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Judges and Attorneys
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Superior Court of New Jersey,
Appellate Division.

# STATE of New Jersey, Plaintiff–Respondent,
# v.
# Kevin M. CAMPFIELD, Defendant–Appellant.

Submitted May 10, 2011.
Decided June 28, 2011.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Indictment No. 07–04–0906.
Yvonne Smith Segars, Public Defender, attorney for appellant (Diane Toscano, Assistant Deputy Public Defender, of counsel and on the brief).

Theodore F.L. Housel, Atlantic County Prosecutor, attorney for respondent (Courtney M. Cittadini, Assistant Prosecutor, of counsel and on the brief).

## Before Judges MESSANO and WAUGH.

## PER CURIAM.

*1 Defendant Kevin M. Campfield appeals his conviction, following a guilty plea, for reckless manslaughter and robbery, as well as the resulting sentence to consecutive terms of imprisonment for eight and seven years, respectively, both subject to the provisions of the No Early Release Act (NERA), *N.J.S.A.* 2C:43–7.2. We affirm the denial of the motion to suppress, vacate the guilty plea to reckless manslaughter, and remand for further proceedings consistent with this opinion.

## I.

We discern the following facts and procedural history from the record on appeal.

The decedent in this case was Ivory Bennett, who was twenty-five at the time of his death. His mother reported him missing on January 17, 2006. His clothing was found in a wooded area behind the Sassafras Run Apartments in Pleasantville, where he lived with his mother. There appeared to be blood on the clothing. Bennett's partially-clothed body was found in an adjacent creek the following day. There were lacerations on the back of his head, and extensive swelling to his eyes and face. The cause of death was subsequently determined to be drowning. Shortly after the body was discovered, the police found what appeared to be blood stains near the stairs close to the building in which Bennett lived.

During their missing persons investigation prior to locating Bennett's body, the police learned that Campfield, an eighteen-year-old student at Pleasantville High School, was the last person known to have seen Bennett alive. After Campfield was questioned and gave an incriminating statement, he was arrested and charged in connection with Bennett's homicide. He was subsequently indicted for felony murder, contrary to *N.J.S.A.* 2C:11–3(a)(3) (Count One); second-degree robbery, contrary to *N.J.S.A.* 2C:15–1

(Count Two); first-degree robbery, contrary to *N.J.S.A.* 2C:15–1 (Count Three); first-degree aggravated manslaughter, contrary to *N .J.S.A.* 2C:11–4(a) (Count Four); second-degree reckless manslaughter, contrary to *N.J.S.A.* 2C:11–4(b) (Count Five); second-degree aggravated assault, contrary to *N.J.S.A.* 2C:12–1(b)(1) (Count Six); third-degree aggravated assault, contrary to *N.J.S.A.* 2C:12–1(b)(2) (Count Seven); fourth-degree aggravated assault, contrary to *N.J.S.A.* 2C:12–1(b)(4) (Count Eight); second-degree possession of a weapon for an unlawful purpose, contrary to *N.J.S.A.* 2C:39–4(a) (Count Nine); third-degree unlawful possession of a weapon, contrary to *N.J.S.A.* 2C:39–5(b) (Count Ten); and tampering with physical evidence, contrary to *N.J.S.A.* 2C:28–6(1) (Count Eleven).

Campfield moved to suppress the statement he gave to the police, arguing that the entire statement was not recorded as required by *Rule* 3:17, that he was not given timely *Miranda*[FN1] warnings, and that his subsequent *Miranda* waiver was the result of coercion and police misconduct. The motion judge heard testimony over four days between November 2006 and March 2007. He denied the motion to suppress in a detailed written opinion dated April 23, 2007.

FN1. *Miranda v. Arizona,* 384 *U.S.* 436, 86 *S.Ct.* 1602, 16 *L. Ed.*2d 694 (1966).

