Confessions & Admissions: Interviewing Criminal Suspects under New Jersey Law Lesson Plan

Part I
Introduction
Fifth Amendment & the Right to Remain Silent

A) As applied to the States: Malloy vs. Hogan, 378 U.S. 1, 8(1964)

B) As applied to New Jersey:

1) New Jersey Common Law (State vs. Hartley, 103 N.J. 252, 260(1986))

2) N.J.S.A. 2A:84A-19 ([E]very natural person has a right to refuse to disclose in an action or to a police officer or other official any matter that will incriminate him or expose him to a penalty or a forfeiture of his estate)

3) N.J.R.E. 503

C) Foundations of the Right to Remain Silent

1) Miranda vs. Arizona, 384 U.S. 436(1966);[*] (Dickerson vs. U.S., 530 U.S.428(2000)) [*]

2) Massiah vs. U.S. 377 U.S. 201(1964)

3) Escobedo v. Ill., 378 U.S. 478 (1964)

D) Custody & Interrogation

State vs. Pierson, 223 N.J.Super 62, 67(App.Div.1988) "Pertinent factors include the duration of the detention, the nature and degree of the pressure applied to

detain the individual, the physical surroundings of the questioning and the language used by the officer in summoning the individual."

4) Rhode Island vs. Innis, 466 U.S. 291, 303(1980) - In order to violate a defendant's constitutional rights against self-incrimination, a defendant's incriminating statements must be "the product of words or actions on the part of the police that they should have known were reasonably likely to elicit an incriminating response.

5) State vs. Ramos, 217 N.J.Super 530(App.Div.1987)[*]

6) State v. Ward, 240 N.J. Super. 412, 418 (App. Div. 1990) [*]

7) MV/***Terry*** Stops - Berkemer vs. McCarty, 468 U.S. 420(1984) [*]

8) State vs. Toro, 229 N.J.Super 215(App.Div.1988)

9) Volunteered Statements - State vs. Cryan, 363 N.J.Super 442(App.Div.2003) [*]

10) State vs. Mallozzi, 246 N.J.Super 509(App.Div.1991)

11) General on-the-scene questioning: *Miranda* at 477

"Our decision is not intended to hamper the traditional function of police officers in investigating crime. When an individual is in custody on probable cause, the police may, of course, seek out evidence in the field to be used at trial against him. Such investigation may include inquiry of persons not under restraint. General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding. It is an act of **478* **responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present."**

12) Non-Testimonial Evidence: Schmerber v. CA, 384 U.S. 757 (1966).
(Pedigree, Blood, Prints, Hair, Voice, etc)

Part II
Waiver

A) N.J.R.E. 104(c)

The burden of proof is beyond a reasonable doubt -The State must prove not only that the individual was informed of his rights, but also that he has knowingly, voluntarily, and intelligently waived those rights, before any evidence acquired through the interrogation can be used against him.

B) The Totality of the Circumstances Test

A trial court will admit a confession into evidence only if the State has proven beyond a reasonable doubt that, based on the totality of the circumstances, the suspect's waiver of those rights was knowing, intelligent and voluntary. The court must specifically consider the defendant's characteristics and the nature of the interrogation, and may include in its consideration the defendant's age, education, intelligence, length of detention, advice concerning constitutional rights, whether questioning was repeated and prolonged, and whether physical punishment or mental exhaustion were involved. State vs. Galloway, 133 N.J. 631, 654, 628 A.2d 735(1993).

1) State vs. Presha, 163 N.J. 304(2000) [*]

2) State vs. Nyhammer, 197 N.J. 383(2009)

3) State vs. O'Neill, 193 N.J. 148(2007)

4) State vs. Dispoto, 189 N.J. 108(2007)

C) Per Se Rules

1) Attorney Present: State vs. Reed, 133 N.J. 237(1993)

2) Active Bench Warrant: State vs. A.G.D., 178 N.J. 56(2003)

4) Fabrication of Evidence: State v. Patton, 362 N.J. Super. 16 (A.D. 2003)

5) Absent Parent & under 14 years old: State v. Presha, 163 N.J. 304 (2000)

D) Requests for Counsel & “Scrupulously Honored”

1) State vs. Hartley, 103 N.J. 252, 260(1986) [*]
2) State vs. Burno-Taylor, 400 N.J.Super 581(App.Div.2008) (Video!!)

E) Ambiguity

1) Police may continue their questioning so long as the person's words or conduct could not reasonably be viewed as invoking the right to remain silent. State vs. Bey, 112 N.J. 123, 136-38(1988)

2) New Jersey courts have recognized that even an ambiguous indication of a desire to remain silent is sufficient to require that questioning cease. State vs. Johnson, 120 N.J. 263, 281-82(1990) [*]

Part III
Practical Application

A) The Edwards Rule (Edwards vs. Arizona, 451 U.S. 477(1981) (Badgering)

When an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to police-initiated interrogation after being again advised of his rights. An accused, such as petitioner, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation until counsel has been made available to him, unless the accused has himself initiated further communication, exchanges, or conversations with the police.

