ELIZABETH VOGELSONG-PARVIN
ACTING GLOUCESTER COUNTY PROSECUTOR
By: NARLINE CASIMIR, ESQUIRE
SDAG/Acting Assistant Prosecutor
Attorney ID.: 047572013
GLOUCESTER COUNTY PROSECUTOR'S OFFICE
P.O. BOX 623
WOODBURY, NEW JERSEY 08096
(856) 384-5500
ncasimir@co.gloucester.nj.us

AMENDED BRIEF ON BEHALF OF THE PLAINTIFF-APPELLANT

Superior Court of New Jersey
Appellate Division
DOCKET NO: A-

CRIMINAL ACTION

		On Motion For Leave To Appeal From An Interlocutory Order
STATE OF NEW JERSEY	:	Of The Superior Court of New Jersey, Law Division
Plaintiff-Appellant	:	Gloucester County
		Granting, in part, Defendant's Motion to Suppress
v.	:	
ZACHARY LAHNEMAN,	:	PROS. FILE# 22-2473 INDICTMENT# 23-02-0082-I
Defendant-Respondent	:	Sat Below: Hon. John C. Eastlack, Jr.,J.S.C.

Defendant is Confined

Your Honors:

TABLE OF CONTENTS

TABLE OF APPENDIX

TABLE OF AUTHORITIES

Cases **Page Nos.**

TABLE OF AUTHORITIES CONT'D

Page Nos.

Statutes

Rules

PROCEDURAL HISTORY

On February 2, 2023, a Gloucester County Grand Jury returned Indictment No. 23-02-00082, charging defendant Zachary Lahneman with Count I, unlawful possession of a handgun in violation of N.J.S.A. 2C:39-5b(1); Count II, second-degree possession of a weapon for an unlawful purpose in violation of N.J.S.A. 2C:39-4a; Count III, first-degree murder in violation of N.J.S.A. 2C:11-3a(1).

On February 15, 2024, defendant filed a motion to suppress all out-of-court statements made by defendant to law enforcement and all other persons while detained by law enforcement, in violation of his constitutional right against self-incrimination.

On April 5, April 9, and April 18, 2024, the Honorable John C. Eastlack, Jr., J.S.C. presided over pretrial motions and heard the testimony of witnesses. (1T:3-10 to 4:23)[1]

On June 25, 2024, the trial court heard the arguments of counsel and subsequently issued a decision granting in part and denying in part defendant's motion to suppress his statements. (2T:51-1 to 56-1).

---

[1] "1T" refers to the Transcript of Motion to Suppress, dated April 9, 2024.
"2T" refers to the Transcript of Decision, dated June 25, 2024.
"3T" refers to the Transcript of Motion to Reconsider, dated August 26, 2024.

On June 26, 2024, the Court signed an Order documenting the specific findings of the Court. Pa1.[2]

On August 26, 2024, Judge Eastlack heard the State's motion to reconsider and maintained the suppression of the statements defendant made during phone calls to his parents. (3T:20-23 to 21-3).

On August 30, 2024, Judge Eastlack denied the State's motion for stay of the proceeding pending leave to appeal. Pa2.

On September 4, 2024, the Appellate Division denied the State's emergent application for a stay of the proceedings. Pa3-Pa4.

The State requests leave to appeal Judge Eastlack's decision on the motion to reconsider.

STATEMENT OF FACTS

On November 6, 2022, at approximately 10:30 a.m., Officer Benjamin Swan of the Washington Township Police Department was dispatched to 197 Fries Mill Road, the Municipal Golf Course, on a report of a hunting complaint. When he arrived, Officer Swan observed a male, later identified as Victor Marrero, lying face down with blood pooling around his head. Marrero appeared to have a gunshot wound on his back. Employees of the golf course alerted Officer Swan to a male later identified as Zachary Lahneman. Defendant was walking toward Officer Swan

[2] "Pa" refers to Appendix of the State's brief.

while talking on his cell phone. Officer Swan ordered defendant to his knees and placed him in custody. Defendant was transported to Gloucester County Prosecutor's Office to be interviewed and processed.

On April 9, 2024, Judge Eastlack heard testimony from Lieutenant John Petroski, then Detective-Sergeant, in defendant's motion to suppress statements made to law enforcement and others while in custody. (1T).

Lt. Petroski testified that while he was overseeing the investigation, his role in the case was mostly administrative and he did not assign any interviewing task to himself. (1T:6-22 to 8-3). He explained that defendant was initially placed in Room 5, located in the basement of the Prosecutor's Office, to secure him until other officers returned from processing the crime scene. (1T:10-12 to 11-7; 13-8 to 13-18). The video and audio recording from Room 5 was played during Lt. Petroski's testimony. (1T:13-24 to 14-9). From the recording, defendant could be heard speaking out loud to himself about the incident and he continued to do so for over 30 minutes until Lt. Petroski reentered the room. (1T:24-14 to 32-15). When Lt. Petroski returned to the room, he informed defendant that he would be taken to Room 1, located on the first floor of the Prosecutor's Office to be interviewed by Detective Krystal Santiago. (1T:33-5 to 33-16). Lt. Petroski testified that he did not have any conversation with defendant and nothing of significance was said as they went from Room 5 to Room 1. (1T:33-20 to 34-10). After the interview in Room 1, Lt. Petroski escorted defendant to the booking room located right outside Room 5 to be

processed, fingerprinted, and photographed. (1T:35-5 to 35-24). Lt. Petroski did not ask defendant any questions related to the investigation of the case. Ibid.

When defendant was advised that he was going to be taken to the hospital to be cleared for incarceration, he stated that his mother needed to know about what is going on with him. (1T:68-8 to 69-2). He informed that his mother lives in Maine and he knew her number by heart. Ibid. Lt. Petroski advised that he would let defendant speak with his mother. Ibid. Defendant also stated that he wanted to talk to his woman to let her know that he is incarcerated. Ibid.

After defendant returned from the hospital, Lt. Petroski placed him in Room 1 pending the completion of the necessary paperwork before he was picked up by sheriff's officers to be transported to the Salem County jail. (1T:72-12 to 73-14). Defendant informed Lt. Petroski that he wished to speak with his parents via telephone. (1T:73-15 to 73-20). Lt. Petroski informed defendant that because his cell phone was seized as evidence, it could not be turned over to him. (1T:73-21 to 74-6). Lt. Petroski testified that because defendant was in custody and his cell phone was evidence, he could not leave defendant alone in the room with the phone and risk the phone being manipulated and anything being erased. Ibid. Before making the calls, Lt. Petroski informed defendant that he was being recorded and that he would be staying in the room with defendant. (1T:74-7 to 74-15). Lt. Petroski specifically stated that the audio would not be turned off and that defendant could not touch the phone. Ibid. Defendant agreed to these conditions. Ibid. The recording

capabilities in Room 1 remained as they were the first time defendant was interviewed by Detective Santiago. (1T:74-16 to 74-20).

The recording of defendant's phone calls to his parents was played during the motion to suppress. (1T:77-15 to 77-17). Before the calls were made, defendant volunteered that gunpowder residue would be found on his sweatshirt because he wore the same sweatshirt a week ago when he went shooting. (1T:78-10 to 78-25). Lt. Petroski proceeded to give defendant instruction as to how the phone calls will be made using defendant's cell phone. 1T:79-6 to 82-25). Defendant agreed with the procedure. Ibid. Lt. Petroski also informed defendant that he will be transported to county jail and told him that he was being charged with homicide and weapons offenses. Ibid. Defendant stated that he did not remember having a handgun on his person. Ibid. Lt. Petroski proceeded to inform defendant of the First Appearance and Detention Hearing process and that it would likely take about seven (7) days before the detention hearing is held. Ibid. Defendant stated that he understood and answered affirmatively that he wanted to speak with his mother and girlfriend. Ibid. Defendant stated that he wanted to speak with his father as well. Ibid.

