

**RECORD IMPOUNDED**

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

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4721-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

FRANKLIN GUAMAN,

Defendant-Appellant.

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Submitted April 10, 2018 – Decided April 27, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,  
Law Division, Hudson County, Indictment No.  
14-02-0304.

Joseph E. Krakora, Public Defender, attorney  
for appellant (Stephen W. Kirsch, Assistant  
Deputy Public Defender, of counsel and on the  
brief).

Gurbir S. Grewal, Attorney General, attorney  
for respondent (Frank Muroski, Deputy Attorney  
General, of counsel and on the brief).

PER CURIAM

Defendant Franklin Guaman appeals from his conviction, focusing on a June 30, 2015 order denying his motion to suppress his statement to police. We affirm.

After denial of his motion to suppress evidence, defendant pled guilty to second-degree endangering the welfare of a child, N.J.S.A. 2C:24-4a.<sup>1</sup> The remaining charges against defendant were dismissed. In accordance with the plea agreement, defendant was sentenced to three years in prison.

The judge conducted an evidentiary hearing on defendant's suppression motion. At the hearing, a detective from the Special Victim's Unit at the Hudson County Prosecutor's Office testified for the State. The detective, who interviewed defendant, stated that she introduced herself to defendant, informed defendant that the victim had made allegations against him, and read defendant his Miranda<sup>2</sup> rights in Spanish. The detective further testified that she handed defendant a form, acknowledging that defendant understood his Miranda rights, and asked defendant to sign the Spanish version of the form if he understood his rights.

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<sup>1</sup> Defendant was alleged to have sexually assaulted a minor to whom he was related.

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

Defendant responded that he understood his rights but had "a question." The following exchange took place between defendant and the detective:

DEFENDANT: Yes, I understand them but I have a question. I'm going to sign, but before I sign don't I need to know precisely the gravity of the case? Why, in others words do I need of a lawyer? I really do not need one, but do I need to sign now before I consult . . . .

DETECTIVE: I need you to understand what's going on. The little girl . . . has made allegations against you of sexual abuse, ok? Before I can talk to you, I need you to understand your rights, ok?

DEFENDANT: Ok.

DETECTIVE: Ok, by signing that you are saying that you understand your rights, ok and that you don't need . . . .

DEFENDANT: Ok, just to know what my rights are, that I know what my rights are.

DETECTIVE: Yes.

DEFENDANT: Ok, where?

DETECTIVE: I need you to initial here, in each one and sign at the bottom.

DEFENDANT: In all of these?

DETECTIVE: Yes. The ones that are in Spanish. And if you understand your rights that I read to you, sign down here; also if you want to talk to me.

After this conversation, defendant signed the Miranda form, acknowledging he understood his rights, waived his rights, and agreed to answer the detective's questions. Defendant then admitted to the detective that he inappropriately touched the minor victim for his own sexual gratification.

At the conclusion of the evidentiary hearing, the judge denied the suppression motion. The judge found defendant was not in custody at the time the statement was made and that defendant failed to assert his right to counsel before speaking with the detective.

On appeal, defendant argues:

POINT I

THE MOTION TO SUPPRESS DEFENDANT'S STATEMENT SHOULD HAVE BEEN GRANTED; CONTRARY TO THE MOTION JUDGE'S RULING, DEFENDANT WAS IN CUSTODY AND MADE AT LEAST AN AMBIGUOUS ASSERTION OF HIS RIGHT TO COUNSEL THAT NEEDED TO BE ADDRESSED BY POLICE BEFORE THE INTERROGATION COULD PROCEED.

Defendant argues the judge erred in denying the motion to suppress his statement to the detective because he asserted his right to counsel. The State argues defendant's appeal is procedurally barred, because defendant failed to preserve his right to appeal the denial of his suppression motion.

The plea form initialed and signed by defendant specifies defendant understood he was waiving his right to appeal the denial

of all pretrial motions, with the exception of those motions contemplated under Rule 3:5-7(d) or Rule 3:28(g). The plea form had a section preserving the right to appeal specifically enumerated pretrial motions. However, there is nothing written on the signed plea form preserving defendant's right to appeal the denial of his motion to suppress his statement.

Although the signed plea form and the plea hearing transcript do not support defendant's preservation of the right to appeal denial of his motion to suppress, defendant contends he preserved his right to appeal during the sentencing hearing. While there was a discussion during the sentencing hearing regarding defendant's right to appeal, the State never agreed that defendant properly preserved the issue for appeal.

It is well settled that "a defendant who pleads guilty is prohibited from raising, on appeal, the contention that the State violated his constitutional rights prior to the plea." State v. Knight, 183 N.J. 449, 470 (2005) (quoting State v. Crawley, 149 N.J. 310, 316 (1997)). Only motions for suppression based on an unlawful search and seizure automatically survive the entry of a guilty plea. See State v. Greeley, 178 N.J. 38, 50-51 (2003); Pressler & Verniero, Current N.J. Court Rules, cmt. 4 on R. 3:5-7 (2018). As this matter does not involve suppression of unlawfully seized evidence, defendant was required to "enter a conditional

plea of guilty reserving on the record the right to appeal from the adverse determination of any specified pretrial motion" consistent with Rule 3:9-3(f).

Based on our review of the plea form and transcript of the plea hearing, defendant failed to preserve his right to appeal the denial of his motion to suppress his statement in accordance with Rule 3:9-3(f). Where a defendant fails to preserve the right to appeal the admission of his or her statement to the police per Rule 3:9-3, defendant is precluded from raising the issue on appeal. See State v. Brown, 352 N.J. Super. 338, 349-51 (App. Div. 2002). Thus, defendant waived his right to challenge the judge's denial of his suppression motion when he entered an unconditional guilty plea. See Knight, 183 N.J. at 470-71.

We reject defendant's argument that statements made by the sentencing judge preserved the right to appeal the denial of the suppression motion. The sentencing judge simply stated that defendant could still appeal from his conviction. We do not find any of the statements by the sentencing judge support preservation of defendant's right to appeal the denial of his motion to suppress his statement to the detective.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION