SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3923-21

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

JEFFREY HULSE, HAROLD HOOD, KEITH HOOD, and RASHEIM WILLIAMS,

Defendants-Respondents.

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Argued January 24, 2023 – Decided March 10, 2023

Before Judges Messano and Rose.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Passaic County, Indictment No. 19-09-0709.

Timothy P. Kerrigan, Senior Assistant Prosecutor, argued the cause for appellant (Camelia M. Valdes, Passaic County Prosecutor, attorney; Timothy P. Kerrigan, of counsel and on the brief).

Kevin G. Roe argued the cause for respondent Harold Hood (Law Office of Kevin G. Roe, attorneys; Kevin

G. Roe, of counsel and on the brief; Sean P. Roe, on the brief).

Alexandra Macaluso argued the cause for respondent Keith Hood (Law Offices of Fusco & Macaluso, PC, attorneys; Alexandra Macaluso, of counsel and on the brief).

Levin Shea Pfeffer & Goldman, PA, attorneys for respondent Jeffrey Hulse, join in the briefs of Harold Hood and Keith Hood.

Jeffrey Simms, attorney for respondent Rasheim Williams, joins in the brief of Keith Hood.

PER CURIAM

Following a shooting at a gentlemen's club in Paterson, a Passaic County grand jury charged defendants Jeffrey Hulse, Harold Hood, Keith Hood, and Rasheim Williams with various offenses.[1] Keith, joined by his co-defendants, moved to suppress statements made to police following an investigatory stop of Harold's car and thereafter at police headquarters. Following a two-day testimonial hearing, the trial court granted defendants' motion. Relevant here,

[1] Hulse and Harold were charged with first-degree attempted murder, N.J.S.A. 2C:5-1(a)(1) and N.J.S.A. 2C:11-3(a)(1); second-degree aggravated assault, N.J.S.A. 2C:12-1b(1) and N.J.S.A. 2C:2-6; second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b)(1); and second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1); Keith and Williams were charged only with weapons offenses. We use first names for the two parties who share the same surname, intending no disrespect in doing so.

the court determined that because defendants were in custody after police removed them from the vehicle, police should have issued Miranda[2] warnings "before asking them any questions regarding the ongoing investigation." The court further found Harold "properly invoked his right to counsel three times" during police questioning at headquarters and, as such, police "should have either stopped to clarify or cease the interrogation to call for defendant's counsel."

We granted the State's motion for leave to appeal from the Law Division's June 29, 2022 order, which seemingly applied to all statements made by all four defendants. However, on August 3, 2022, the trial court issued a clarifying order, explicitly suppressing the statements made by Keith and Williams during the motor vehicle stop, and Harold at Paterson Police Department (PPD) headquarters "following his first invocation [of] counsel."

The State now raises three points for our consideration. Acknowledging Keith and Williams were in custody after they were removed from the vehicle, the State contends their statements were volunteered and, as such, Miranda warnings were not required. Apparently for the first time on appeal, the State

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

argues Keith's statements also were admissible under the public safety exception. Finally, the State claims Harold did not invoke his right to counsel when questioned at police headquarters.[3] Although Hulse acknowledges his statements were not the subject of the suppression motions, he joins the responding arguments advanced by Keith and Harold, urging us to affirm.

Because we conclude the trial court erroneously determined Keith and Williams were subjected to custodial interrogation at the stop, we reverse the order suppressing their statements. For the reasons that follow, we also reverse the court's order suppressing Harold's statement at police headquarters after his first inquiry to police concerning counsel, but affirm the order suppressing his statements made after the second inquiry.

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[3] For the first time in its March 6, 2023 correspondence, the Passaic County Prosecutor's Office advised this court that defendants Harold Hood and Jeffrey Hulse were approaching the two-year maximum release date under N.J.S.A. 2A:162-22(a)(2)(a). Prior to that date, we were never informed of defendants' release dates. Citing the Supreme Court's decision in State v. Mackroy-Davis, 251 N.J. 217, 241-42 (2022), the State suggested our decision was due "within 5 days" of receiving the filed appellate briefs and transcripts. The State's contention is misplaced. The State did not "mo[ve] for leave to appeal an order about speedy trial calculations" as did the defendant in Mackroy-Davis. See id. at 241. Accordingly, the timeframe outlined by the Court in that decision is inapplicable here.