Defendant told Lt. Petroski where to locate the phone numbers on his phone. (1T:83-25 to 84-12). Defendant than said to himself, without any prompt from Lt. Petroski, "Over a fucking dog . . ." (1T:84-15). When Lt. Petroski dialed the mother's number, the phone rang without answer and Lt. Petroski advised defendant to leave a voicemail for his mother informing her that he will call her when he arrives

at the jail. (1T:84-16 to 84-18). As defendant was leaving the voicemail, his mother called back and asked, "What the fuck happened?" (1T:84-20 to 85-6). Lt. Petroski immediately told defendant to simply tell her where they are and where he would be going. (1T:85-7 to 85-9). Defendant proceeded to tell his mother that he is going to county jail and that he had an issue with a man and his dog, and apparently the man died. (1T:85-10 to 94-13). Defendant's mother asked defendant if he shot the man, and why he had the handgun on his person. Ibid. Defendant stated that the man punched him in the face; he blacked out, and he apparently shot him. Ibid. He also stated that the man was going for it so he had to do it. Ibid. When defendant's mother asked if she should pick up defendant at the jail, Lt. Petroski proceeded to introduce himself and advised defendant's mother of the logistics of the detention hearing. Ibid. When defendant interjected to speak about the case, both Lt. Petroski and his mother told him to stop speaking but defendant continued to make incriminating statements. Ibid. When defendant's mother raised concerns that he has had several concussions, Lt. Petroski informed that a CAT scan was completed and defendant was cleared for incarceration. Ibid. Lt. Petroski also asked the mother not to talk about the case. Ibid. During the call, defendant asked his mother to call Vera, presumably his girlfriend, and an attorney. Ibid. The mother advised that she could not pay for private counsel and defendant would have to be assigned a public defender. Ibid. Once the call was completed with defendant's mother, Lt. Petroski repeated, "Don't talk about the case, dude." (1T:94-14 to 94-23). Defendant then

proceeded to tell Lt. Petroski that he had to because he had to let his mother know. Ibid. Lt. Petroski responded that he had already requested to speak with an attorney. Ibid.

Then, Lt. Petroski called defendant's father as previously requested. (1T:96-7 to 99-7). The first thing defendant asked his father was whether all the guns were locked up. Ibid. Lt. Petroski immediately jumped in to prevent defendant from making further incriminating statements. Ibid. Lt. Petroski proceeded to give defendant's father logistical information and the call was ended. Ibid.

After Lt. Petroski exited the room, defendant continued to talk to himself. (1T:103-6 to 105-23). When Lt. Petroski reentered the room in attempt to calm defendant down and distract him from speaking about the case, defendant tried to tell him which handgun was used during the shooting. (1T:105-25 to 129-21). Lt. Petroski told him not to tell him and that the police will conduct an independent investigation. Ibid. Lt. Petroski also noted that defendant is innocent until proven guilty. Ibid. While Lt. Petroski never asked defendant any questions regarding the incident and reminded him that he had already requested to speak with an attorney, he continued to speak with defendant in order to keep him calm. Ibid.

During the cross-examination, counsel asked Lt. Petroski if he could have allowed defendant to have a private conversation with his parents. (1T:141-9 to 143-14). Lt. Petroski testified that he could do so by letting defendant use what is called bank numbers at the Prosecutor's Office but from his experience, people usually do

not pick up these calls because they do not show as being from a specific person. Ibid. The alternative would be to use his personal or work cell phone but he did not want people having his number because they would continuously call him regarding the status of their loved-ones. Ibid. Lt. Petroski reiterated that the bank number of the Prosecutor's Office is usually not answered because it does not come back to the office. Ibid. Lt. Petroski further testified that he did not have the capability to give defendant a private call but he informed him that the calls would be recorded. Ibid. Lt. Petroski also testified that defendant agreed to speak with his parents in his presence. Ibid. Counsel acknowledged that Lt. Petroski did not question defendant but he asked if he was cognizant that if he continued to speak with defendant and was friendly toward him, defendant would make statements regarding the case. (1T:148-16 to 149-13). Lt. Petroski clarified that he was being friendly to defendant to keep him calm because he continued to be agitated. Ibid. Lt. Petroski also stated, "We could not get him to shut up at any point whether someone was in there or not." Ibid. Defendant could be heard speaking to himself from outside the interview room. Ibid.

On June 25, 2025, Judge Eastlack issued a decision where defendant's motion to suppress was granted in part. (2T:11-1 to 11-7). The trial court suppressed defendant's statements made during his formal interview by Det. Santiago because as she failed to ask for clarity when defendant stated "no, I'm not going to do it,"

while she was reading his Miranda[3] rights. (2T:19-22 to 20-4; 51-1 to 51-11). At some point during his formal statement, defendant indicated that he wanted to speak with his mother as well as his attorney and Det. Santiago concluded the interview. (2T:21-3 to 21-8). Judge Eastlack found that the request to speak with his mother and to speak with his attorney are inextricably intertwined. (2T:39-1 to 39-5). Regarding defendant's interactions with Lt. Petroski, the trial court found that up to the point where Lt. Petroski approached defendant about calling defendant's mother, his interactions with defendant were truthful and honest. (2T:42-7 to 42-20). Additionally, the court found that Lt. Petroski's testimony was credible. Ibid. He did not initiate any substantive questioning as to what happened that the scene. Ibid. However, the Court stated that Lt. Petroski advised defendant that he could not use a landline to speak with his parents because the landlines at the Prosecutor's Office are recorded. (2T:25-3 to 25-6);(2T:44-3 to 44-7);(2T:58-16 to 58-25). Additionally, once defendant's mother was called and heard on the line, defendant made incriminating statements and asked his mother to contact an attorney. The court opined that it was not until defendant made a number of incriminating statements that Lt. Petroski identified himself and advised that everything was being recorded. (2T:25-21 to 26-17). Judge Eastlack also stated that at no point during defendant's interaction with his parents he was advised of his Miranda rights.

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

(2T:25-15 to 25-16). The trial court found that the calls to defendant's parents facilitated by Lt. Petroski are the functional equivalents of interrogation. (2T: 46-18 to 46-20). In reaching this conclusion, the Court relied on State in the Interest of A.A., 240 N.J. 341 (2020). (2T:47-1 to 50-25). The court determined that the statements made by defendant to his parents were not spontaneous. (2T:49-19 to 49-20). The court found that what is most telling of Lt. Petroski's utilization of the phone calls with defendant's parents to continue to interrogate defendant is the explanation that the Prosecutor's Office's landlines are recorded and should not be used knowing that the calls were being video and audio recorded while defendant was in the interview room. (2T:58-16 to 58-25). The Court acknowledged that defendant throughout the entire event made several incriminating statements unprompted by questioning or action by law enforcement. (2T:52-5 to 54-11). Defendant continued to make statements although law enforcement advised defendant not to speak. (2T:52-9 to 52 to 13). The Court opined that these incriminating statements are admissible. (2T:52-4 to 54-1). Nevertheless, the Court found that Lt. Petroski's state of mind was to elicit additional incriminating statements from defendant through the phone calls to his parents. (2T:55-6 to 55-21).

Seeking clarification, the State inquired if statements defendant's made to Det. Santiago before she started administering the Miranda warnings would be admissible and raised that it did not hear in the court's analysis any finding regarding

Lt. Petroski's admonition to defendant that he is not to talk about the facts of the case. (2T:56-4 to 59-25). Rather, he was to advise his parents of where he was and where he was going. Ibid. Moreover, the State requested that the court find that the difference in timing between the two calls was not some kind of learning curve where defendant would not be able to follow the instructions that he is not to talk about the case. Ibid. The court responded that it found the entire episode of making the phone call with defendant's phone is barred. Ibid. Judge Eastlack reasoned that defendant, a) already asserted his right counsel, and b) Lt. Petroski utilized a ruse by telling defendant that the landlines of the Prosecutor's Office are recorded in order to keep defendant from using a landline, and thereby use defendant's cell phone to call his parents. Ibid. The trial court stated that the entire process of making the phone call to defendant's parents was disingenuous. Ibid.

