

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2221-12T2

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

TERRELL L. HUBBARD,

Defendant-Respondent

Argued June 11, 2013 – Decided October 11, 2013

Before Judges Parrillo and Messano.

On appeal from the Superior Court of New Jersey, Law Division, Cumberland County, Indictment No. 10-12-0705.

Christina Foglio Aiello, Assistant Prosecutor, argued the cause for appellant (Jennifer Webb-McRae, Cumberland County Prosecutor, attorney; Ms. Aiello, on the brief).

Wayne Powell argued the cause for respondent (Law Office of Wayne Powell, LLC, attorney, Mr. Powell, on the brief).

PER CURIAM

Defendant Terrell Hubbard was indicted by the Cumberland County grand jury and charged in the death of his daughter, L.H., with manslaughter in the second degree, N.J.S.A. 2C:11-4b(1), and second-degree endangering of a child, N.J.S.A. 2C:24-

4a. Defendant moved to suppress a statement he provided to Vineland police on October 20, 2008. Following an evidentiary hearing, the Law Division judge granted defendant's motion and suppressed the statement, concluding defendant was subjected to custodial interrogation without first having been advised of his Miranda rights.¹ We granted the State's motion for leave to appeal and now reverse.

I.

At the hearing, Patrolman Jeff Travaline testified that he responded to a call of an injured child at approximately 3:30 p.m. on October 20, 2008.² A man, later identified as defendant, was on the front porch of the house talking to another officer. Travaline spoke to emergency medical technicians who had the child in an ambulance; he learned she was in critical condition. Defendant told Travaline that L.H. was laying on the bed when he realized she was not breathing. Defendant called 9-1-1 and tried to perform CPR.

Travaline asked defendant if he would "come down to the police station" When defendant agreed, Travaline offered him a ride, since the only car in defendant's family was

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

² At the time, Travaline was a detective in plain clothes.

being used at the time by L.H.'s mother. Defendant was not "a suspect," so Travaline did not "pat him down" or place him in handcuffs. Defendant sat in the backseat of the car as Travaline drove the short distance to police headquarters and parked behind the building. They entered through a door only used by police personnel.

Travaline escorted defendant to an eight-foot by eight-foot "interview room." The room was used for interviewing witnesses, victims, and suspects under arrest. Defendant sat in "one of the first chairs that was near the doorway." Everything that occurred in the room was recorded, and the DVD was played for the judge.³

The session began at 4:16 p.m. Travaline provided defendant with water and asked defendant to relocate to another chair in the room. Defendant was not administered his Miranda rights before Travaline began posing questions to him.

After approximately twenty minutes of questioning, Travaline left the room. He returned approximately eight minutes later, and informed defendant that L.H. was at the hospital and "[t]hey are still working on her. They do have a pulse. It is a weak pulse, though." After approximately three

³ A copy has been provided to us and is part of the appellate record.

more minutes of questioning, Travaline left the room again and returned two minutes later. After approximately eighteen minutes of further questioning, defendant and Travaline left so defendant could use the bathroom. Both returned to the interview room, but Travaline left within seconds thereafter. The detective did not return for two hours, during which time defendant sat in the room alone.

At that point, Travaline told defendant, "[w]e're going to take you back home." It suffices to say that defendant made no admissions of guilt during the entire interview and was not arrested.⁴

Travaline testified that, if defendant had "knocked on the door" while he was alone in the interview room, Travaline would have heard him and "been there to open the door." If defendant asked to leave, he "would have been given a ride back home." But, he did neither.

During cross-examination, Travaline acknowledged that defendant already had been questioned by the responding officer at the scene when Travaline arrived. He also indicated that defendant's home had been "secured" as a potential crime scene.

⁴ We are advised that L.H. died on October 23, 2008. Defendant was not arrested until May 2009, after he provided a second statement to police that was not a subject of the motion to suppress.

Travaline further admitted that he initially asked defendant to move to another chair in the interview room in order to face the camera, and he never advised defendant that "he was free to leave" headquarters.