*2 On August 20, 2007, Campfield entered a guilty plea on two counts of the indictment: reckless manslaughter (count five) and robbery (count two), both second-degree offenses. The State agreed to dismiss the remaining charges and to recommend a sentence of eight years on the manslaughter and seven years on the robbery, to run consecutively. Both terms of incarceration were subject to NERA's eighty-five percent period of parole ineligibility. The judge satisfied himself that Campfield understood the consequences of the plea and that he was entering into it voluntarily. After defense counsel and the prosecutor questioned Campfield to establish the factual basis of the plea, the judge accepted it.

Campfield was sentenced on November 9, 2007. The judge found aggravating factors three (risk of committing another offense) and nine (deterrence), *N.J.S.A.* 2C:44–1(a)(3) and (9). The judge declined to find aggravating factor six (extent of prior record), *N.J.S.A.* 2C:44–1(a)(6), which had been requested by the State. Although he found no statutory mitigating factors, *N.J.S.A.* 2C:44–1(b), the judge noted Campfield's "relative youth and the many character references" made on his behalf. The judge determined that the sentence under the plea agreement was "fair" and imposed that sentence.

This appeal followed.

## II.

On appeal, Campfield raises the following issues:

*POINT I:* BECAUSE THE STATEMENT THAT THE DEFENDANT MADE TO THE POLICE WAS NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY MADE, THE TRIAL COURT'S REFUSAL TO GRANT HIS MOTION TO SUPPRESS THE STATEMENT DEPRIVED HIM OF DUE PROCESS OF LAW AND VIOLATED HIS PRIVILEGE AGAINST SELF–INCRIMINATION. *U.S. Const.,* Amend. V, XIV; *N.J. Const.,* Art. I, & 1.

A. THE STATEMENTS MUST BE SUPPRESSED PURSUANT TO *MIRANDA V. ARIZONA* AND *STATE V. O'NEILL.*

B. THE STATEMENT MUST BE SUPPRESSED BECAUSE IT WAS NOT VOLUNTARY.

*POINT II:* THE DEFENDANT'S PLEA OF GUILTY TO THE CHARGE OF MANSLAUGHTER FAILED TO CONTAIN A SUFFICIENT FACTUAL BASIS AND MUST BE VACATED. (Not Raised Below)

*POINT III:* DEFENDANT'S SENTENCE IS EXCESSIVE AND MUST BE REDUCED OR REMANDED FOR SENTENCING.

A. THE COURT'S SENTENCE WAS BASED ON CHARGES OUTSIDE THE GUILTY PLEA.

B. DEFENDANT'S SENTENCES SHOULD BE CONCURRENT.

We will address the first two issues in detail. Because of our decision to vacate the guilty plea with respect to reckless manslaughter, we need not reach the issues related to the sentence.

## A.

Campfield's first argument is that the statement he gave to the police should have been suppressed because he was questioned before he was given his *Miranda* warnings, the entire interrogation was not recorded as required by *Rule* 3:17, and the nature of the questioning, when viewed in the totality of the circumstances, demonstrated that his waiver of *Miranda* rights was neither voluntary nor knowing. He further contends that he was misled by Police Detective Richard Moore, a school resource officer and family friend, into cooperating and making statements that were not true. As a result, he argues, the motion judge erred in denying his motion to suppress.

*3 The Supreme Court has explained the standard of review applicable to an appellate court's consideration of a trial court's fact-finding on a motion to suppress as follows:

Our analysis must begin with an understanding of the standard of appellate review that applies to a motion judge's findings in a suppression hearing. As the Appellate Division in this case clearly recognized, an 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. Elders*, 386 *N.J.Super.* 208, 228, 899 A.2d 1037 (App.Div.2006) ] (citing *State v. Locurto*, 157 *N.J.* 463, 474, 724 A.2d 234 (1999)); *see also State v. Slockbower*, 79 *N.J.* 1, 13, 397 A.2d 1050 (1979) (concluding that "there was substantial credible evidence to support the findings of the motion judge that the ... investigatory search [was] not based on probable cause"); *State v. Alvarez*, 238 *N.J.Super.* 560, 562–64, 570 A.2d 459 (App.Div.1990) (stating that standard of review on appeal from motion to suppress is whether "the findings made by the judge could reasonably have been reached on sufficient credible evidence present in the record" (citing *State v. Johnson*, 42 *N.J.* 146, 164, 199 A.2d 809 (1964))).