On August 26, 2024, Judge Eastlack presided over the State's motion for reconsideration based on the trial court's reliance on facts not in evidence, specifically that Lt. Petroski falsely claimed that the landlines at the Prosecutor's Office were recorded thereby creating an environment to elicit additional incriminating statements from defendant. (3T:6-1 to 8-11). As well as the trial court failing to properly consider the many times Lt. Petroski advised defendant not to talk about the case to his parents. Ibid. The State argued that the trial court must reconsider its decision not to admit defendant's statements during to phone calls at trial because of the court's erroneous factual findings. (3T:10-25 to 11-6). Judge

Eastlack granted the State's motion to reconsider and removed the facts not in evidence from his analysis. (3T:15-5 to 15-17). However, Judge Eastlack maintained his decision to suppress the statements made during the phone calls and reasoned that because defendant had previously indicated to Detective Krystal Santiago that he wanted to talk to a lawyer, his mother, and his girlfriend, Lt. Petroski should have re-Mirandized defendant before the phone calls to his parents. (3T:16-8 to 19-4). Judge Eastlack found that "the utilization of [the] phone call[s] was the functional equivalent of custodial interrogation." (3T:19-5 to 19-7). However, Judge Eastlack did acknowledge that Lt. Petroski told defendant prior to making the calls not to talk about the facts of the case during the phone calls. (3T:19-19 to 19-22). In addition, Judge Eastlack acknowledged the many occasions where Lt. Petroski tried to calm defendant down and told him not to talk about the case. (3T:19-23 to 20-9). Nevertheless, Judge Eastlack indicated there was no question in [the court's] mind the calls constituted continuing questioning of defendant by allowing him to talk to his parents. (3T:20-9 to 20-16).

LEGAL ARGUMENT
POINT I

LEAVE TO APPEAL SHOULD BE GRANTED TO PREVENT IRREPABABLE HARM TO THE STATE.

The State moves before this Honorable Court for leave to appeal from an interlocutory order in the Superior Court, Law Division, granting, in part, defendant's motion to suppress evidence. Specifically, the State moves to appeal the portion of the order suppressing statements made by defendant during phone calls to his parents in the presence of Lt. Petroski.

The State may seek leave to appeal from an adverse ruling on an interlocutory order entered before trial. R. 2:3-1(b)(5); State v. Sims, 65 N.J. 359, 372 (1974). Leave to appeal is a "highly discretionary" extraordinary relief, granted in the interests of justice to consider a fundamental claim, which could infect a trial and would otherwise be irremediable in the ordinary course. R. 2:2-4; State v. Reldan, 100 N.J. 187, 205 (1985); In re Pa. R.R. Co., 20 N.J. 398, 409 (1956); State v. Alfano, 305 N.J. Super. 178, 190 (App. Div. 1997). In recognition of the fact that interlocutory appellate review runs counter to a judicial policy that favors an uninterrupted proceeding at the trial level with a single and complete review thereafter, our courts exercise the authority to grant leave to appeal only sparingly. Brundage v. Estate of Carambio, 195 N.J. 575, 599 (2008); Reldan, 100 N.J. at 205. Yet leave to appeal should be granted when the grounds raised are substantial, and

where the rights involved are too important to be denied review. Pa. R.R. Co., 20 N.J. at 409.

Judge Eastlack's ruling suppressing defendant's statements during the phone calls to his parents is not supported by either the facts of the case or case law. Therefore, should the trial court's decision not be addressed and remedied at this juncture, the State will be forced to try its case without evidence that was constitutionally obtained. Moreover, the trial court's decision would be forever immunized from appellate review and would leave the State without a remedy to challenge the trial court's decision.

Here, in granting the motion for reconsideration and coming to the same conclusion that the statements made during the phone calls must be suppressed, the trial court merely acknowledged that it misinterpreted Lt. Petroski's reason not to let defendant use a landline, failed to properly consider Lt. Petroski's many attempts to prevent defendant from talking about the facts of the case (whether alone or during the phone calls), mistakenly linked defendant's request to speak with an attorney to his request to speak with his mother and girlfriend, and continued its erroneous application of the Supreme Court's ruling in State in the Interest of A.A., 240 N.J. 341 (2020). Therefore, the State respectfully asks this Court to grant leave to appeal the reconsideration order.

POINT II

THE TRIAL COURT ABUSED ITS DISCRETION BY GRANTING DEFENDANT'S MOTION TO SUPPRESS THE PHONE CALLS MADE TO HIS PARENTS.

The court abused its discretion by suppressing defendant's statements during the phone calls with his parents. There is insufficient evidence in the record to support the conclusion that the purpose of these phone calls was to obtain further incriminating statements from defendant and that permitting the defendant to have phone calls to his parents was the functional equivalent of interrogation. Rather, defendant requested to make the phone calls to inform his parents that he was detained at the Prosecutor's Office and would later be transported to the county jail. Moreover, the trial court failed to distinguish the legal implication between requesting to speak with an attorney and requesting to speak with one's mother and girlfriend. Therefore, trial court's suppression of the statements made during the phone calls to his parents must be reversed.

A review by the Appellate Division of a trial judge's decision on a motion to suppress evidence is limited and deferential, particularly when the decision is based on the judge's factual findings made after a testimonial hearing. State v. Rockford, 213 N.J. 424, 440 (2013). "[A]n appellate court reviewing a motion to suppress must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Watts,

223 N.J. 503, 516 (2015); State v. Robinson, 200 N.J. 1, 15 (2009); State v. Elders, 192 N.J. 224, 243-44 (2007); see State v. Locurto, 157 N.J. 463, 474 (1999); State v. Alvarez, 238 N.J. Super. 560, 562-64 (App. Div. 1990) (stating that standard of review on appeal of a motion to suppress is whether "the findings made by the judge could reasonably have been reached on sufficient credible evidence present in the record").

The factual findings of the trial court "warrant particular deference when they are 'substantially influenced by the trial judge's opportunity to hear and see the witnesses and to have the feel of the case, which a reviewing court cannot enjoy.'" Watts, 223 N.J. at 516; Rockford, 213 N.J. at 440; Robinson, 200 N.J. at 15; State v. Bard, 445 N.J. Super. 145, 154 (2016); see also State v. Tate, 220 N.J. 393, 404 (2015) (Deference should be given to the trial court for determinations made based on witness credibility).

Furthermore, "[a]n appellate court should not disturb the trial court's findings merely because it might have reached a different conclusion were it the trial tribunal or because the trial court decided all evidence or inference conflicts in favor of one side in a close case." Bard, 445 N.J. at 154. Elders, 192 N.J. at 244. Rather, a trial court's findings should be disturbed only if they are so "clearly mistaken" or so "wide of the mark" that "the interests of justice demand intervention and correction." Id. at 244-45. Only in those circumstances should an appellate court "appraise the record as if it were deciding the matter at inception and make its own findings and

conclusions." Ibid. (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). Ultimately, the appellate court "may only consider whether the motion to suppress was properly decided based on the evidence presented at that time." State v. Gibson, 318 N.J. Super. 1, 9 (App. Div. 1999).

"The privilege against self-incrimination, as set forth in the Fifth Amendment to the United States Constitution, is one of the most important protections of the criminal law." State v. Presha, 163 N.J. 304, 312 (2000). Although a similar provision does not exist in our State Constitution, "the privilege itself is firmly established as part of the common law of New Jersey and has been incorporated into our Rules of Evidence." Id. at 312-13. (internal citation omitted). "The right against self-incrimination, and the corollary requirement that a suspect be informed of that right, are triggered 'when an individual is taken into custody or otherwise deprived of his [or her] freedom by the authorities in any significant way and is subject to questioning [.]'" State v. Scott, 171 N.J. 343 (2002) (quoting Miranda, 384 U.S. at 478). "The requirement that interrogators warn suspects of certain rights is deemed necessary due to the pressure inherent in an incommunicado interrogation of individuals in a police-dominated atmosphere." Ibid. (internal citation omitted).

The requirements of Miranda are triggered when the suspect is subject to custodial questioning, meaning "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." Miranda, 284 U.S. at 444; See also State v.

Timmendequas, 161 N.J. 515 (1999); State v. P.Z., 152 N.J. 86 (1997) ("The predicate requirements of Miranda are that the defendant must be in custody and the interrogation must be carried out by law enforcement".) "Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence." Rhode Island v. Innis, 446 U.S. 291, 299-300 (1980)(quoting Miranda, 384 U.S. at 478.) Essentially, "The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated." Ibid. Indeed, the protection against self-incrimination expressed in Miranda only applies to statements made by defendants in custody in response to "express questioning or its functional equivalent." Ibid. at 300–01; accord State v. Stott, 171 N.J. at 365. The Supreme Court has defined "functional equivalent" of interrogation as "any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect." Innis, 446 U.S. at 300-01. "Interrogation for Miranda purposes 'must reflect a measure of compulsion above and beyond that inherent in custody itself.'" State v. Tiwana, 256 N.J. 33, 42 (2023) (quoting Innis, 446 U.S. at 300). Therefore, "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." Innis, 446 at 301-02.