Defendant also testified at the hearing. Defendant asserted that he could have driven himself to the police station because his car was in the driveway. But, when he asked if anyone had information on his daughter's condition, Travaline said "get in the car and come to the station" Travaline never told him he was free to leave, and defendant did not believe he was. On cross-examination, however, defendant admitted he never asked Travaline if he could drive himself to police headquarters, never inquired about his daughter's condition while there, and never asked to be taken to the hospital to see her.

After considering the oral arguments of defense counsel and the prosecutor, the judge noted "[t]he critical determinate of custody is whether there has been a significant deprivation of the suspect's freedom of action, based on objective circumstances, including the time and place of the interrogation, the status of the interrogator, the status of the suspect, and other factors." The judge found that Travaline knew L.H. had suffered a serious injury that was "suspicious,"

noting that, "[i]nstead of offering to take [defendant] to the hospital, [Travaline] said, get in the back seat of my patrol car and took him to the station."

Referencing the DVD, the judge found that when Travaline entered the interview room, he told defendant to move to a seat that was in the "farthest part [of the room] from the door." Travaline moved his chair close to defendant. The detective's "body block[ed] the entire way, and it was a very intimidating action" The judge found Travaline asked "polite but probing questions" that were "[n]o different than any other type of interrogation" the judge had witnessed during hearings conducted in other cases after Miranda warnings were issued. The judge observed that defendant was quite upset and "cried in his hands" when Travaline returned to the room and told him of L.H.'s condition.

The judge concluded: "I don't know how any person would not think that the[y] were not free to leave in that circumstance and I find that [defendant] was in custody at that time." He granted defendant's motion and entered the order under review.

II.

The State argues that the judge erred in concluding that defendant was in custody when Travaline questioned him.

Alternatively, the State contends that the questioning was not "interrogation." In either case, the State asserts that Travaline did not need to administer Miranda warnings and secure defendant's waiver before proceeding.

Generally, when considering the ruling on a motion to suppress, "if the trial court has had the benefit of and has relied upon testimony of witnesses, appellate courts must give due deference to those findings because it is the trial court that had the opportunity to evaluate the credibility of the witnesses who appeared and testified." State v. Diaz-Bridges, 208 N.J. 544, 565 (2011) (citation omitted). The availability of a videotape documenting a police-citizen encounter does not "extinguish[] the deference owed to a trial court's findings." State v. Elders, 192 N.J. 224, 244 (2007). However, "[w]hen the trial court's factual findings are based only on its viewing of a recorded interrogation that is equally available to the appellate court and are not dependent on any testimony uniquely available to the trial court, deference to the trial court's interpretation is not required." Diaz-Bridges, supra, 208 N.J. at 566.

In this case, the judge made no specific credibility findings as between Travaline's and defendant's version of the events leading up to the questioning at police headquarters. To

the extent there were differences in the two accounts, the judge did not resolve them. It is clear that the judge's assessment of the video was the single determining factor in his decision-making. As such, we "need not . . . close our eyes to the evidence that we can observe in the form of the videotaped interrogation itself." Ibid.

In State v. O'Neal, 190 N.J. 601 (2007), the Court described the circumstances under which Miranda warnings are required:

In general, Miranda warnings must be given before a suspect's statement made during custodial interrogation [may] be admitted in evidence. In Miranda, the Court defined "custodial interrogation" as questioning initiated by law enforcement after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. The determination whether a suspect is in custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned [T]he only relevant inquiry is how a reasonable [person] in the suspect's position would have understood his situation.

[Id. at 615-16 (first and third alterations in original) (internal citations and quotation marks omitted).]

"The rights set forth in Miranda are not implicated when the detention and questioning is part of an investigatory procedure rather than a custodial interrogation, or where the restriction

on a defendant's freedom is not of such significance as to compel the conclusion that his liberty is restrained." State v. Smith, 307 N.J. Super. 1, 9 (App. Div. 1997) (internal quotations and citations omitted), certif. denied, 153 N.J. 216 (1998).

