SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3790-21

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

HARESH TAILOR,

Defendant-Respondent.

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Submitted January 24, 2023 – Decided January 31, 2023

Before Judges Geiger and Fisher.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Bergen County, Indictment No. 20-01-0010.

Matthew J. Platkin, Attorney General, attorney for appellant (Thomas Clark, Deputy Attorney General, of counsel and on the briefs).

David Jay Glassman, attorney for respondent.

PER CURIAM

Upon leave granted, the State appeals a Law Division order suppressing the post-arrest statements made by defendant Haresh Tailor during questioning by police. Because the initial questioning sought information beyond mere "pedigree information" and defendant had not yet been advised of his Miranda[1] rights, and defendant subsequently received inadequate Miranda warnings, we affirm.

Members of the Somerset County Prosecutor's Office participated in a multi-agency task force investigation in which law enforcement officers posed in undercover capacities on social media applications regarding adults attempting to engage in sexual activities with minors. On April 14, 2019, defendant engaged in a chat conversation with a detective who was posing as a minor. A meeting at an address in Upper Saddle River was set up for later that day. Defendant arrived at the meeting place, where he was subsequently placed under arrest, handcuffed, transported to the Bergen County Prosecutor's Office for processing, and placed in an interrogation room.

Another detective, who was not otherwise involved in the investigation, was tasked with obtaining "pedigree information" from defendant. His interactions with defendant were video recorded.

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

English is a second language for defendant, who was born in India. He is fluent in Gujarati. Defendant has a limited understanding of English, advising the detective he understood only a little bit of English. Defendant had not been advised of his Miranda rights at this point. Nor had a Gujarati interpreter been provided.

The detective asked defendant for his name, birthdate, address, age, weight, height, whether he had any scars or tattoos, name of his employer, place of employment, and place of birth. The questioning did not end there. He also asked defendant for his cell phone number, position at work, how many days a week and hours a day he usually worked, what he liked to do for fun when not working, whether he liked to do any activities, whether he was left-handed or right-handed, whether he went to school in India, what level of education he completed, and who lived with him.

During this questioning, defendant made certain unsolicited statements.[2] Defendant stated "I am . . . it's not my fault. I'm a very [unintelligible] man." "This, this lady messaged me." "[Unintelligible] not wrong, not anything. I'm good people, not any [unintelligible] man, any [unintelligible] wrong, sir,

[2] The transcript reflects the poor quality of the recording and defendant's limited understanding of English.

[unintelligible]." "No, I'm not fault myself." "Sir, it's not my fault, [unintelligible]." "This lady messaged me." He repeatedly stated it was not his fault.

Following this questioning, the investigating detective entered the room to administer Miranda warnings, obtain a waiver of those rights, and take defendant's statement. At the outset, defendant repeatedly made clear that his understanding of English was limited, stating he only understood "a little bit" of English. Another detective, who spoke Hindi, which defendant could understand, assisted.

A State Grand Jury issued an indictment charging defendant with second-degree luring/enticing a child, N.J.S.A. 2C:13-6(a); second-degree attempted sexual assault, N.J.S.A. 2C:14-2(c)(4) and N.J.S.A. 2C:5-1; third-degree attempted endangering the welfare of a child (impairing/debauching the morals of a child), N.J.S.A. 2C:24-4(a)(1) and N.J.S.A. 2C:5-1; and third-degree attempted obscenity to minors, N.J.S.A. 2C:34-3(b)(2) and N.J.S.A. 2C:5-1.

The State filed a motion to declare defendant's post-arrest statements to be admissible at trial. The court conducted a hearing under N.J.R.E. 104(c). The two detectives who questioned defendant testified for the State. Defendant

did not present any witnesses. A Gujarati interpreter was used during the hearing.

The court issued a lengthy oral decision and order ruling defendant's post-arrest statements were not admissible at trial, including his answers to the so-called pedigree questions. While defendant understood he was a suspect in custody and the object of a police investigation, the court found the attempted translation of the Miranda form and waiver of those rights were "terribly inadequate." It found the attempts to explain the Miranda rights in Hindi were "critically lacking" and not understandable.