Here, this Court erroneously relied on State in Interest of A.A., a case where a juvenile who was being investigated for a shooting incident was not mirandized but his mother was placed in a holding cell to speak with him after she was advised of the charges against him. Id. at 357. The New Jersey Supreme Court found that Miranda warnings should have been given to A.A. in the presence of his mother to serve as a buffer to help the juvenile understand his rights. Id. at 358. The current matter is distinguishable from State in Interest of A.A. in that defendant is an adult and he elected not to waive his Miranda rights but continued to make incriminating statements although he was repeatedly advised to stop speaking. When he asked to speak with his parents, he had already been advised that his statements could be used against him and that the calls were being recorded.

Moreover, the trial court erroneously reasoned that there was no question in [it's] mind the calls constituted continuing questioning of defendant by allowing him to talk to his parents. (3T:20-9 to 20-16). Lt. Petroski did not suggest that defendant call his parents and there is no evidence in the record that there was any measure of compulsion on the part of Lt. Petroski that led defendant to request to speak with his parents. Therefore, the phone calls cannot be deemed the functional equivalent of interrogation. See Tiwana, 256 N.J. at 42.

Moreover, because the trial court's belief is not supported by the evidence presented during the suppression motion, the trial court's decision to suppress the statements made during the phone calls is "clearly mistaken" and so "wide of the mark" that "the interests of justice demand intervention and correction" by this Court. Elders, 192 N.J. at 244-45. Indeed, the trial court acknowledged that defendant continued to talk and make unsolicited incriminating statements throughout the entire process despite being told by Lt. Petroski not to talk about the case. (3T:19-23 to 20-9). However, the trial court failed to consider that defendant requested to make the calls to inform his mother who resides in Maine that he was in custody and will be transported to the county jail. (1T:68-8 to 69-2). Defendant specifically stated the purpose for the call, and although he had made many voluntary incriminating statements, Lt. Petroski could not have predicted that defendant would have used the phone calls for reasons other than what he requested. Therefore, Lt. Petroski cannot be held accountable for defendant's voluntary incriminating statements during the phone calls. See Innis, 446 at 301-02.

An important fact that goes against the trial court's reasoning that the phone calls are the functional equivalent of interrogation is Lt. Petroski advising defendant that if his mother did not pick up the call he should leave a voicemail informing her that he was going to be transported to the county jail and would call her once he arrived there. (1T:84-16 to 84-18). Moreover, once defendant's mother called back as defendant was leaving a voicemail and asked what happened, Lt. Petroski

immediately told defendant to only tell her that they are in the room and that he will be later transported to the jail. (1T:85-7 to 85-9). The question posed by defendant's mother cannot be deemed interrogation because it was not posed by law enforcement or for the benefit of law enforcement. See P.Z., 152 N.J. at 102. In issuing its opinion, the Court overlooked these facts. It is simply not logical that Lt. Petroski took affirmative steps to prevent defendant from speaking about the case while at the same time questioning him through phone calls defendant requested to make to his parents. If Lt. Petroski sought to obtain incriminating statements from defendant, he did not need to take any actions because defendant freely spoke to himself out loud about the case for extended periods of time. (1T:24-14 to 32-15); (1T:103-6 to 105-23). In fact, defendant volunteered that gunshot residue would be found on his sweatshirt, (1T:78-10 to 78-25), and he told Lt. Petroski which handgun he used during the shooting. (1T:105-25 to 129-21). Defendant did not say anything during his phone calls with his parents that he had not already said or to which he had not already alluded. Because Lt. Petroski did not interrogate defendant or engaged in what would be considered the functional equivalent of interrogation, he was not obligated to re-Mirandized defendant before the phone calls to his parents. Therefore, defendant's statements made "freely and voluntarily without any compelling influences" during the phone calls are admissible evidence. See Innis, 446 U.S. at 299-300.

CONCLUSION

For these reasons, the State respectfully requests that this Court grant the State's motion for leave to appeal and reverse the trial court's order suppressing the statements defendant made during phone calls to his parents.

Respectfully submitted,
ELIZABETH VOGELSONG-PARVIN
ACTING GLOUCESTER COUNTY
PROSECUTOR

BY: S/NARLINE CASIMIR
NARLINE CASIMIR
SDAG/AAP
Attorney ID 047572013

DATED: September 20, 2024

PHIL MURPHY
Governor

TAHESHA WAY
Lt. Governor

State of New Jersey
OFFICE OF THE PUBLIC DEFENDER
Appellate Section
ALISON PERRONE
Deputy Public Defender
31 Clinton Street, 9th Floor, P.O. Box 46003
Newark, New Jersey 07101
Tel. 973.877.1200 · Fax 973.877.1239

JENNIFER N. SELLITTI
Public Defender

November 21, 2024

SAMUEL CARRIGAN
ID. NO. 379212021
Assistant Deputy Public Defender

Of Counsel and
On the Letter-Brief

LETTER BRIEF ON BEHALF OF DEFENDANT-RESPONDENT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0344-24

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Appellant,	:	On Motion for Leave to Appeal from an Interlocutory Order, Superior Court of New Jersey, Law Division
v.	:	Gloucester County, Granting in part Defendant's Motion to Suppress
ZACHARY LAHNEMAN,	:	
		Indictment 23-02-0082-I
Defendant-Respondent.	:	
		Sat Below: Hon. John C. Eastlack, Jr., J.S.C.
		DEFENDANT IS CONFINED

Your Honors:

This letter is submitted in lieu of a formal brief pursuant to Rule 2:6-2(b).

TABLE OF CONTENTS

PAGE NOS.

PRELIMINARY STATEMENT

The State appeals following a grant of its motion for reconsideration; on reconsideration, the trial court corrected a minor factual error but upheld its earlier ruling to suppress statements made by Mr. Zachary Lahneman while in custody. The Hon. Judge Eastlack, J.S.C., decided the underlying suppression motion regarding the admissibility of statements Lahneman made the day of his arrest near the scene of a fatal shooting. Several of Lahneman's early statements were found to be admissible because they were unprompted and spontaneous. But Judge Eastlack found constitutional violations arising from police conduct surrounding a later formal interview and a subsequent process in which the police recorded phone calls Lahneman made to his parents. The Miranda violation requiring suppression of the formal interview is not contested by the State; rather, this appeal is limited to the phone call process which Judge Eastlack found to constitute the functional equivalent of continued interrogation. Because the record demonstrates that Judge Eastlack's factual findings were well-supported and his decision to suppress was well within the permissible bounds of discretion, this Court should affirm the portion of his order finding the phone call recordings to be inadmissible.

COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

Mr. Lahneman accepts the State's recitation of the case's basic procedural history and adopts the State's transcript designation codes. (Pb 1-2)[2] The facts were found by the Hon. Judge Eastlack, J.S.C., based on testimony and exhibits presented over several days of hearings in early 2024. (2T 3-10 to 23)

Officers from the Washington Township Police Department responded to an alleged shooting near the town's municipal golf course on November 16, 2022.[3] (2T 9-19 to 10-13) The victim, Mr. Victor Marrero, was deceased when officers arrived. (2T 10-14 to 11-16) Personnel from the golf course yelled to the officers and pointed them towards a nearby individual, Mr. Zachary Lahneman. (2T 11-16 to 20) Officers arrested Lahneman, patted him down, and walked him to a police vehicle. (2T 11-21 to 12-7) Body-worn camera footage showed the officers asking Lahneman what had happened. (2T 12-13 to 14-16) Lahneman said that Mr. Marrero had punched him in the face and taken Lahneman's gun, but Lahneman took the gun back. (2T 14-2 to 16) Lahneman had an injury on his face which he attributed to Mr. Marrero. (2T 20-9 to 14)

---

[1] Due to their overlapping nature, the procedural history and facts are presented for the convenience of the Court.