I.

We summarize the facts adduced at the two-day suppression hearing. The State produced the testimony of Sergeant Sabrina McCoy and Detective Sergeant Ricardo Ferreira of the Passaic County Prosecutor's Office, who were assigned to assist the PPD's Ceasefire Division, on the date of the incident. Pertinent to this appeal, the State also played the recorded statement of Williams to the detectives at PPD headquarters. Defendants did not testify or present any evidence at the hearing.

In the early morning hours of July 13, 2019, McCoy and her partner, Detective Jose Castillo, were on break when they heard gunshots near Getty Avenue. While en route to the area in their unmarked police car, the officers received information that the black Dodge Durango involved in the shooting was driving on Getty Avenue toward Madison Avenue.

McCoy and Castillo stopped the Durango, which was driven by Harold and occupied by Keith in the front passenger's seat, Williams in the rear seat behind Keith, and Orville Crooks[4] in the rear seat behind Harold. Police ordered the occupants to show their hands, but they failed to comply. McCoy "hear[d]

[4] Crooks was not indicted in this matter; he is not a party to this appeal.

a lot of rustling of items inside the vehicle," while the officers "continued to give verbal commands."

The occupants were ordered out of the car and told to place their hands on the car. Williams volunteered he was "a New York corrections officer and that he was currently in possession of a weapon." McCoy seized the firearm from his right hip. Williams was then handcuffed and placed on the curb, along with the other occupants. They were not free to leave.

Without conducting a search of the car, McCoy saw an empty holster in the backseat; Keith volunteered ownership of the holster. Keith further stated the handgun was "under the front passenger seat."[5] McCoy illuminated the area with her flashlight but did not locate the weapon. Keith then indicated that the handgun "could possibly be in the trunk of the vehicle." At Keith's direction, McCoy checked the trunk, but did not locate the weapon.

When pressed on cross-examination, McCoy stated Keith "was still near the vehicle" when he claimed ownership of the holster. McCoy did not personally restrain Keith, but she recalled that all the occupants were placed on

[5] Although no testimony was elicited from McCoy about Keith's employment during the January 13, 2022 and February 9, 2022 hearings, according to the police reports, Keith indicated at the scene "he was also a New York City Corrections Officer."

the curb and, as such, "they would still be able to face the vehicle" when Keith volunteered his statements about the gun.

At some point after the firearm was recovered from Williams, the occupants "were asked where they were coming from" because police had information "that the black Dodge Durango may have been involved in a shooting." Accordingly, police "wanted to see if the occupants were coming from that area or were at the location of the shooting." Police then transported defendants to PPD headquarters to be interviewed. They were not free to leave but they were not arrested at the conclusion of their interviews.

Pertinent to this appeal, Harold was questioned by Ferreira and PPD Detective Mahmoud Rabboh. Harold told the detectives he was "still feeling drunk," but able to speak with them. Ferreira administered Miranda warnings; Harold indicated he understood his rights. But Harold made the first of three inquiries of the detectives, all of which the court found were invocations of his right to counsel:

> HAROLD: Any time I want a lawyer I can – I can get a lawyer?
>
> FERREIRA: A hundred percent.
>
> HAROLD: All right.

FERREIRA: So right now, if you don't . . . like the color of my hat and you want to just stop talking, we stop talking. You know what I'm saying? You're not being forced or nothing.

HAROLD: What's your hat mean though?

FERREIRA: It's a soccer team.

HAROLD: Oh –

FERREIRA: A Portuguese soccer team.

HAROLD: – my god. I'm just ready to go. I'm ready to just go.

FERREIRA: So, you don't want to sign [the waiver of rights form] though?

HAROLD: No, I don't.

FERREIRA: But you're willing to talk to me?

HAROLD: I'll talk to you. Come on.

FERREIRA: All right. So let me just write down that you don't want to sign it. Okay? So . . . I remember.

HAROLD: Damn. Just get this started.

[(Emphasis added).]

Questioning ensued. In essence, Harold claimed he left the club alone to move his car and was alone in the car when he heard gunshots, then changed his

tune and acknowledged "JJ" was with him.[6] After Ferreira stated, "[d]o me a favor, pay attention to what I'm asking please," Harold made his second inquiry[7]:

> HAROLD: All right, hold up. Let me ask you something. Do I need a lawyer or something right now?
>
> FERREIRA: It's your decision.
>
> HAROLD: Because I'm trying to work it out with y'all. [(Emphasis added).]

