SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2094-22

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JUSTIN N. SAAVEDRA, a/k/a
JUSTIN SAAVEDRA, and
JUSTIN NINO SAAVEDRA,

Defendant-Appellant.

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Argued May 20, 2024 – Decided May 28, 2024

Before Judges Mawla, Marczyk, and Vinci.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Indictment No. 18-06-0096.

Steven E. Braun argued the cause for appellant.

Steven K. Cuttonaro, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Steven K. Cuttonaro, of counsel and on the brief).

PER CURIAM

Defendant Justin N. Saavedra appeals from his convictions following a bench trial for: second-degree endangering the welfare of a child by storing and file-sharing items depicting the sexual exploitation or abuse of a child, N.J.S.A. 2C:24-4(b)(5)(a)(iii) (count one); second-degree endangering the welfare of a child by distributing items depicting the sexual exploitation or abuse of a child, N.J.S.A. 2C:24-4(b)(5)(a)(i) (count two); and third-degree endangering the welfare of a child by knowingly possessing and viewing less than 1,000 items depicting the sexual exploitation or abuse of a child, N.J.S.A. 2C:24-4(b)(5)(b) (count three). He also challenges his sentence.

Defendant raises the following points on appeal:

> POINT I - THE CONVICTION MUST BE REVERSED BECAUSE OF STRUCTURAL ERROR, TO WIT: THE TRIAL COURT LACKED JURISDICTION TO CONDUCT A BENCH TRIAL DUE TO THE FAILURE TO PROPERLY VOIR DIRE DEFENDANT REGARDING HIS ELECTION OF A BENCH TRIAL AND THE FAILURE TO SUBMIT THE REQUIRED FORM INDICATING THAT DEFENDANT UNDERSTOOD THE RIGHTS HE WOULD BE FORFEITING BY HIS ELECTION OF A BENCH TRIAL (NOT RAISED BELOW).
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> POINT II - THE STATE FAILED TO ESTABLISH BEYOND A REASONABLE DOUBT THAT DEFENDANT WAS THE INDIVIDUAL WHO UPLOADED, POSSESSED, OR DISTRIBUTED THE CHILD PORNOGRAPHY. THE TRIAL COURT

SHOULD HAVE GRANTED THE DEFENSE MOTION FOR A JUDGMENT OF ACQUITTAL.

POINT III - THE TRIAL COURT SHOULD HAVE GRANTED THE DEFENSE MOTION TO SUPPRESS DEFENDANT'S STATEMENT BECAUSE [THE LEAD INVESTIGATING] DETECTIVE FAILED TO ADEQUATELY DISCUSS WHETHER DEFENDANT UNDERSTOOD HIS WAIVER RIGHTS AS REQUIRED BY MIRANDA.[1]

POINT IV - THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE (NOT RAISED BELOW).

POINT V - THE SENTENCE IMPOSED WAS EXCESSIVE (NOT RAISED BELOW).

We need not repeat the facts at length because the parties are familiar with them, and a full recitation is not required to adjudicate the central issue of this appeal raised by defendant in Point I, or the secondary issue in Point III. We will address them in reverse order.

I.

In Point III, defendant argues the trial judge erred when he denied his motion to suppress his statement to the lead investigating detective because the detective failed to discuss whether defendant waived his Miranda rights after reading them to him. Defendant asserts his waiver was invalid because it did

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

not comply with the Supreme Court's holding in State v. Tillery, 238 N.J. 293 (2019).

The salient facts relating to the Miranda issue were adduced during the suppression motion hearing at which Detective Laura Hurley, of the Division of Criminal Justice Computer Analytics and Technology Unit, was the sole witness. On July 29, 2017, she connected to defendant's IP[2] address through a file-sharing program called BitTorrent. She downloaded seventy-nine files from the address. Forty-three files contained images and videos of children under the age of eighteen engaged in sexual acts. The files also contained exploitative photographs of children. Some were labeled with "PTSC," which stands for "Pre[-]Teen Soft Core," or "PTHC," for "Pre[-]Teen Hard Core."

Detective Hurley prepared a subpoena for records relating to defendant's IP address. The subpoenaed records revealed the Verizon subscriber to the internet service was defendant's mother XioMara or Karina Zelada[3] and gave her address in Clifton. On September 28, 2017, Detective Hurley and other law enforcement officers executed a search warrant at the address. Among the eight people living in the home was defendant.

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[2] Internet Protocol.

[3] Zelada is addressed as both Xiomara and Karina in the record.

Detective Hurley first spoke with Zelada and read Zelada her Miranda rights from a time and date-stamped card. Next, the detective spoke with defendant. He was sitting in a chair in the garage wearing handcuffs. According to Detective Hurley, defendant "appeared relatively calm" and "alert." She introduced herself and identified her law enforcement agency. Defendant then complimented Detective Hurley on how the police "entry into the residence was very smooth and expressed his interest in wanting to go into law enforcement."