[2] Pb – Plaintiff's brief
Pa – Plaintiff's appendix

[3] The State's brief mistakenly gives the date as November 6, 2022. (Pb 2)

Lahneman was transported to the Gloucester County Prosecutor's Office (GCPO) and made additional statements before, during, and after formal questioning. (2T 17-23 to 18-18, 19-22 to 20-21-2)

Lahneman was interrogated by Detective Krystal Santiago of the GCPO. (1T 15-4 to 8, 33-4 to 35-4; 2T 18-7 to 13) The recording of the interrogation showed that Detective Santiago reviewed the Miranda[4] warnings with Lahneman and had him initial on a waiver form next to each warning. (2T 19-12 to 21) But when Detective Santiago asked Lahneman if he was willing to waive his rights and speak to her without a lawyer, Judge Eastlack found that Lahneman clearly stated, "No, I'm not going to do it." (2T 19-22 to 25, 36-8 to 18) Detective Santiago did not ask Lahneman to clarify what he meant by this. (2T 36-23 to 37-14) Rather, Judge Eastlack found that Detective Santiago "essentially ignore[d] his clearly uttered statement, and then direct[ed] him to sign the paragraph and enter his printed name." (2T 37-5 to 7) During the formal questioning, Lahneman admitted that he was on the scene and that he "blacked out," but he did not acknowledge shooting the victim. (2T 20-9 to 18) The interrogation started at 2:11 p.m. and ended around 2:47 p.m. when Lahneman said, "I want to talk to my lawyer." (2T 38-22 to 25)

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

After the formal questioning, Lahneman was booked and medically examined to be cleared for incarceration. (2T 22-16 to 24-19) Lahneman was returned to the GCPO and was given the opportunity to make a phone call by Lieutenant Petroski. (2T 24-20 to 24) Lt. Petroski told Lahneman that he could not have his cell phone back because it was being held as evidence. (2T 24-23 to 25-2, 25-7 to 11) Instead, Lt. Petroski would make the calls to Lahneman's parents from Lahneman's cell phone and let them talk over speakerphone. (2T 24-24 to 25-20) Lt. Petroski knew that Lahneman had asserted his right to counsel several hours ago and did not re-warn him; Lahneman did not ask to speak with Lt. Petroski about the crime or ask for him to be present during the calls. (1T 142-17 to 19; 2T 25-15 to 16, 46-5 to 16)

On the call to his mother, Lahneman made incriminating statements in response to her questions; he said that he did not intend to shoot the victim, but he feared for his life because he thought the victim was trying to get his gun and kill him. (2T 25-21 to 26-2) Lahneman asked his mother to contact a lawyer, and his mother said that she could not afford an attorney. (2T 26-7 to 9) At this point, Lt. Petroski identified himself, made clear that he was also on the call, and explained the detention process before ending the call. (2T 26-9 to 17) Lt. Petroski then placed a call to Lahneman's father. (2T 26-18 to 20) This time, Lt. Petroski identified himself and said he was on the call at the very beginning.

(2T 26-21 to 23) There was only limited discussion between Lahneman and his father about what had happened earlier that day. (2T 26-23 to 25)

Judge Eastlack decided the underlying suppression motion after making fact-sensitive determinations about the admissibility of various statements made by Lahneman on the day of the arrest. The five groups of statements, and Judge Eastlack's rulings on each, were:

1. Statements Lahneman volunteered to officers responding to the scene – **admissible**. (2T 51-17 to 53-14)

2. Statements Lahneman made, without prompting, while talking to himself alone in a recorded interview room – **admissible**. (2T 53-15 to 54-1)

3. Statements Lahneman volunteered during booking as officers were asking routine pedigree questions – **admissible**. (2T 54-2 to 11)

4. Statements Lahneman made in response to formal questioning at the GCPO – **not admissible**. (2T 51-2 to 11)

5. Statements Lahneman made at GCPO during the phone calls in response to his parents in the presence of Lt. Petroski – **not admissible**. (2T 51-12 to 16)

Judge Eastlack found that Lahneman's statements in the interrogation were inadmissible because Detective Santiago did not perform the minimum of asking to clarify Lahneman's statement that he would not waive his rights; consequently, she failed to "scrupulously honor" his rights and failed to follow New Jersey's Miranda procedure. (2T 37-23 to 38-20) Judge Eastlack's decision to suppress the interview was not challenged by the State on the motion

for reconsideration. (3T 21-4 to 10) Accordingly, the State's appeal only addresses Judge Eastlack's determination to suppress the statements in the final group, the recorded phone calls. (Pb 2)

Judge Eastlack determined that the phone call recordings should be suppressed after concluding that Lt. Petroski's actions concerning the phone calls with Lahneman's parents constituted "the functional equivalent of interrogation." (2T 46-18 to 20) Judge Eastlack found that Lahneman's invocation of his right to counsel to end the interview was still effective when Lt. Petroski initiated the phone calls from Lahneman's cell phone. (2T 49-19 to 50-2) And Lt. Petroski knew about the invocation when he initiated the phone calls. (1T 142-17 to 19; 2T 46-5 to 16, 49-19 to 50-2) Because this constituted continued interrogation, officers needed to show they had "scrupulously honored" his invocation of rights for the recording to be admissible. (2T 37-15 to 38-15) Judge Eastlack found that any effort by Lt. Petroski to re-Mirandize Lahneman after he had already unequivocally invoked his rights would have been tainted, but Lt. Petroski "didn't even make the effort to do so." (2T 46-20 to 25) Judge Eastlack also found that Lt. Petroski did not inform Lahneman's mother that he was on the call until the end, after she had questioned Lahneman about what happened and Lahneman had responded with incriminating statements. (2T 25-21 to 26-17, 54-25 to 55-21) Because the phone call

procedure was the functional equivalent of direct questioning following his invocation, Judge Eastlack concluded that Lahneman's rights were violated and that suppression of the statements was required. (3T 20-10 to 16)

The State moved for reconsideration on the grounds that Judge Eastlack included, among his factual findings, that Lt. Petroski had told Lahneman he could not call his parents on the GCPO's phones because they were recorded lines. (3T 4-6 to 21) Judge Eastlack granted the motion for reconsideration and acknowledged that Lt. Petroski had not said the GCPO lines were recorded. (3T 14-10 to 15-14) Rather, Judge Eastlack had interpreted Lt. Petroski's statement that the GCPO phones used banked numbers—preventing people from calling them back—to mean they were recorded lines.[5] (3T 14-23 to 15-14)

Nonetheless, Judge Eastlack found that the facts bearing on the statement's admissibility remained the same: Lahneman had invoked his right to counsel to end questioning, Lt. Petroski did not try to re-warn him before placing the calls to his parents from Lahneman's cell phone, and the call process was the functional equivalent of interrogation. (3T 18-17 to 19-4, 20-8 to 22)

---

[5] At the same time, Lt. Petroski acknowledged that the GCPO phones were not the only option for Lahneman's calls to his parents. (1T 141-9 to 17) Lt. Petroski testified acknowledged that he could have used his work phone but that did not family members of suspects calling him back for updates. (1T 141-12 to 142-8) When asked if it was possible for Lahneman to have a private, unrecorded phone call with his mother, Lt. Petroski testified, "No, we did not have that capability." (1T 142-9 to 16)

Consequently, the revised factual finding did not affect his conclusion that the phone call process was the functional equivalent of a continued interrogation despite Lahneman's invocation of his rights, such that suppression was required. (3T 15-11 to18-22, 19-5 to 7, 20-23 to 21-10)

LEGAL ARGUMENT

POINT I

THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION ON THE MOTION FOR RECONSIDERATION BY SUPPRESSING STATEMENTS ELICITED AFTER LAHNEMAN CLEARLY INVOKED HIS RIGHT TO COUNSEL.

Mr. Lahneman moved to suppress numerous statements from November 16, 2022; the State appeals on a motion for reconsideration that upheld suppression of the statements recorded by Lt. Petroski during Lahneman's calls to his parents. (2T 11-1 to 7; Pb 1) Judge Eastlack concluded that the statements should be suppressed because officers did not re-warn Lahneman after he had invoked his rights, and the phone call process used by law enforcement was the functional equivalent of interrogation. (2T 46-18 to 20; 3T 15-15 to 18-22) Because the decision was a proper exercise of the trial court's discretion based on sound factual findings, the suppression of the phone call recordings should be affirmed.