The Court has said that the "objective circumstances" that bear consideration "includ[e] the time and place of the interrogation, the status of the interrogator, the status of the suspect, and other such factors." State v. P.Z., 152 N.J. 86, 103 (1997). We have recognized other "[p]ertinent factors" to "include the duration of the detention, the nature and degree of the pressure applied to detain the individual, the physical surroundings of the interrogation and the language employed by the police." Smith, supra, 307 N.J. Super. at 9; see also State v. Brown, 352 N.J. Super. 338, 352 (App. Div.) (noting additional circumstances include "the nature of the questions and the language employed by the interrogator"), certif. denied, 174 N.J. 544 (2002)).

The questioning in this case occurred in the middle of the afternoon immediately following the police response to defendant's home. Although defendant was in the police station, we have historically and repeatedly recognized that interrogation conducted in a police station is not necessarily

custodial. See, e.g., State v. Micheliche, 220 N.J. Super. 532, 536 (App. Div.), certif. denied, 109 N.J. 40 (1987). We have said that "a non-custodial situation is not converted to one in which Miranda applies merely because the questioning takes place in a 'coercive environment.'" State v. Lutz, 165 N.J. Super. 278, 284 (App. Div. 1979) (quoting Oregon v. Mathiason, 429 U.S. 492, 495, 97 S. Ct. 711, 714, 50 L. Ed. 2d 714, 719 (1977)).

Obviously, defendant understood Travaline was a detective assigned to the investigation. The judge noted that when Travaline interviewed defendant, the detective viewed the cause of L.H.'s serious medical condition to be "suspicious." However, "'it is the compulsive aspect of custodial interrogation, and not the strength or content of the government's suspicions at the time' of the questioning that implicates Miranda." State v. Smith, 374 N.J. Super. 425, 434 (App. Div. 2005) (quoting Brown, supra, 352 N.J. Super. at 353); see also State v. Nyhammer, 197 N.J. 383, 406 (2009) ("The defining event triggering the need to give Miranda warnings is custody, not police suspicions concerning an individual's possible role in a crime.").

The questioning began shortly after defendant and Travaline arrived at headquarters. Compare State v. Pearson, 318 N.J. Super. 123, 134-35 (App. Div. 1999) (where the defendant was

extensively questioned, then asked to accompany investigators to the prosecutor's office and then left in a small room for more than one hour before being questioned again). Travaline completed his questioning in less than one hour.⁵

Defendant agreed to accompany Travaline to the police station and never asked to leave. It is clear from our viewing of the video that defendant was never in discomfort. He was provided with water and was permitted to use the bathroom when he requested.

The judge attached significant weight to the fact that Travaline asked defendant to sit in a specific chair so he could be videotaped. Yet, Travaline testified that the request was made so defendant, like any witness or victim, could face the camera while the statement was being recorded. Additionally, having seen the video, we respectfully disagree with the judge's characterization of Travaline's physical posture as intimidating. Although he pulled his chair closer to defendant's, the detective remained slightly slouched in his chair and frequently rested his arm over an adjoining chair.

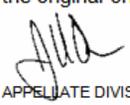
⁵ As noted, after Travaline concluded his questioning, there was a two-hour hiatus before defendant was taken home. Even if we were to consider this extensive delay as indicative of some change in defendant's status, triggering the need for Miranda warnings, defendant made no statements during the final ten seconds of the interview.

The judge found Travaline's questions to be "polite but probing," and no different from those asked in interrogations that routinely followed administration of Miranda warnings. However, Travaline's questions, particularly at the inception of the interview, were entirely open-ended. Defendant did most of the talking. To be sure, on occasions thereafter, Travaline followed up with specific inquiries. For example, Travaline asked defendant if he "drop[p[ed]]" L.H. But, he did not accuse defendant of committing any crime.

In short, viewing the totality of the circumstances surrounding the interrogation, we cannot conclude that defendant was subject to "the inherent psychological pressure on a suspect in custody." Brown, supra, 352 N.J. Super. at 351 (quoting P.Z., supra, 152 N.J. at 102). As a result, Travaline did not have to administer Miranda warnings before he questioned defendant on October 20, 2008. Defendant's statement should not have been suppressed.

Reversed.

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


CLERK OF THE APPELLATE DIVISION