Detective Hurley read defendant his Miranda rights in English from a card. She printed his name on the card to "memorialize the reading of Miranda rights at that time." She asked defendant if he understood his rights, and he answered that he did. Detective Hurley advised defendant the search warrant was related to an internet crime involving child pornography and asked him if he used file-sharing programs. He stated he used UTorrent and TOR browser.[4] She noted UTorrent was significant because it was "the BitTorrent software client that was reported in the investigative downloads on July 29[]."

Defendant told Detective Hurley "his computer had been acting funny recently and that files may have been downloaded when he was searching for

[4] According to Detective Hurley, TOR is "The Onion Router" and "[i]t is a free software program that is used to . . . search the [i]nternet anonymously."

pornography." He informed her where his devices were and provided passwords for them. She asked defendant if he shared his password with anyone, and he told her "he did not." Their conversation lasted "[a]pproximately eight minutes."

Detective Hurley then interviewed another member of the household. Afterwards, she spoke with defendant again and asked for consent to search his car. Defendant agreed, and the detective filled out a consent to search form, which defendant signed.

Meanwhile, other officers searched the rooms of the house and conducted "forensic previews of [defendant's] electronic devices." Detective Hurley testified that after defendant's vehicle was searched, she learned the UTorrent program was "found on the desktop computer belonging to [defendant] in his bedroom, and . . . there were torrent files that had file names indicative of child pornography also located on that same device." She placed defendant under arrest and once again read him his Miranda rights. This warning was also memorialized by a Miranda rights card, which defendant signed.

Defendant was transported to the Clifton Police Department. There, Detective Hurley asked him if he wanted to provide a video recorded statement.

Defendant declined and said he wanted to speak with an attorney, and the questioning ended.

The trial judge denied the suppression motion. He found Detective Hurley's testimony credible and the "Miranda warnings were adequately and legally given to him." The judge further made detailed findings explaining why, under the totality of the circumstances, defendant's statement to police was given knowingly and voluntarily.

We defer to a "court's factual findings as to [a] defendant's Miranda waiver." Tillery, 238 N.J. at 314. The trial court's findings "should be disturbed only if they are so clearly mistaken 'that the interests of justice demand intervention and correction.'" State v. A.M., 237 N.J. 384, 395 (2019) (quoting State v. Elders, 192 N.J. 224, 244 (2007)). We review a trial court's legal conclusions de novo. Tillery, 238 N.J. at 314.

In considering the sufficiency of a Miranda waiver, we evaluate "whether the State has satisfied its burden of proof by considering the 'totality of the circumstances.'" State v. Diaz, 470 N.J. Super. 495, 515 (App. Div. 2022) (quoting Tillery, 238 N.J. at 316). Once the defendant is subjected to custodial interrogation requiring the administration of Miranda rights, "[t]he defendant may waive effectuation of [those] rights, provided the waiver is made

voluntarily, knowingly[,] and intelligently." Miranda, 384 U.S. at 444. "[T]he State must 'prove beyond a reasonable doubt that the suspect's waiver was knowing, intelligent, and voluntary in light of all the circumstances.'" Tillery, 238 N.J. at 316 (quoting State v. Presha, 163 N.J. 304, 313 (2000)).

Our law "does not require that a defendant's Miranda waiver be explicitly stated in order to be effective." Ibid. Rather, "[a] waiver may be 'established even absent formal or express statements.'" A.M., 237 N.J. at 397 (quoting Berghuis v. Thompkins, 560 U.S. 370, 383 (2010)). "Indeed, '[a]ny clear manifestation of a desire to waive is sufficient.'" Tillery, 238 N.J. at 316 (alteration in original) (quoting A.M., 237 N.J. at 397). See also Kevin G. Byrnes, N.J. Arrest, Search & Seizure § 28:2 (2023-2024) (noting that under New Jersey law, "a waiver may be inferred from the particular factual circumstances following the proper administration of Miranda warnings to a suspect in custody").

As defendant points out, Tillery held that "Miranda waiver cards and forms should guide an officer to ask whether the suspect understands [their] rights, and whether, understanding those rights, [they are] willing to answer questions." 238 N.J. at 318. However, this holding does not mean defendant's

2017 waiver is invalid because Tillery, which was decided in 2019, is not retroactively applicable.

"The threshold retroactivity question is always the same—whether a new rule of law has been announced." State v. Feal, 194 N.J. 293, 307 (2008). A new rule of law resulting in retroactive application is a "sudden and generally unanticipated repudiation of a long-standing practice," id. at 308 (quoting State v. Purnell, 161 N.J. 44, 53 (1999)), or a rule that "breaks new ground or imposes a new obligation on the . . . [g]overnment . . . [or] if the result was not dictated by precedent existing at the time the defendant's conviction became final," ibid. (second alteration in original) (quoting State v. Lark, 117 N.J. 331, 339 (1989)). "[W]here a new rule is not at issue, a retroactivity inquiry is unnecessary." Ibid.