An appellate court "should give deference to those findings of the trial judge which are substantially influenced by his opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." *Johnson, supra*, 42 *N.J.* at 161, 199 A.2d 809. An 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. *Id.* at 162, 199 A.2d 809. A trial court's findings should be disturbed only if they are so clearly mistaken "that the interests of justice demand intervention and correction." *Ibid.* In those circumstances solely should an appellate court "appraise the record as if it were deciding the matter at inception and make its own findings and conclusions." *Ibid.*

[ *State v. Elders*, 192 *N.J.* 224, 243–44, 927 A.2d 1250 (2007).]

However, our review of the motion judge's legal conclusions is plenary. *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 *N.J.* 366, 378, 658 A.2d 1230 (1995).

In reviewing a trial judge's ruling on a *Miranda* motion, we analyze police-obtained statements using a "searching and critical" standard of review to ensure that constitutional rights have not been trampled upon. *State v. Patton*, 362 *N.J.Super.* 16, 43, 826 A.2d 783 (App.Div.) (citations omitted), *certif. denied*, 178 *N.J.* 35, 834 A.2d 408 (2003). We will not "engage in an independent assessment of the evidence as if [we] were the court of first instance," *State v. Locurto*, 157 *N.J.* 463, 471, 724 A.2d 234 (1999), nor will we make conclusions regarding witness credibility, *State v. Barone*, 147 *N.J.* 599, 615, 689 A.2d 132 (1997), but we instead defer to the trial judge's credibility findings. *State v. Cerefice*, 335 *N.J.Super.* 374, 383, 762 A.2d 668 (App.Div.2000).

*4 *Miranda* warnings are required " '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. Stott*, 171 *N.J.* 343, 364, 794 A.2d 120 (2002) (quoting *Miranda v. Arizona*, 384 *U.S.* 436, 478, 86 *S.Ct.* 1602, 1630, 16 *L. Ed.*2d 694, 726 (1966)). " '[T]he critical determinant of custody is whether there has been a significant deprivation of the suspect's freedom of action based on the objective circumstances, including the time and place of the interrogation, the status of the interrogator, and the status of the suspect.' " *Id.* at 365, 794 A.2d 120 (quoting *State v. P.Z.*, 152 *N.J.* 86, 103, 703 A.2d 901 (1997)). Exculpatory or inculpatory statements made while a defendant is in custody are not to be used in the prosecution's case-in-chief if defendant was not advised of his *Miranda* rights. *State v. Nyhammer*, 197 *N.J.* 383, 400–01, 963 A.2d 316, *cert. denied*, —— *U.S.* 65, 130 *S.Ct.* 65, 175 *L. Ed.*2d 48 (2009); *Stott, supra*, 171 *N.J.* at 365, 794 A.2d 120; *State v. Brown*, 352 *N.J.Super.* 338, 351, 800 A.2d 189 (App.Div.), *certif. denied*, 174 *N.J.* 544, 810 A.2d 64 (2002).