The Edwards Rule is intended to prevent police from badgering a suspect in custody. The bright-line rule of *Edwards* was "designed to protect an accused in police custody from being badgered by police officers" in an effort to wear the suspect down and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance

1) State vs. Wessells, ___ N.J.Super ___(App.Div.2009) (Short Release)

Once released, the suspect is no longer under the 'inherently compelling pressures' of continuous custody where there is a reasonable possibility of wearing the suspect down by badgering police tactics to the point the suspect would waive the previously invoked right to counsel. A break in custody between the first and second interrogations also provides the suspect the opportunity to speak with an attorney, family member or any person the suspect cares to consult without police constraints." We therefore adopt the premise that "a ... break in custody where the defendant has a reasonable opportunity to contact his attorney [while free of custodial pressures] dissolves an *Edwards* ... claim.' "

Thus, in New Jersey, a person who has asserted the right to counsel during a police custodial interrogation and is subsequently released may be interrogated again if the break in custody afforded a reasonable opportunity to consult an attorney. Moreover, in order to determine whether the break in custody is sufficient to defeat *Edwards* protection, we adopt a totality-of-the-circumstances test, similar

2) Tiers of Protection to defendants in custody

a) Miranda vs. Arizona, 384 U.S. 436(1966) (post-indictment, see also Patterson vs. Illinois, 487 U.S. 285(1988)
b) Edwards vs. Arizona, 451 U.S. 477(1981)
c) Minnick vs. Mississippi, 498 U.S. 146(1990)
d) Michigan vs. Jackson, 475 U.S. 625(1986); (overruled by Montejo vs. Louisiana 129 S.Ct. 2079 (2009))

These three layers of prophylaxis are sufficient. Under the *Miranda*- *Edwards*- *Minnick* line of cases (which is not in doubt), a defendant who does not want to speak to the police without counsel present need only say as much when he is first approached and given the *Miranda* warnings. At that point, not only must the immediate contact end, but "badgering" by later requests is prohibited. If that regime suffices to protect the integrity of "a suspect's voluntary choice not to speak outside his lawyer's presence" before his arraignment, it is hard to see why it would not also suffice to protect that same choice after arraignment, when Sixth Amendment rights have attached. And if so, then *Jackson* is simply superfluous.

B) Unrelated Crimes

1) McNeil vs. Wisconsin, 501 U.S. 171(1991)
2) Arizona vs. Roberson, 486 U.S. 675(1988) (After Attorney Request)
3) Michigan v. Mosley, 423 U.S. 96(1975) (Two hrs after Invocation with fresh warnings)

C) Use at Trial of Improperly Obtained Statements

1) Kansas vs. Ventris, 129 S. Ct. 1841(2009)

D) Standing

1) State vs. Baum, 199 N.J. 409 (2009)

E) Public Safety

1) New York vs. Quarles, 467 U.S. 649(1984)

State vs. O'Neal, 190 N.J. 601, 618(2007) "In limited circumstances, based on an "objectively reasonable need to protect the police or the public from any immediate danger associated with the weapon[,]" a safety exception to *Miranda* is appropriate In such circumstances, the police must specifically frame the question to elicit a response concerning the possible presence of a weapon."

2) State vs. Stephenson, 350 N.J. 517(App.Div.2002)
3) State vs. Elkwisni, 384 N.J.Super 351(App.Div.2006)

F) Emergency Aid

1) State vs. Boretsky, 186 N.J. 271(2006)

G) Prolonged Interrogation

1) State vs. Cook, 179 N.J. 533 (2004) (Two days)
2) State vs. Carbrera, 387 N.J.Super 81(App.Div.2006) (10 hours)

H) Juveniles

1) Harley vs. Ohio, 332 U.S. 596(1948)
2) Gallegos vs. Colorado, 370 U.S. 49(1962)
3) State in the Interest of Carlo, 48 N.J. 224(1966)
4) In Re J.F., 286 N.J.Super 89(App.Div.1995)
5) State vs. Presha, 163 N.J. 304(2000)
6) State in Interest of Q.N., 179 N.J. 165(2004)
7) In Re S.H., 61 N.J. 108(1972)

Miranda v. Arizona, 384 U.S. 436, 444-445 (1966)

Our holding will be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean 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. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

Dickerson v. U.S., 530 U.S. 428, 430 (2000).