The court rejected the State's argument that Miranda warnings and a waiver of those rights were not required before the initial sixteen minutes of questioning. The court noted that custodial interrogation "includes not only the express questioning but also any words or actions on the part of the police that the police should now are reasonably likely to elicit an incriminating response from the subject." The court focused on how the State intended to use the information solicited in its case. It found that using defendant's answer as to his age violated Miranda.

The court also noted that defendant appeared to be "very nervous," "emotional throughout," and "crying at times," and "does not understand completely English." It rejected any notion that defendant was "faking it."

The court further noted that defendant was not advised he was a suspect or that he had charges pending against him and was being investigated for those charges. The court acknowledged, however, that defendant was not asked "anything specific about his alleged involvement or the crimes that he [was] being investigated for."

Additionally, the court found no evidence of any "physical coercion, threat of force, that type of pressure" being exerted on defendant. While defendant was "relatively calm," he appeared to be "nervous" and "somewhat emotional" from the beginning of the initial questioning. Near the end of the initial round of questioning, defendant started crying.

The court also found it was "clearly demonstrable from the video that [defendant] is not completely fluent in English." The court found "that from the very first exchange" it was difficult to understand what defendant was saying and that it was clear that defendant "doesn't fully understand what's going on." The court found the police should have stopped the interview at that point and

attempted to obtain an interpreter, rather than pressing defendant about whether he understood English.

Despite using another detective to attempt to translate into Hindi, the court found it difficult "to even read portions" of the transcript and make sense of it. The court painstakingly set forth the significant errors in the attempted translation of the Miranda rights. The court found the attempted translation was "not even an adequate paraphrase."

Considering the totality of the circumstances, the court concluded that the State did not establish beyond a reasonable doubt that defendant received proper Miranda warnings or that he "gave a knowing, intelligent and voluntary waiver" of those rights. Based on these findings, the court determined that defendant's statements to the two detectives were not admissible at trial. We granted the State's motion for leave to appeal that ruling.

On appeal, the State argues:

> THE CREDIBLE FACTS AND LEGAL PRECEDENT ESTABLISHED THE DETECTIVE TAKING PEDIGREE INFORMATION WAS NOT ENGAGED IN INTERROGRATION.
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> > A. [The First] Detective [] Collected Typically Exempt Pedigree Information.

1. That the Taking of Pedigree Information Produced Relevant Evidence Is Irrelevant, and Cannot Be Considered.

2. Defendant's Emotional Reaction to His Arrest Did Not Transform the Questioning Into Interrogation.

3. Defendant's Limited Comprehension of English Did Not Transform the Questioning Into Interrogation.

4. This Court Should Weigh the Officers' Efforts to Stop Defendant From Providing Incriminating Information During the Taking of Pedigree Information.

5. The Totality of Circumstances Shows the Taking of Pedigree Information Was Not Transformed Into Interrogation.

B. [The First] Detective [] Said Nothing to Induce Defendant to Make his Voluntary Spontaneous Admissions.

We are unpersuaded by these arguments and affirm the trial court's decision that defendant's statements to the police are not admissible at trial.

When reviewing a trial court's decision on a motion to suppress a defendant's statement, we must "engage in a 'searching and critical' review of the record." State v. Maltese, 222 N.J. 525, 543 (2015) (quoting State v. Hreha, 217 N.J. 368, 381-82 (2014)). We defer to the trial court's findings supported by "sufficient credible evidence in the record," particularly when they are grounded in the judge's "feel" of

the case and ability to assess the witnesses' demeanor and credibility. State v. Robinson, 200 N.J. 1, 15 (2009) (quoting State v. Elders, 192 N.J. 224, 243-44 (2007)). "An appellate court should not disturb a trial court's factual findings unless those findings are 'so clearly mistaken that the interests of justice demand intervention and correction.'" State v. S.S., 229 N.J. 360, 374 (2017) (quoting State v. Gamble, 218 N.J. 412, 425 (2014)). This deferential standard of review applies even to "factfindings based solely on video or documentary evidence," such as recordings of custodial interrogations by the police. Id. at 379.

"The right against self-incrimination is guaranteed by the Fifth Amendment to the United States Constitution and this state's common law, now embodied in statute, N.J.S.A. 2A:84A-19, and evidence rule, N.J.R.E. 503." State v. Nyhammer, 197 N.J. 383, 399 (2009). A suspect in custody

> must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation.
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> [Miranda, 384 U.S. at 479.]