In Feal, the Court stated:

> If, however, a new rule of law is implicated, [the court has] four options:
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> > (1) make the new rule of law purely prospective, applying it only to cases whose operative facts arise after the new rule is announced; (2) apply the new rule to future cases and to the parties in the case announcing the new rule, while applying the old rule to all other pending and past litigation; (3) grant the new rule . . . [pipeline] retroactivity, applying it to cases in (1) and (2) as well as to pending cases where the parties have not yet exhausted all

> avenues of direct review; and, finally, (4) give the new rule complete retroactive effect.
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> [Ibid. (alteration in original) (quoting State v. Burstein, 85 N.J. 394, 402-03 (1981)).]

Regarding these four options, the Feal Court provided the following guidance:

> In determining which option to adopt, [a court] consider[s] the following three factors: "'(1) the purpose of the rule and whether it would be furthered by a retroactive application, (2) the degree of reliance placed on the old rule by those who administered it, and (3) the effect a retroactive application would have on the administration of justice.'" State v. Knight, 145 N.J. 233, 251 (1996) (quoting State v. Nash, 64 N.J. 464, 471 (1974)).
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> [Ibid.]

We decline to apply Tillery retroactively because the Court did not state its ruling had retroactive effect. Moreover, here, a retroactive application of Tillery's requirement that police ask a suspect if they are willing to waive their rights and answer questions after asking if they understand them would not further the purpose of the holding in Tillery. Instead, it would have a chilling effect on the administration of justice because an unlimited number of previously valid Miranda waivers would be invalidated.

Having decided the retroactivity issue, we affirm the trial judge's substantive ruling on the suppression motion. Indeed, as the judge found, the

totality of the circumstances suggests defendant knowingly and voluntarily waived his rights. Detective Hurley explained defendant's rights in the garage using the form routinely used by police and asked him if he understood them, to which defendant answered that he did. He continued to voluntarily speak with her, without invoking his rights, and Detective Hurley could infer from defendant's decision to speak with her that he was waiving his right to remain silent. Moreover, she re-administered the Miranda warning when she placed him under arrest, and defendant signed a card acknowledging he had been read his rights. When defendant declined to give a recorded statement at the police station, the questioning stopped. These circumstances amply support the trial judge's ruling and he neither abused his discretion nor misapplied the law when he denied the suppression motion.

II.

In Point I, defendant argues his conviction must be reversed because he was not voir dired on his decision to waive his right to a jury trial as required by our Supreme Court in State v. Blann, 217 N.J. 517, 518 (2014). Defendant's argument raises a question of law. Therefore, our review is de novo. State v. S.B., 230 N.J. 62, 67 (2017).

Blann imposed two requirements to ensure a defendant has a full understanding of their decision to waive a jury trial. 217 N.J. at 518. First, a defendant must review a written waiver form. Ibid. The form must advise the defendant

> that (1) a jury is composed of [twelve] members of the community, (2) a defendant may participate in the selection of jurors, (3) all [twelve] jurors must unanimously vote to convict in order for a conviction to be obtained, and (4) if a defendant waives a jury trial, a judge alone will decide [their] guilt or innocence.
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> [Ibid. (quoting State v. Blann, 429 N.J. Super. 220, 250 (App. Div. 2013) (Lisa, J.A.D., retired and temporarily assigned on recall, dissenting)).]

Second, the Court required "that trial judges engage in a colloquy with defendants that includes those four items, at a minimum, to assess the voluntariness of a waiver request." Ibid.

Recently, the Court confirmed Blann "establish[ed] procedures that trial judges must follow to accept a waiver of the right to trial by jury." Orientale v. Jennings, 239 N.J. 569, 592 (2019). These procedures are important because we have long observed that "[a] defendant's mere acquiescence in proceeding without a jury . . . is not sufficient to constitute a waiver of [the] right to a jury trial." State v. Wyman, 232 N.J. Super. 565, 568 (App. Div. 1989).

Here, defendant, defense counsel, and the prosecutor executed the jury trial waiver form. However, the trial judge did not voir dire defendant about the waiver as required by Blann. The record reflects there were only two discussions about the waiver. The first discussion occurred when defense counsel told the trial judge defendant wanted a bench trial prior to oral argument of the suppression motion. The second mention of the waiver occurred at the end of the same court appearance when defendant told the judge: "Your [h]onor, I wish for you to judge me, sir."

These limited interactions did not satisfy Blann's requirements. The trial judge did not address the four Blann factors before accepting defendant's waiver. For these reasons, we are constrained to vacate defendant's convictions and remand for a new trial. Because there will be another trial, we do not reach the other arguments raised on appeal.

The suppression motion ruling is affirmed. Defendant's convictions are vacated and remanded for further proceedings. We do not retain jurisdiction.