This Court declines to overrule *Miranda.* Whether or not this Court would agree with *Miranda's* reasoning and its rule in the first instance, *stare decisis* weighs heavily against overruling it now. Even in constitutional cases, *stare decisis* carries such persuasive force that the Court has always required a departure from precedent to be supported by some special justification. *E.g* There is no such justification here. *Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture. While the Court has overruled its precedents when subsequent cases have undermined their doctrinal underpinnings, that has not happened to *Miranda.* If anything, subsequent cases have reduced *Miranda's* impact on legitimate law enforcement while reaffirming the decision's core ruling. The rule's disadvantage is that it may result in a guilty defendant going free. But experience suggests that § 3501's totality-of-the-circumstances test is more difficult than *Miranda* for officers to conform to, and for courts to apply consistently. The requirement that *Miranda* warnings be given does not dispense with the voluntariness inquiry, but cases in which a defendant can make a colorable argument that a self-incriminating statement was compelled despite officers' adherence to *Miranda* are rare.

State v. Ramos, 217 N.J. Super. 530, 537 (App. Div. 1987)

It is clear that defendant had already been arrested and was thus in custody. If the purpose of the detective's inquiry had been to elicit information to aid the investigation, the *Miranda* safeguards pertained. But, from the context of the question to defendant, it appears that he was not being interrogated. The detectives knew that defendant wore glasses, from both prior observations of defendant over the years and having just seen his photograph in which he was depicted wearing glasses. Defendant was in the process of getting dressed. Yet defendant had not yet put his glasses on. The question "Where are your glasses?" was no more an interrogation than if defendant had not put on his shoes and was asked "Where are your shoes?" The unexpected response that defendant did not wear glasses was not the result of an interrogation as to whether defendant wore glasses or not, but was a non-responsive answer to a question directed to prod defendant to finish dressing so that he could be taken to police headquarters. The trial judge found as a fact that the comment to defendant was "a casual remark." We agree with this factual finding, notwithstanding our different analysis of the *Miranda* principles.

State v. Ward, 40 N.J. Super. 412,418 (App. Div. 1990)

It is clear therefore that the special procedural safeguards outlined in *Miranda* are required not where a suspect is simply taken into custody, but rather where a suspect in custody is subjected to interrogation. "Interrogation," as conceptualized in the *Miranda* opinion, must reflect a measure of compulsion above and beyond that inherent in custody itself.

We conclude that the *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that the *Miranda* safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. *But, 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.*

Berkemer v. McCarty, 468 U.S. 420, 437-441 (1984)

Two features of an ordinary traffic stop mitigate the danger that a person questioned will be induced "to speak where he would not otherwise do so freely." First, detention of a motorist pursuant to a traffic stop is presumptively temporary and brief. The vast majority of roadside detentions last only a few minutes. A motorist's expectations, when he sees a policeman's light flashing behind him, are that he will be obliged to spend a short period of time answering questions and waiting while the officer checks his license and registration, that he may then be given a citation, but that in the end he most likely will be allowed to continue on his way.In this respect, questioning incident to an ordinary traffic stop is quite different from stationhouse interrogation, which frequently is prolonged, and in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek.

Berkemer v. McCarty, 468 U.S. 420, 437-441 (1984)

Second, circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police. To be sure, the aura of authority surrounding an armed, uniformed officer and the knowledge that the officer has some discretion in deciding whether to issue a citation, in combination, exert some pressure on the detainee to respond to questions. But other aspects of the situation substantially offset these forces. Perhaps most importantly, the typical traffic stop is public, at least to some degree. Passersby, on foot or in other cars, witness the interaction of officer and motorist. This exposure to public view both reduces the ability of an unscrupulous policeman to use illegitimate means to elicit self-incriminating statements and diminishes the motorist's fear that, if he does not cooperate, he will be subjected to abuse. The fact that the detained motorist typically is confronted by only one or at most two policemen further mutes his sense of vulnerability. In short, the atmosphere surrounding an ordinary traffic stop is substantially less "police dominated" than that surrounding the kinds of interrogation at issue in Miranda itself, and in the subsequent cases in which we have applied Miranda.

Berkemer v. McCarty, 468 U.S. 420, 437-441 (1984)

In both of these respects, the usual traffic stop is more analogous to a so-called "Terry stop" than to a formal arrest. Under the Fourth Amendment, we have held, a policeman who lacks probable cause but whose "observations lead him reasonably to suspect" that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to "investigate the circumstances that provoke suspicion." "[T]he stop and inquiry must be 'reasonably related in scope to the justification for their initiation.' " Typically, this means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obliged to respond. And, unless the detainee's answers provide the officer with probable cause to arrest him, he must then be released. The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that Terry stops are subject to the dictates of Miranda. The similarly non-coercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not "in custody" for the purposes of Miranda.