Questioning continued about the shooting and JJ's involvement. Shortly thereafter, Harold made his third inquiry:

> FERREIRA: What – do you remember what color shirt JJ had on?
>
> HAROLD: No, I told you that. Well, do I need a lawyer or something?
>
> FERREIRA: I'm going to tell you again, Harold, you can stop talking at any time. If you want to have a lawyer, you can have one present. You can stop at any time. Right now –
>
> HAROLD: When the lawyer comes, he – what's the lawyer going to do? Is he going to talk to y'all?

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[6] Two days later, police received information from a confidential informant that Hulse was the shooter; Hulse apparently matched the description of "JJ" as depicted in surveillance footage.

[7] The parties did not provide the video recording of Harold's statement. According to the transcript of oral argument before the trial court, this exchange commenced around the "twenty-minute and thirty-three-second mark."

> FERREIRA: Well, that's between you and him. I don't – that has nothing to do with me.
>
> RABBOH: Yeah. That's something between you and –
>
> FERREIRA: We're sitting here asking you questions about what happened tonight. That's it. That's all we're doing.
>
> HAROLD: I got you.
>
> [(Emphasis added).]

II.

When reviewing a trial court's decision on a motion to suppress a statement, we generally defer to the factual findings of the trial court if they are supported by sufficient credible evidence in the record. See State v. Nyhammer, 197 N.J. 383, 409 (2009); see also State v. Ahmad, 246 N.J. 592, 609 (2021). We disregard a trial court's findings only when "clearly mistaken." State v. Hubbard, 222 N.J. 249, 262 (2015). Our deference includes the trial court's findings based on video recording or documentary evidence. See State v. McNeil-Thomas, 238 N.J. 256, 271 (2019). However, we review de novo the trial court's legal conclusions. See State v. Hathaway, 222 N.J. 453, 467 (2015).

A. Statements of Keith and Williams at the Investigatory Stop

"The admissibility of a suspect's statements to police is governed by familiar principles." State v. Carlucci, 217 N.J. 129, 143 (2014). "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. S.S., 229 N.J. 360, 381 (2017) (quoting Nyhammer, 197 N.J. at 399). Police must issue Miranda warnings "when a person in police custody is questioned by law enforcement." State v. P.Z., 152 N.J. 86, 102 (1997). Failure to do so, "creates a presumption of compulsion." Carlucci, 217 N.J. at 144 (quoting Oregon v. Elstad, 470 U.S. 298, 307 (1985)).

"Custodial interrogation" is defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Id. at 144 (quoting Miranda, 384 U.S. at 444). Stated another way, "the protections provided by Miranda are only invoked when a person is both in custody and subjected to police interrogation." Hubbard, 222 N.J. at 266. Accordingly, "Miranda has no application to statements that are 'volunteered.'" State v. Brabham, 413 N.J.

Super. 196, 210 (App. Div. 2010) (quoting Miranda, 384 U.S. at 478); see also State v. Coburn, 221 N.J. Super. 586, 598 (App. Div. 1987).

Moreover, police are not required to issue "Miranda warnings before asking questions reasonably related to dispelling, or confirming, suspicions that justify the detention." State v. Smith, 374 N.J. Super. 425, 431 (App. Div. 2005). "General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process" does not implicate Miranda's holding. 384 U.S. at 477. Even when police have a suspect in mind, they "may conduct general on-the-scene questioning of [the] suspect . . . without giving Miranda warnings." State v. Toro, 229 N.J. Super. 215, 220 (App. Div. 1988), overruled in part on other grounds, State v. Velez, 119 N.J. 185 (1990).

With those principles in view, we consider the statements made by Keith and Williams at the roadside investigatory stop. The trial court generally concluded that because defendants were in custody, police should have issued Miranda warnings before questioning them about the shooting. The court made no findings as to whether the statements made by Keith and Williams were volunteered. Nor did the court make any credibility findings.

