, intelligently, and voluntarily waived her Miranda rights, and the detectives failed to clarify her second, ambiguous, request for counsel after she was arrested.

Because defendant's statement is suppressed, we do not address her resentencing arguments.

Reversed and remanded for entry of an order suppressing defendant's statement and for entry of an order vacating the judgment of conviction. Defendant is entitled to withdraw her guilty plea. The matter is remanded for further proceedings in conformity with this opinion or that which must inevitably follow from today's mandate. 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