Appellate courts "review a trial court's decision on a motion for reconsideration under an abuse of discretion standard." Matter of Estate of Jones, 477 N.J. Super. 203, 216 (App. Div. 2023) (citing Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015)). "An abuse of discretion 'arises when a decision is ["]made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.["]'" Ibid. (quoting Kornbleuth v. Westover, 241 N.J. 289, 302 (2020)).

Under this deferential standard of review, motion judges are "entitled to draw inferences from the evidence and make factual findings based on" their "feel of the case," and their findings are entitled to deference unless they are "'clearly mistaken' or 'so wide of the mark' that the interests of justice" require appellate intervention. State v. Elders, 192 N.J. 224, 245 (2007) (citations omitted). "A disagreement with how the motion judge weighed the evidence in a close case is not a sufficient basis for an appellate court to substitute its own factual findings to decide the matter." Ibid.

"The privilege against self-incrimination, as set forth in the Fifth Amendment to the United States Constitution, is one of the most important protections of the criminal law." State v. Sims, 250 N.J. 189, 211 (2022) (quoting State v. Presha, 163 N.J. 304, 312 (2000)). New Jersey's state law

provides "more expansive protections against self-incrimination than the Fifth Amendment." State In Interest of A.A., 240 N.J. 341, 358 (2020). In New Jersey, the State must "prove beyond a reasonable doubt that the individual knowingly, intelligently, and voluntarily waived those rights 'in light of all the circumstances.'" State v. O.D.A.-C., 250 N.J. 408, 420 (2022) (quoting Sims, 250 N.J. at 211).

A trial court's factual findings on a motion to suppress a statement are reviewed deferentially. State v. S.S., 229 N.J. 360, 379-80 (2017). When faced with an admissibility determination, appellate courts "give deference to the trial court's factual findings so long as they are supported by sufficient credible evidence in the record." O.D.A.-C., 250 N.J. at 425 (citing S.S., 229 N.J. at 379-81). A trial judge's legal conclusions are reviewed de novo. State v. Rockford, 213 N.J. 424, 440 (2013).

The purpose of the now-familiar Miranda warnings is "[t]o counteract the inherent psychological pressures in a police-dominated atmosphere that might compel a person 'to speak where he would not otherwise do so freely.'" S.S., 229 N.J. at 382 (quoting State v. Nyhammer, 197 N.J. 383, 400 (2009)). Miranda warnings must be provided before "either 'express questioning' or the 'functional equivalent' of interrogation." A.A., 240 N.J. at 352 (quoting Rhode Island v. Innis, 446 U.S. 291, 300-01 (1980)). Moreover, once a person has

invoked the right to remain silent, this choice must be "scrupulously honored" by investigators. State v. Hartley, 103 N.J. 252, 261 (1986). The "failure [to] scrupulously honor a previously-invoked right to silence renders unconstitutionally compelled any resultant incriminating statement made in response to custodial interrogation." Ibid. "[T]he admissibility of statements made by an accused after invoking the right to silence depends on the resolution of two separate inquiries: first, was the right scrupulously honored; second, was the waiver knowing, intelligent, and voluntary?" State v. Fuller, 118 N.J. 75, 84 (1990). But "[i]f the police have not scrupulously honored the suspect's right to silence, the court should not reach the waiver issue." State v. Adams, 127 N.J. 438, 445 (1992). Rather, if law enforcement asks "the accused to reconsider a previously-announced decision to remain silent," they must at the minimum readminister Miranda warnings as a reminder that the suspect can refuse. Fuller, 118 N.J. at 84. Although "fresh Miranda warnings alone" are not sufficient to satisfy the requirement to scrupulously honor the defendant's right, "they are indispensable." Ibid.

In Innis, the U.S. Supreme Court held "that Miranda applies whenever a suspect is in police custody and 'is subjected to either express questioning or its functional equivalent,' which may include 'any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an

incriminating response from the suspect.'" State v. Tiwana, 256 N.J. 33, 42 (2023) (quoting Innis, 446 U.S at 300-301). In New Jersey, the Innis test is applied "in accordance with its plain meaning." A.A., 240 N.J. at 354.

Here, Judge Eastlack determined that the phone call procedure was the functional equivalent of interrogation, warranting suppression. (2T 48-12 to 25; 3T 15-15 to 23) In that regard, Judge Eastlack applied the Innis test just as New Jersey law requires: he examined the police's words and actions and found that they should have known they were reasonably likely to elicit an incriminating response. See A.A., 240 N.J. at 354 (quoting State v. Hubbard, 222 N.J. 249, 267 (2015)). As Judge Eastlack found, Lt. Petroski should have known by the time of the phone calls that the talkative Lahneman was reasonably likely to keep discussing the case if he was able to reach his parents, particularly since Lahneman had already incriminated himself in the constitutionally invalid interrogation. Nevertheless, Lt. Petroski arranged to let Lahneman contact his mother without her knowing from the outset that he was present and recording. Judge Eastlack applied the Innis test to the critical facts he found from the recordings and the testimony, properly exercising his discretion.

In that regard, Judge Eastlack applied the test our Supreme Court has recently applied to differing factual scenarios. In Tiwana, for instance, the Supreme Court found no questioning or its functional equivalent had occurred

when a defendant made incriminating statements immediately after a detective had introduced himself as the person investigating a car crash. 256 N.J. at 35-36. Because "[l]aw enforcement officers 'cannot be held accountable for the unforeseeable results of their words or actions,'" a detective who had only introduced himself could not have foreseen that this simple introduction was "likely to elicit an [immediate] incriminating response." Id. at 46 (alteration in original) (quoting Innis, 446 U.S. at 301-03).

The Tiwana Court compared that unprompted, spontaneous statement with the statement that was suppressed in State in Interest of A.A.: "Relying on Innis, we explained that 'A.A. was subjected to the "functional equivalent" of express questioning while in custody' because A.A.'s incriminating statements, although made to his mother, were also made in the presence of police officers." Tiwana, 256 N.J. at 44 (quoting A.A., 240 N.J. at 358). In A.A., the juvenile defendant's mother was brought to the police station and given a chance to speak with A.A. while officers were present in the room. Ibid. Police did not provide Miranda warnings before A.A.'s mother asked him questions and he had made "critical admissions." Ibid. (quoting A.A., 240 N.J. at 357). Thus, A.A. was subject to "the 'functional equivalent' of express questioning while in custody" because the unwarned statements were made in the presence of officers, and it was reasonably likely that his mother would elicit incriminating responses from

him. Ibid. (quoting A.A., 240 N.J. at 357-58). Notably, the Tiwana Court did not conclude that the analysis in A.A. was limited to the context of a juvenile case. Rather, it served as a clear example of a "functional equivalent of interrogation" that runs afoul of Miranda. Ibid. (quoting A.A., 240 N.J. at 344-45). Applying the plain meaning of the Innis test, the Court found that "[t]he police should have known it was reasonably likely that A.A.'s mother would elicit incriminating responses from him," making the statements inadmissible. Id. at 44 (quoting A.A., 240 N.J. at 357-58). Judge Eastlack recognized that the A.A. decision's use of the Innis standard was "equally applicable here." (2T 49-1 to 5) Thus, it was no abuse of discretion for Judge Eastlack to find the rationale for suppression in A.A. compelling when the police conduct in that case so closely matched what had happened to Lahneman. (2T 47-1 to 49-5; 3T 15-15 to 22)

The State takes issue with Judge Eastlack's citations to A.A., arguing it has no bearing here because Lahneman is an adult. (Pb 19) But our Supreme Court's analysis in Tiwana makes it clear that A.A. is a relevant demonstration of the "functional equivalent of interrogation" outside of juvenile cases. See Tiwana, 256 N.J. at 44 (comparing to unwarned but spontaneous statements of adult defendant). The State also argues that the phone call procedure was not an interrogation because officers did not compel Lahneman to request to speak

with his parents. (Pb 19) Lahneman's request to make the phone calls, however, does not bear on the ultimate inquiry. Here, an officer was present and recording Lahneman's calls made after his invocation and without the benefit of a re-warning. The statements were made in response to his mother's questions, which an officer should have known were at least reasonably likely to occur, making this the functional equivalent of an interrogation. Judge Eastlack had more than enough record support for his finding that police should have known this would elicit a response. Judge Eastlack even found that Lt. Petroski knew the phone call process would result in incriminating responses. (2T 55-6 to 25) His measured legal analysis, however, acknowledged that the officer's actual state of mind is not what matters—the Innis test asks whether officers should know their actions are reasonably likely to elicit an incriminating response. (3T 12 to 21-3) Judge Eastlack not only applied the correct legal test, but he found that the facts went beyond what was required to find the functional equivalent of interrogation.