According to McCoy's unrefuted testimony, police stopped Harold's car because it matched the description of the car that had just left the scene of a shooting. The occupants were not immediately cooperative, but after they were ordered out of the car, Williams – an off-duty corrections officer – volunteered that he was carrying a firearm. Shortly thereafter, without prompting, Keith told McCoy the holster in the rear seat was his. He then offered that this handgun was under the front seat; when that search came up empty, he told McCoy to look in the trunk.[8]

Although Keith and Williams were in custody following the investigatory stop, police did not interrogate them at the scene. According to McCoy's

[8] In his responding brief, Keith cites McCoy's police report – which was not admitted in evidence – to support his argument that McCoy questioned Keith about the location of the handgun when she did not locate the firearm in the trunk. Because the record does not reveal that McCoy was questioned about her report on this issue or that the report was provided to the trial court, it is inappropriate for consideration on appeal. See Zaman v. Felton, 219 N.J. 199, 226-27 (2014).

Similarly, we decline to consider the State's seemingly belated argument that Keith's statements were admissible pursuant to the public safety doctrine. State v. Robinson, 200 N.J. 1, 20 (2009) ("'[I]t is a well-settled principle that our appellate courts will 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 so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'" (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973))).

unwavering testimony, Keith and Williams volunteered information concerning their service weapons. Because they were not questioned, Miranda warnings were not required. Nor did the officers' brief inquiry regarding where they were traveling from mandate Miranda's protections. See 384 U.S. at 477. We therefore conclude the court erroneously suppressed their oral statements and reverse the court's order.

B. Harold's Statements at PPD Headquarters

In New Jersey, the privilege against self-incrimination "offers broader protection that its Fifth Amendment federal counterpart." State v. O'Neill, 193 N.J. 148, 176-77 (2007). "Under our state law privilege against self-incrimination, 'a suspect need not be articulate, clear, or explicit in requesting counsel; any indication of a desire for counsel, however ambiguous, will trigger entitlement to counsel.'" State v. Rivas, 251 N.J. 132, 154 (2022) (quoting State v. Alston, 204 N.J. 614, 622 (2011)). "[I]f a suspect's 'words amount even to an ambiguous request for counsel, the questioning must cease,' unless the officer makes additional neutral inquiries that clarify that the suspect desires to waive the presence of counsel." Ibid. (quoting Alston, 204 N.J. at 624). "[T]he State bears the burden to show scrupulous compliance with" these requirements. State v. Dorff, 468 N.J. Super. 633, 651 (App. Div. 2021).

In determining whether a suspect has invoked his right to counsel, the court employs "a totality of the circumstances approach that focuses on the reasonable interpretation of defendant's words and behaviors." State v. Diaz-Bridges, 208 N.J. 544, 564 (2011). "[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." Alston, 204 N.J. at 622 (quoting State v. Bey, 112 N.J. 123, 136 (1988)). "[B]ecause the right to counsel is so fundamental, an equivocal request for an attorney is to be interpreted in the light most favorable to defendant." State v. Wright, 97 N.J. 113, 119 (1984).

Generally, police are not obligated to advise suspects about whether they should assert their Miranda rights. Alston, 204 N.J. at 628. If an ambiguous invocation is made, however, further questioning of a suspect is permissible provided the inquiry is aimed at clarifying the meaning of the statement. Id. at 623. Such clarification is necessary where the suspect's statement "leave[s] the investigating officer 'reasonably unsure whether the suspect was asserting that right.'" Diaz-Bridges, 208 N.J. at 564 (quoting State v. Johnson, 120 N.J. 263, 283 (1990)). In clarifying the meaning of a suspect's statement, an officer is limited "to neutral inquiries." Alston, 204 N.J. at 624.

Critically, these clarifying inquiries must not "operate to delay, confuse, or burden the suspect in his [or her] assertion of his rights." Id. at 623 (quoting Johnson, 120 N.J. at 283).

Recently, in State v. Gonzalez, 249 N.J. 612, 631-32 (2022), our Supreme Court concluded police must stop an interrogation when suspects indicate, even ambiguously, that they want a lawyer. Thereafter, we explained the distinction between the Court's decisions in Alston and Gonzalez:

> In Alston, the Court held the defendant's response to the officer's question whether the defendant wanted a lawyer – "No, I'm asking you guys, man." – was not "even an ambiguous request for counsel; rather, it was an emphatic 'no' followed by a continued effort to secure advice and guidance from the police about what they thought [his] best course of action was at the time." 204 N.J. at 626. In Gonzalez, the Court distinguished Alston and held, the "defendant's first mention of counsel, '[b]ut what do I do about an attorney and everything?' was an ambiguous invocation of her right to counsel that required the detective to cease all questioning and seek clarification." 249 N.J. at 631 (alteration in original). The detective's response – "I can't give you an opinion about anything" – "failed to clarify what [the] defendant meant." Id. at 632.
>
> [(State v. Hahn, 473 N.J. Super. 349, 363 (App. Div. 2022)).]