State v. Cryan, 363 N.J. Super. 442, 453-454 (App. Div. 2003)

In *State v. Mallozzi, 246 N.J.Super.* 509, 516 (App.Div. 1991), we held that unexpected incriminating statements made by an in-custody defendant in response to non-investigative questions by the police without prior *Miranda* warnings are admissible. The conduct of the police here is even more benign. Here, it was defendant who repeatedly and aggressively sought out and engaged the police in conversation in an effort to improperly influence their law enforcement decisions. If in the course of such unsolicited conversations a defendant makes self-incriminating statements to the police, he has only himself to blame. Under these circumstances, the police were not obligated to advise defendant of his rights under *Miranda* before responding to defendant's unsolicited statements.

State v. Presha, 63 N.J. 304 (2000)

We hold that courts should consider the totality of circumstances when reviewing the admissibility of confessions by juveniles in custody. Moreover, courts should consider the absence of a parent or legal guardian from the interrogation area as a highly significant fact when determining whether the State has demonstrated that a juvenile's waiver of rights was knowing, intelligent, and voluntary.

We note that a special circumstance exists when a juvenile is under the age of fourteen. We will apply a different standard in that context, namely, the adult's absence will render the young offender's statement inadmissible as a matter of law, unless the parent or legal guardian is truly unavailable. Regardless of the juvenile's age, law enforcement officers must use their best efforts to locate the adult before beginning the interrogation and should account for those efforts to the trial court's satisfaction.

State v. Presha, 63 N.J. 304 (2000)

In sum, a parent or legal guardian should attend a juvenile interrogation whenever possible to help assure that any waiver of rights by the juvenile is the product of free will. Police officers must use their best efforts to locate a juvenile's parent or legal guardian before beginning an interrogation and should be required to account for those efforts to the trial court's satisfaction. We consider the absence of the adult to be a highly significant factor in the overall balance of factors used to determine the admissibility of the juvenile's statement. It would be difficult to envision prosecutors successfully carrying their burdens in cases in which the police deliberately exclude a parent or legal guardian from the interrogation. When the juvenile is under the age of fourteen, the adult's absence will render the young offender's statement inadmissible as a matter of law-unless the adult is truly unavailable, in which case, the voluntariness of the waiver should be determined by considering the totality of circumstances.

State v. Hartley, 103 N.J. 252, 261 (1986)

In *Miranda,* the Court made clear that the requirement that the police "scrupulously honor" the suspect's assertion of his right to remain silent is independent of the requirement that any waiver be knowing, intelligent, and voluntary. Care must be taken therefore that there be no blurring of the separate lines of analysis that are followed in respect of the "scrupulously honor" requirement on the one hand and the waiver issue on the other. The distinction between the two concepts stands out in bold relief in this case: given our holding that the failure scrupulously to honor a previously-invoked right to silence renders unconstitutionally compelled any resultant incriminating statement made in response to custodial interrogation, there can be no question of waiver. In the instant context the waiver issue could not arise until after the exercise of the asserted right had been scrupulously honored by, at a minimum, the giving of fresh *Miranda* warnings. The requirement that an asserted right be scrupulously honored has been carefully guarded in this state in order to ensure that full opportunity to exercise the privilege is permitted.

State v. Johnson, 120 N.J. 263,283-284 (1990)

If, however, "following an equivocal indication of the desire to remain silent," the police are reasonably unsure whether the suspect was asserting that right, they "may ask questions designed to clarify whether the suspect intended to invoke his right to remain silent."citations omitted); (where suspect asked whether questioning could "wait until tomorrow," the only "proper course of action would have been to attempt to clarify whether [suspect] indeed intended to invoke his right to cut off questioning"); (suspect's statement that he did not want to talk "about the drugs in the van" but would talk about other subjects required police, who subsequently sought to return to subject, first to clarify whether suspect's position on questions about the drugs had changed). This Court has described the standard for police conduct when faced with ambiguous assertions of *Miranda* rights:

[W]here a suspect makes a statement which arguably amounts to an assertion of his *Miranda* rights and the interrogating agent recognizes that the statement is susceptible of that construction, his questioning with regard to the crime he is investigating should immediately cease and he should then inquire of the suspect as to the correct interpretation of the statement. Only if the suspect makes clear that he is not invoking his *Miranda* rights should substantive questioning be resumed.

State v. Johnson, 120 N.J. 263,283-284 (1990)

Such questioning is not considered "interrogation" under *Miranda,* because it is not intended to "elicit an incriminating response from the suspect." The rule permits only clarification, not questions that "operate to, delay, confuse, or burden the suspect in his assertion of his rights. Because such questions serve to keep the suspect talking, not to uphold his right to remain silent, they constitute unlawful 'interrogation,' not permissible clarification." Thus, for example, where the suspect indicated that he wanted to make a statement but added that he first wanted to tell his story to an attorney, it was wrong for interrogators to argue with the suspect about "whether having counsel would be in the suspect's best interest (suspect's conditional statement that he did not want to talk if he was being accused was equivocal, and no further questioning should have taken place until suspect's position was clarified).