The State's argument that "the interests of justice demand intervention and correction" of Judge Eastlack's decision to suppress requires looking past the uncontested factual finding that Lahneman had already invoked his rights and indicated that he did not want to answer more questions about the case. (Pb 8-9) Lahneman did not re-initiate questioning by asking to speak to his mother.

Cf. Fuller, 118 N.J. at 78 (suspect reinitiated questioning by asking officers direct questions that invited conversation about the crimes). Law enforcement knew that he had invoked his right not to speak without counsel. (2T 46-5 to 16) What occurred instead was what Judge Eastlack described as a "domino effect;" after Lahneman's clear statement that he did not wish to waive his rights was ignored by Detective Santiago, any further efforts to continue questioning would have been "tainted" at best. (2T 46-18 to 25; 3T 16-24 to 18-22) A proper—but likely defective—effort by law enforcement to resume questioning would have involved a new round of Miranda warnings; as Judge Eastlack observed, that re-warning simply never occurred. (3T 18-17 to 19)

In this regard, Judge Eastlack gave appropriate weight to his finding that Detective Santiago ignored Lahneman's first statement that he would not waive his rights. "[W]here the police fail to halt the questioning even temporarily, the ensuing danger of coercion and compulsion to confess is great, for the suspect perceives their conduct as an indication that the rights he has just been read mean nothing, and that he is going to be subjected to ongoing interrogation by the police until he talks." State v. Bey, 112 N.J. 45, 72 (1988). This is why courts have found that "any confession obtained after police flatly ignore a suspect's invocation 'is likely to be involuntary.'" Id. at 73 (quoting Martin v. Wainwright, 770 F.2d 918, 929 n.14 (11th Cir. 1985)).

When the facts show that the police ignored an invocation—as Judge Eastlack found happened here, as the State does not contest—suspects are pressured to believe that they have no choice but to speak. And improper methods for obtaining earlier statements can have lasting damaging effects: "A natural concern in those circumstances is that 'after an accused has once let the cat out of the bag by confessing, no matter what the inducement, he is never thereafter free of the psychological and practical disadvantages of having confessed.'" State v. Bullock, 253 N.J. 512, 535 (2023) (quoting State v. Carrion, 249 N.J. 253, 275-76 (2021)). At the time of the phone calls, Lahneman had no idea that the improperly elicited statements he had made in the formal interview just hours earlier were going to be suppressed.[6] Once the confession has been extracted, defendants may believe it is too late to exercise their rights, creating pressure to self-incriminate. That risk was especially acute here, where Lahneman made clear he did not want to re-initiate questioning with the police; he said he wanted to contact his mother to ask her to find him an attorney. (3T 20-8 to 22)

The concern that an accused who has had their rights violated feels that "the cat is out of the bag" is closely related to the fruit-of-the-poisonous-tree

[6] The State appears to share the view that the cat was out of the bag: "Defendant did not say anything during his phone calls with his parents that he had not already said or to which he had not already alluded." (Pb 21)

doctrine; this doctrine further supports affirming the trial court's ruling, even without the fact-finding that the phone call process was functionally equivalent to interrogation. See State v. O'Neill, 193 N.J. 148, 171 n.13 (discussing the two doctrines). "The fruit-of-the-poisonous-tree doctrine denies the prosecution the use of derivative evidence obtained as a result of a Fourth or Fifth Amendment violation." Ibid. (citing United States v. Patane, 542 U.S. 630, 642-44 (2004)). Under this principle, even later volunteered statements may need to be suppressed if they were induced by earlier constitutional violations. See Harrison v. United States, 392 U.S. 219, 225-26 (1968) (barring later use of testimony that was induced by prosecution's use of illegal confessions at first trial). If a defendant's confession is illegally induced in the first instance, then "a later confession always may be looked upon as fruit of the first." State v. Maltese, 222 N.J. 525, 548 (2015) (quoting O'Neill, 193 N.J. at 171 n.13).

Thus, even if the phone calls had not constituted further interrogation, Lahneman suppression still would have been required because of the uncontested Miranda violation that preceded the formal interview and the phone calls. Judge Eastlack demonstrated sound discretion when he found—after the uncontested violation—that the phone statements were fruit of the invalid interrogation. (2T 46-18 to 24) After the violation at the beginning of the interview, the State could not dispel the reasonable doubt regarding whether

Lahneman's subsequent statements were made with a knowing and voluntary waiver of his rights. (2T 33-3 to 34-9) Judge Eastlack considered these circumstances carefully and found that the procedures used here violated Lahneman's fundamental right against self-incrimination. (3T 17-11 to 19-7, 20-9 to 16)

Given the circumstances presented by the record, the decision to suppress the phone call recordings was a sound exercise of discretion. Judge Eastlack explained the clear basis—following established precedent—for his decisions on all five suppression determinations. (2T 51-17 to 55-5; 3T 16-8 to 17-3, 19-5 to 20-22) The State does not—and cannot—contest Judge Eastlack's suppression of the formal interview that occurred after the failure to follow Miranda. The one factual finding the State took issue with, regarding banked phone numbers, was already addressed on the motion to reconsideration. (3T 15-5 to 17) Once again, Judge Eastlack demonstrated sound discretion by revisiting his factual findings and determining that the key facts were unchanged: Lahneman's invocation of his rights was not respected, and the phone call process used here was the functional equivalent of interrogation. (3T 20-23 to 21-10)

Under the circumstances, it was clear that the words and actions of the police officers following the failed interrogation waiver procedure were

reasonably likely to elicit incriminating responses. The record demonstrates that Judge Eastlack considered the facts, reconsidered the facts, and correctly applied the law to reach a conclusion that was well within the bounds of his discretion.

CONCLUSION

For the reasons set forth in this brief, the trial court's orders suppressing the statements made during the recorded phone calls should be affirmed.

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender
Attorney for the Defendant-Respondent

BY: /s/ Samuel Carrigan
Assistant Deputy Public Defender
Attorney ID: 379212021

Dated: November 22, 2024

ELIZABETH VOGELSONG-PARVIN
ACTING GLOUCESTER COUNTY PROSECUTOR
By: NARLINE CASIMIR, ESQUIRE
SDAG/Acting Assistant Prosecutor
Attorney ID.: 047572013
GLOUCESTER COUNTY PROSECUTOR'S OFFICE
P.O. BOX 623
WOODBURY, NEW JERSEY 08096
(856) 384-5500
ncasimir@co.gloucester.nj.us

AMENDED REPLY BRIEF ON BEHALF OF THE PLAINTIFF-APPELLANT

Superior Court of New Jersey
Appellate Division
DOCKET NO: A-000344-24
CRIMINAL ACTION

		On Motion For Leave To Appeal From An Interlocutory Order
STATE OF NEW JERSEY	:	Of The Superior Court of New Jersey, Law Division
Plaintiff-Appellant	:	Gloucester County
		Granting, in part, Defendant's Motion to Suppress
v.	:	
ZACHARY LAHNEMAN,	:	PROS. FILE# 22-2473
		INDICTMENT# 23-02-0082-I
Defendant-Respondent	:	Sat Below:
		Hon. John C. Eastlack, Jr.,J.S.C.

Defendant is Confined

Your Honors:

Please accept this supplemental filing addressing points raised by counsel in their response to the State's appeal.

TABLE OF CONTENTS

LEGAL ARGUEMENT

I. THE STATE OBJECTS TO THE DEFENSE'S POSITION THAT THE HOLDING IN A.A. APPLIES TO ADULT DEFENDANTS AND THAT THE STATEMENTS SHOULD BE SUPPRESSED BASED ON THE "FRUIT OF THE POISONOUS TREE" DOCTRINE.