In the present matter, the trial court found Harold thrice invoked his right to counsel. We address each inquiry in turn.

Regarding the first question, the trial court found "H[arold] mentioned that he 'wished to speak with his lawyer.'"[9] The record does not support the court's finding and, as such, we owe no deference to the court's decision. See Nyhammer, 197 N.J. at 409.

According to the transcript provided on appeal, Harold asked, "Any time I want a lawyer I can - I can get a lawyer?" That question was posed after police administered his Miranda rights. That question, however, was not an invocation of Harold's right to counsel but a request for clarification about his rights. Ferreira immediately answered, "A hundred percent." Harold then repeatedly stated he was "ready to go"; then stated, "I'll talk to you. Come on . . . Damn. Just get this started." Harold's inquiry was not an express or implied request for a lawyer. Accordingly, we reverse the court's finding that Harold invoked his right to counsel at this point in his statement.[10]

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[9] The court further stated: "The interview showed that [Harold] was visibly intoxicated, however, the detective continued with his line of questioning." The court did not conclude Harold's inebriated state interfered with his ability to understand his Miranda warnings or waive those rights. Indeed, there is no indication in the record that Harold argued he lacked the capacity to voluntarily waive his rights. To the extent he makes that argument on appeal, we decline to consider it. See Robinson, 200 N.J. at 20.

[10] Before the trial court, Harold's attorney relied on the arguments of Hulse's counsel, who contended that Harold's entire statement need not be suppressed.

The trial court's finding regarding Harold's second question to the detectives likewise was contradicted by the record. The court found Harold "clear[ly]" invoked his right to counsel when he stated: "Can I talk to my lawyer or something?" The record, however, indicates Harold asked: "Do I need a lawyer or something right now?" The difference between those questions makes the analysis a close call.

Without any reference whatsoever to the Court's decision in Gonzalez, the State argues Harold sought advice from the officers, i.e., he did not expressly or impliedly request counsel. Prior to the Court's decision in Gonzalez, we might have agreed. However, Harold's inquiry is somewhat analogous to the question posed by the defendant in Gonzalez: "But, what do I do about an attorney and everything?" Because the Court held that question "was an ambiguous invocation of [Gonzalez's] right to counsel that required the detective to cease all questioning and seek clarification," 249 N.J. at 631, we discern no reason to disturb the trial court's decision here. Accordingly, any statements made after Harold stated, "No, I told you that," shall remain suppressed.

Instead, Hulse's attorney argued, "any testimony after that twenty-minute-and-thirty-second mark should be suppressed," i.e., the second inquiry.

In view of our decision, we need not reach defendant's third inquiry. We do so for the sake of completeness. The trial court found Harold invoked his right to counsel "when he t[old] the detective, 'I need a lawyer.'" Again, the court's finding is not supported by the record. However, we nonetheless agree with the court's conclusion that under Gonzalez, the detectives were obligated to clarify Harold's inquiry.

This time, Harold not only asked, "Well, do I need a lawyer or something," but further inquired, "When the lawyer comes, he – what's the lawyer going to do? Is he going to talk to y'all?" Unlike the defendant in Alston, or his previous inquiry, Harold did not simply seek advice; similar to the defendant in Gonzalez, Harold seemingly asked about counsel's availability. To the extent Harold's questions were ambiguous, the detectives should have ceased the interrogation and made further inquiry to clarify whether he wished to speak with counsel. Ibid. We therefore affirm the court's order as to the third inquiry.

In summary, we reverse the trial court's order suppressing the statements made by Keith and Williams at the investigative stop. We also reverse the order suppressing Harold's statements after his first inquiry, and affirm the order suppressing his statements made after the second inquiry.

Affirmed in part, reversed in part, and remanded for further proceedings. 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