"Confessions obtained by the police during a custodial interrogation are barred from evidence unless the defendant has been advised of his or her" Miranda

rights. State v. Knight, 183 N.J. 449, 461 (2005). At a hearing challenging the admission of statements made during a custodial interrogation, the "state must prove beyond a reasonable doubt that a defendant's confession was voluntary and was not made because the defendant's will was overborne." Id. at 462. The State must also prove "the defendant was advised of his rights and knowingly, voluntarily and intelligently waived them." State v. W.B., 205 N.J. 588, 602 n.3 (2011).

Determining whether the State has satisfied its burden of proving beyond a reasonable doubt that a defendant's statement was voluntary requires "a court to assess 'the totality of circumstances, including both the characteristics of the defendant and the nature of the interrogation.'" Hreha, 217 N.J. at 383 (quoting State v. Galloway, 133 N.J. 631, 654 (1993)). An appellate court "should engage in a 'searching and critical' review of the record to ensure protection of a defendant's constitutional rights." Id. at 382 (quoting State v. Pickles, 46 N.J. 542, 577 (1966)). We must determine "whether, under the totality of the circumstances, the confession is 'the product of an essentially free and unconstrained choice by its maker' or whether 'his will has been overborne and his capacity for self-determination critically impaired.'" State v. Pillar, 359 N.J. Super. 249, 271 (App. Div. 2003) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 225-26 (1973)). The "factors relevant to that analysis include 'the suspect's age, education and intelligence, advice

concerning constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature, and whether physical punishment and mental exhaustion were involved.'" Hreha, 217 N.J. at 383 (quoting Galloway, 133 N.J. at 654). The court should also consider defendant's prior encounters with law enforcement. Ibid.

Here, defendant's education and understanding of English were limited. There is no indication defendant had prior encounters with law enforcement.

The trial court's findings regarding the failure to properly advise defendant of his Miranda rights are amply supported by the record. The attempts to translate those rights into Hindi, a second language for defendant, fell far short of adequately advising defendant of his rights. The court's finding that the State did not prove beyond a reasonable doubt that defendant knowingly, voluntarily, and intelligently waived his rights is likewise amply supported by the record. The trial court properly ruled that defendant's statements following the failed attempts to advise him of his rights are inadmissible at trial.

We next address defendant's initial questioning and statements before any Miranda warnings were given. We have recognized that police are permitted to ask a defendant for "routine pedigree information, including his name and address, for purposes of completing [an] arrest report" even when a defendant is in custody. State

v. Melendez, 454 N.J. Super. 445, 457 (App. Div. 2018). "[B]ooking procedures and the routine questions associated therewith are ministerial in nature and beyond the right to remain silent." State v. M.L., 253 N.J. Super. 13, 21 (App. Div. 1991) (citing United States ex rel. Hines v. LaVallee, 521 F.2d 1109, 1112-13 (2d Cir. 1975)); accord State v. Bohuk, 269 N.J. Super. 581, 593 (App. Div. 1994); State v. Cunningham, 153 N.J. Super. 350, 352 (App. Div. 1977). But we have not defined the contours of what constitutes pedigree information.

The issue presented here is whether the initial questioning went beyond "[r]outine questions asked during the booking process or for bail purposes," Cunningham, 153 N.J. Super. at 352, thereby falling within the privilege against self-incrimination and the need to advise a suspect of his or her Miranda rights. We conclude that several of the questions asked went beyond routine questions and were not ministerial in nature. Moreover, the information solicited could be used to inculpate defendant given the nature of the charges he faced.

Here, defendant was a suspect under arrest. He was in police custody in an interrogation room at a prosecutor's office. The charges to be filed against defendant were already clear. These facts are clearly distinguishable from those in M.L., where we found "the police had no inkling of defendant's conduct regarding her child's

safety and welfare and could not by any stretch of imagination be said to be seeking incriminating evidence." 253 N.J. Super. at 21-22.

Beyond routine booking questions, defendant was asked for his cell phone number, what he liked to do for fun when not working, how many days a week he worked, how many hours a day he worked, whether he worked by himself or with others, whether he was left-handed or right-handed, where in India he was born, whether he went to school in India, what level of education he completed, and who lived with him. This information was not needed to process defendant. He had not yet received any Miranda warnings.

In Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177 (2004), the Supreme Court held that the State may require a suspect to disclose his name during a valid Terry[3] stop without implicating the Fourth Amendment and may be convicted of obstruction for refusing to identify himself without violating the Fifth Amendment right against self-incrimination. The Court noted that the obligation imposed by the Nevada statute "does not go beyond answering an officer's request to disclose a name." Id. at 187. The Court recognized that "[t]he Fifth Amendment prohibits only compelled testimony that is incriminating." Id. at 189. Thus, "the Fifth Amendment privilege against

[3] Terry v. Ohio, 392 U.S. 1 (1968).

compulsory self-incrimination 'protects against any disclosures that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used.'" Id. at 190 (quoting Kastigar v. United States, 406 U.S. 441, 445 (1972)).

The Court concluded that "petitioner's refusal to disclose his name was not based on any articulated real and appreciable fear that his name would be used to incriminate him, or that it 'would furnish a link in the chain of evidence needed to prosecute' him." Ibid. (quoting Hoffman v. United States, 341 U.S. 479, 486 (1951)). The Court further explained:

> The narrow scope of the disclosure requirement is also important. One's identity is, by definition, unique; yet it is, in another sense, a universal characteristic. Answering a request to disclose a name is likely to be so insignificant in the scheme of things as to be incriminating only in unusual circumstances.
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> [Id. at 191.]

The Court nevertheless recognized that "a case may arise where there is a substantial allegation that furnishing identity at the time of a stop would have given the police a link in the chain of evidence needed to convict the individual of a separate offense." Ibid.

In Miranda, the Court held that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of

the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." 384 U.S. at 444. However, the Court also stated that "[v]olunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today." Id. at 478.

In Rhode Island v. Innis, 446 U.S. 291 (1980), the Court elaborated:

> We conclude that the Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that the Miranda safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response.

> [Id. at 300-02 (footnotes omitted) (emphasis in original).]

"Without obtaining a waiver of the suspect's Miranda rights, the police may not ask questions, even during booking, that are designed to elicit incriminatory admissions." Pennsylvania v. Muniz, 496 U.S. 582, 602 n.14 (1990); accord United States v. Mata-Abundiz, 717 F.2d 1277, 1280 (9th Cir. 1983); United States v. Glen-Archila, 677 F.2d 809, 816 n.18 (11th Cir. 1982).

Here, defendant was arrested and remained in custody in an interrogation room. He had not yet received any Miranda warnings. The questioning that preceded the Miranda warnings went well beyond asking defendant to provide routine pedigree information. The detective should have known that some of the information requested was reasonably likely to elicit an incriminating response or lead to incriminating evidence.[4] It may be – although we do not

[4] Here, given the charges he faced, defendant's age was incriminating. So too were his answers to questions about defendant's cell phone number and what defendant liked to do for fun when not working. In other instances, routine booking information may be incriminating given the specific context of the charge. See Hiibel, 542 U.S. at 190-91; see also Hoffman, 341 U.S. at 486 (stating that the Fifth Amendment privilege against self-incrimination "extends to answers that would in themselves support a conviction" or that "would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime"). For example, a suspect's address may well be incriminating if the issue is whether the suspect lives at the place where contraband is found. See Hiibel, 542 U.S. at 198 (Breyer, J., dissenting) (questioning whether a police officer

now decide – that law enforcement may ask questions designed to provide the information needed to complete required fields in the complaint-warrant form before providing Miranda warnings.[5] But the questioning here went well beyond even that limit. Accordingly, defendant's statements were properly ruled inadmissible at trial.

Affirmed.

may require a suspect to provide their license number or address during a Terry stop, since their answers may "incriminate, depending upon the circumstances"). Indeed, "furnishing identity" may itself be incriminating. Id. at 191 (majority opinion). Moreover, "[c]ompelled testimony that communicates information that may 'lead to incriminating evidence' is privileged even if the information itself is not inculpatory." Id. at 195 (Stevens, J., dissenting) (quoting United States v. Hubbell, 530 U.S. 27, 38 (2000)).

[5] Notably, the standard complaint-warrant form used in this State only requires the following identification information: name, address, sex, eye color, date of birth, driver's license number and state of issuance, social security number, and telephone number. State of N.J., Form CDR-2, Complaint-Warrant (Aug. 1, 2005). It does not require any of the other information sought and obtained by the first detective.