The defense argues that the New Jersey Supreme Court's analysis in Tiwana[1] "makes it clear that A.A.[2] is a relevant demonstration of the 'functional equivalent of interrogation' outside of juvenile cases." (Db 14). Moreover, under the doctrine of "the fruit of the poisonous tree," defendant's statements during the phone calls to his parents must be suppressed as they are derivative of the suppressed formal interview by Detective Krystal Santiago. (Db. 18). The State responds that the holding in A.A. does not create a *per se* rule that communication between a defendant and a parent in the presence of law enforcement is to be construed as interrogation requiring automatic Miranda[3] warnings. In addition, the State argues that the suppression of defendant's formal statement was not the result of nefarious tactics by Det. Santiago but rather a failure to clarify defendant's statement that he was "not going to do it" while she was reading the Miranda warnings before unequivocally invoking his right to remain silent and speak with an attorney.

[1] State v. Tiwana, 256 N.J. 33 (2023).
[2] State in the Interest of A.A., 240 N.J. 341 (2020).
[3] Miranda v. Arizona, 384 U.S. 436 (1966).

Therefore, the statements made during the phone calls cannot and must not be considered a continuation of defendant's formal statement.

In A.A., it is clear that the Court found that the actions by the police officers of placing the fifteen-year-old juvenile and his mother on opposite sides of the gate of a holding cell without any advisement of Miranda warnings and thereby obtaining incrimination statements from the juvenile constituted the "functional equivalent of express questioning while in custody." A.A., 240 N.J. at 358. However, the Court did not hold the position that interrogation occurred merely due to the familial relationship between the parties. The accused's age along with the fact that Miranda warnings were not administered contributed to the Court's finding of the "functional equivalent" of interrogation. The Court made the distinction that "to address the special concerns presented when **a juvenile** is brought into custody, **police officers should advise juveniles of their Miranda rights in the presence of a parent or guardian before the police question, or a parent speaks with, the juvenile**." Id. at 345. (emphasis added). The approach of thereafter letting the parent consult with the juvenile in private is to "afford parents a meaningful opportunity to help juveniles understand their rights and decide whether to waive them." Ibid. Moreover, "juveniles receive heightened protections when it comes to custodial interrogations for obvious reasons" as they "are typically less mature, often lack judgment, and are generally more vulnerable to pressure than adults." Id. at 354 (citing J.D.B. v. North Carolina, 564 U.S. 261 (2011)). This specific distinction by the A.A. Court makes it

clear that protections afforded to juveniles and the importance of being Mirandized in the presence of a parent or guardian and being given the opportunity to consult privately does not apply to adults. In A.A., the mother did not serve as a buffer between the police and the juvenile as envisioned in State v. Presha, 163 N.J. 304 (2000), but "unwittingly assisted the police and helped gather incriminating evidence." Id. at 358. In fact, the juvenile in A.A. was never Mirandized at any point while in custody and neither was his mother advised that he had the right to remain silent. Id. at 347. While the Court in Tiwana cites A.A. as a clarification of the meaning of "functional equivalent of interrogation," see Tiwana, 256 N.J. 44, it does not stand for the proposition that conversations between adult defendants and their parents in the presence of law enforcement are to automatically be considered interrogation or its functional equivalent that require the administration or re-administration of Miranda rights.

Again, the present case is vastly dissimilar to A.A. in that defendant is an adult who had been Mirandized and invoked his right to remain silent. (2T:19-22 to 21-8). Yet, he continued to make incriminating statements whether alone or in the presence of law enforcement without any questioning. (1T:24-14 to 32-15); (1T:103-6 to 105-23); (1T:149-2 to 149-13). His request to speak with his parents and girlfriend occurred after he invoked his Miranda rights. (1T:68-8 to 69-2). He also stated explicitly the reasons for the calls – to let his mother, who is in Maine, and his girlfriend know where he is, Ibid., and he wanted an attorney to be contacted on

his behalf. (1T:90-2, 93-1 to 93-7). It is clear that not only was defendant advised of his right to remain silent, he did not need his mother to act as a buffer to explain these rights to him. Indeed, he clearly understood his Miranda rights when he invoked them, thereby terminating Det. Krystal Santiago's questioning and requesting to speak with his mother and his attorney. (2T:19-22 to 21-8).

The matter at bar is more akin to Arizona v. Mauro, 481 U.S. 520 (1987). In that case, a father initially made voluntary and unprompted statements that he killed his son but once Mirandized, he invoked his right to remain silent and to speak with an attorney. Id. at 521-22. His wife, who was also a suspect in the matter and was being questioned in another room, insisted on speaking with the father despite reluctance by law enforcement. Id. at 522. She was brought into the room to speak with her husband in the presence of law enforcement and their conversation was taped-recorded. Ibid. Officers advised that they could only speak with each other in the presence of law enforcement who would be able to hear their conversation. Ibid. Officers placed the tape recorder on the desk in plain sight. Ibid. After the wife expressed despair, the husband told her not to answer any questions until a lawyer is present. Ibid. The conversation between the husband and wife was introduced at trial to negate the husband's insanity defense. Id. at 523. The U.S. Supreme Court concluded that the police's actions in Mauro did not amount to interrogation or its "functional equivalent" under Miranda and Innis. Id. at 527. Neither did allowing the wife to speak with her husband amount to "the kind of psychological ploy that

properly could be treated as the functional equivalent of interrogation." Ibid. The Court did not find that the wife was sent into the room to speak with the husband to elicit incriminating statements, and the officer's presence during the conversation was not improper because there were legitimate reasons for the officer remaining in the room. Id. at 528. The police stayed in the room out of safety concerns, the risk of a plot for escape, the parties cooking up a lie or swapping statements, and/or an attempt to smuggle in a weapon." Id. at 523-24. Moreover, the Court acknowledged that there was a possibility that the husband would incriminate himself while speaking with his wife and that the officers were aware of that possibility. However, the Court opined that "officers do not interrogate a suspect simply by hoping that he will incriminate himself." Id. at 529.

Similarly, in the present case, law enforcement did not arrange the phone calls between the defendant and his parents to elicit additional incriminating statements. Rather, defendant insisted on speaking with his parents and advised that he wanted to let his mother, who resides in Maine, and his girlfriend know that he was in custody and will be transported to the county jail. (1T:68-8 to 69-2). He also wanted his mother to call an attorney on his behalf, indicating that he understood the importance of having an attorney and the distinction between speaking with his mother and an attorney. Lt. Petroski advised defendant that the calls to his parents will be recorded and he will remain in the room to handle the cell phone that had been seized as evidence. (1T:73-21 to 74-15). Defendant agreed to these conditions.

Ibid. Additionally, once defendant's mother called back and defendant picked up the phone, Lt. Petroski audibly told defendant to inform his mother that he was in the room as well. (1T:85-7 to 85-9). Lt. Petroski did not try to hide his presence from the mother who could not see him through the phone but could hear him. The mere possibility that Lt. Petroski could have known that the talkative defendant who had already made multiple incriminating statements could again incriminate himself while speaking with his parents does not constitute interrogation or its functional equivalent. See Mauro, 481 U.S. at 529.

Lastly, while the State does not contest the suppression of all statements made by defendant to Det. Santiago after he stated, "No, I'm not going to do it" while she was reading his Miranda rights, (2T:19-22 to 21-8); (2T:51-2 to 51-11), the State argues that the statements made by defendant during the phone calls were not derived from that interview. The doctrine of "the fruit of the poisonous tree" does not apply because statements made during the phone calls did not stem from Det. Santiago's failure to clarify defendant's equivocal waiver. Rather, the statements came from defendant's desire to communicate his current and eventual location to his parents as well as to request that they hire an attorney on his behalf. Defendant's incriminating statements were solely his doing as he had previously made many unprompted statements. In fact, the incriminating statements made to Det. Santiago before she administered the Miranda warnings were deemed admissible by Judge Eastlack. (2T:56-4 to 57-1).

CONCLUSION

For these reasons, the State respectfully requests that this Court grant the State's motion for leave to appeal and reverse the trial court's order suppressing the statements defendant made during phone calls to his parents.

Respectfully submitted,

ELIZABETH VOGELSONG-PARVIN
ACTING GLOUCESTER COUNTY
PROSECUTOR

BY: *S/NARLINE CASIMIR*
NARLINE CASIMIR
SDAG/AAP
Attorney ID 047572013

DATED: December 18, 2024