The test employed to determine whether a custodial interrogation has taken place is an objective one. *See State v. Barnes*, 54 *N.J.* 1, 6, 252 A.2d 398 (1969), *cert. denied*, 396 *U.S.* 1029, 90 *S.Ct.* 580, 24 *L. Ed.*2d 525 (1970); *State v. Cunningham*, 153 *N.J.Super.* 350, 352–53, 379 A.2d 860 (App.Div.1977). We consider the totality of the objective circumstances surrounding the police questioning, such as "the length of the interrogation, the place and time of the interrogation, the nature of the questions, the conduct of the police and all other relevant circumstances." *State v. Coburn*, 221 *N.J.Super.* 586, 595–96, 535 A.2d 531 (App.Div.1987) (citation omitted) (internal quotation marks omitted), *certif. denied*, 110 *N.J.* 300, 540 A.2d 1281 (1988); *see also Stott, supra*, 171 *N.J.* at 367–68, 794 A.2d 120. The analysis looks to whether objective evidence of the surrounding circumstances would lead a reasonable person to believe that he or she was free to leave. *Stott, supra*, 171 *N.J.* at 367–68, 794 A.2d 120; *Coburn, supra*, 221 *N.J.Super.* at 595–96, 535 A.2d 531.

The fact that an interrogation took place at police headquarters is not determinative, *State v. Micheliche*, 220 *N.J.Super.* 532, 536, 533 A.2d 41 (App.Div.), *certif. denied*, 109 *N.J.* 40, 532 A.2d 1108 (1987), but neither is the fact that the defendant was told he was free to leave at any time. *Id.* at 537, 533 A.2d 41; *Stott, supra*, 171 *N.J.* at 367, 794 A.2d 120. The fact that a defendant was a prime suspect at the time of the interrogation is also not definitive, as the Supreme Court held in *Nyhammer, supra*, 197 *N.J.* at 406, 963 A.2d 316.

In *Nyhammer*, the Court emphasized the import of the custodial aspect of the interrogation to determination of the *Miranda* issue.

Significantly, we are not aware of any case in any jurisdiction that commands that a person be informed of his suspect status in addition to his *Miranda* warnings or that requires automatic suppression of a statement in the absence of a suspect warning. The essential purpose of *Miranda* is to empower a person—subject to custodial interrogation within a police-dominated atmosphere—with knowledge of his basic constitutional rights so that he can exercise, according to his free will, the right against self-incrimination or waive that right and answer questions. *Miranda, supra*, 384 *U.S.* at 456–57, 86 *S.Ct.* at 1618–19, 16 *L. Ed.*2d at 713–14. The defining event triggering the need to give *Miranda* warnings is custody, not police suspicions concerning an individual's possible role in a crime. *See Oregon v. Mathiason*, 429 *U.S.* 492, 495, 97 *S.Ct.* 711, 714, 50 *L. Ed.*2d 714, 719 (1977) ("[P]olice officers are not required to administer *Miranda* warnings ... because the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' "); *Beckwith v. United States*, 425 *U.S.* 341, 346–47, 96 *S.Ct.* 1612, 1616, 48 *L. Ed.*2d 1, 7–8 (1976) ("It was the compulsive aspect of custodial interrogation, and not the strength or content of the government's suspicions at the time the questioning was conducted, which led the court to impose the *Miranda* requirements with regard to custodial questioning." (citation and internal quotation marks omitted)).

*5 [ *Ibid.*]

*See also Stott, supra*, 171 *N.J.* at 365, 794 A.2d 120 ("[T]he critical determinant of custody is whether there

has been a significant deprivation of the suspect's freedom of action based on the objective circumstances .... " (citation omitted) (internal quotation marks omitted)).

The testimony at the suppression hearing presented markedly different versions of the events surrounding Campfield's confession. In his detailed written opinion, the judge summarized the key testimony of the State's witnesses as follows:

Sgt. Melendez testified that he was personally familiar with the defendant and wanted to speak to him concerning the investigation but that he was not a suspect. He contacted Det. Moore who is the school resource officer assigned to Pleasantville High School. Moore advised him that the defendant was not in school because he had either been suspended or was going to special classes. Det. Moore through the course of the day reported that he had gone to family members looking for the defendant and told them to have him contact Det. Moore. Sgt. Melendez testified that he began to fear that the defendant may be a victim as well as Ivory Bennett. Sometime after midnight, Det. Moore called him and said that he had just heard from the defendant's mother who called and asked if they should bring him in at that time. Det. Moore advised him that he said that the next morning between 9:00 a.m. and 10:00 a.m. would be soon enough.

Melendez testified that shortly after 11:00 a.m. the next morning, the defendant arrived at the station with his mother. He first saw the defendant in an interview room. Det. Moore was also present. He introduced himself to the defendant and advised him of the victim being found dead and the location and that they had received information that he was the last person to see him alive. According to Melendez, the defendant said at that time "I didn't kill him. I had a fight." Melendez testified that at that time he stopped the defendant from speaking further and advised him of his *Miranda* Rights. He testified he went over the Rights one-by-one and asked him to initial each and check off whether he wanted to talk to him. The defendant responded he would. Melendez testified that he told him he would leave to get a Prosecutor's investigator and left him with Det. Moore. Moore later left as well leaving Officer Brown behind. Sgt. Melendez advised Sgt. Corrado of the Atlantic County Prosecutor's Office of the defendant's willingness to give a statement. Investigator Campbell of the Atlantic County Prosecutor's Office arrived and he, together with Det. Moore, conducted the interview.

According to Melendez, the defendant signed a *Miranda* Rights card and both he and Det. Moore signed as witnesses at 11:17 a.m. Melendez testified that he did not participate in the interview because he felt the defendant had a rapport with Det. Moore and with a Prosecutor's investigator also being present, did not want to overwhelm the defendant with people. At that time there was no tape recorder in the room and one had to be acquired. The interview was concluded after 12:00 p.m. and the defendant was charged with homicide.

*6 ....

On redirect-examination [Melendez] testified that early in the investigation he received a report of gunshots being heard the night of the homicide. He was not sure but he might have told the defendant of the report of shots being fired and also told him that clothes were found at the scene and that the victim was dead. He also testified that he did not seek to bring the defendant in right away because he only viewed him as a witness and there was no urgency. As to the time of arrest as reported in his arrest report, he indicated that it was a general estimated time that he reported.

The next witness to testify on behalf of the State was Det. Richard Moore. He testified that he was contacted by Sgt. Melendez and requested that he contact the defendant regarding the missing person of Ivory Bennett. He has known the defendant since he was 9–12 years old as a result of his participating in PAL athletics of which he is director. He has mentored the defendant in the past and the defendant calls him by his first name "Richard." He also reported that he arrested the defendant once or twice as a juvenile. He has known his mother for over 20 years. He first reached out to the defendant by calling his mother and while he was not able to speak to her, she called him back and said [s]he would try to contact her son. He thereafter tried to find him at different locations. He went to the defendant's grandmother's house and left

word there for him to contact Det. Moore. Later he did receive a telephone call from the defendant's mother who said she had located her son. He told her it could wait until tomorrow morning.

He was at the department the next day when the defendant arrived and he shook his hand. The defendant was not in custody. He was escorted back to the interview room and left there with Officer Brown. He told Sgt. Melendez that the defendant was there and he and Melendez returned to the room. He testified that the defendant looked afraid or scared at that point. When the defendant said that he didn't kill the victim but just had a fight, Sgt. Melendez stepped in, stopped him and advised him of his *Miranda* Rights. Moore testified that the statement made that the defendant didn't kill the victim was less than 5 minutes after they were in the room. He testified that Sgt. Melendez had not asked any questions prior to the defendant making that statement. Det. Moore testified that he was present when the *Miranda* warnings were given and that he saw the defendant sign the card. He did not appear under the influence of alcohol or drugs at the time. Det. Moore himself signed the card as a witness after which he left the detective bureau.

When he returned to the room with Investigator Campbell of the Atlantic County Prosecutor's Office, they told the defendant they were going to take a taped statement. He appeared afraid, scared or worried. The interview process took 15 to 20 minutes after which the defendant asked to see his mother and she was allowed to go to the interview room.

*7 On cross-examination, Moore testified that he had been in the company of the defendant's mother on social occasions. He said that he never advised Sgt. Melendez of his social familiarity with the defendant and his family, only that he had a prior contact with the defendant for armed robbery. He also testified that at the time he went looking for the defendant he did not know that the missing person was the person found dead and was not even certain as to whether an identification of the body had been made.

He further testified that he spoke to the defendant's mother approximately 3 times by cell phone between January 19th and 20th and that she had his cell phone number. He specifically denied being told by defendant's mother that all the defendant did was fight and denied telling her that he'd only be charged with assault and nothing more. What Sgt. Melendez said to the defendant which prompted his statement about fighting was that Melendez wanted to ask him questions about the missing person because he was the last one to be [seen] with the victim. After the defendant was read his rights, both Moore and Melendez left defendant with Officer Brown and 5 to 10 minutes later Investigator Campbell came in with Moore. He testified that Investigator Campbell asked the defendant if he wanted a drink and then told him he was going to take a taped statement. He denied ever talking to the defendant about giving a statement and was never alone with him. He concluded his testimony by saying at the conclusion of the statement he believed the only charges appropriate were aggravated assault and robbery based on the defendant's statement.

The next witness for the State was Robert Campbell. He is assigned to the Major Crimes Squad of the Atlantic County Prosecutor's Office which is responsible for investigating homicides occurring within the [c]ounty. He was ordered to interview the defendant by his superior officer Sgt. Corrado. He testified he did not recall the time he got to the Pleasantville Police Dept. When he arrived he was advised by Sgt. Corrado of what the defendant had said. He went into the interrogation room and Officer Brown told him that defendant had been Mirandized and had waived. The defendant was calm at that time. He began taking a taped statement at 3:14 p.m. which was concluded at 3:41 p.m.

The judge summarized the testimony of Campfield and his witnesses as follows:

The defense called the defendant Kevin Campfield to the stand. He testified that on January 19, 2006, he was contacted by his mother regarding the attempts by Det. Moore to reach him. It was between 3:00 p.m. and 4:00 p.m. that his mom spoke to him by phone and said that Det. Moore wanted to talk to him and gave him his cell phone number. He testified to having known Moore for 10 to 12 years, that he was a friend of the family/mother and trusted him as a friend.

Later that day he saw his mother at her work in Atlantic City and she called Det. Moore in his presence at approximately 9:30 to 10:00 p.m. After reaching him, she gave the defendant the phone and Det. Moore asked him what happened. He responded that he got into a fight. He testified that Det. Moore told him to

come down to the department and that everything would be alright and promised that he would only be charged with aggravated assault. He testified that he made the statement about getting in a fight after Moore told him it was about the boy who got killed at Sassafras. It was about a 10 minute conversation. He said that he and the defendant had been drinking and chilling and got into a fight. He said that Det. Moore was basically saying "Trust me and everything will be alright."

*8 He testified that he arrived at the police station at approximately 11:00 a.m. the next morning and called his cell phone when he was not far from arriving. On arrival he went into the interrogation room. He was not placed in handcuffs and there was no one else in the room at the time. Officer Brown and Richard Moore were with him for about 10 minutes when Sgt. Melendez arrived. He testified that Det. Moore talked about evidence of gunshots in the Sassafras area, clothes found in the woods and somebody saw him running behind Sassafras. He testified Det. Moore said he should give a taped statement and "go with the flow and everything would turn out alright." He testified that Det. Moore said that he had to take responsibility for the gunshots fired, that he would only be charged with aggravated assault, that he wouldn't cross his family and put him in jeopardy and bail wouldn't be that high. He testified that Sgt. Melendez came in, sat down and put a *Miranda* Card on the table and told him to sign it and that if he didn't he would look guilty.

He also testified that Melendez told him he knew that he was involved in a homicide because of the scratches on him. The defendant said that he responded that he had a fight but didn't kill the victim and that he responded in that way after the *Miranda* Card was signed but not before. He testified that he was told that it wasn't going to work like that—he saying that he'd only had a fight. At one point Det. Moore took him out of the room and [told him] to trust him and go with the flow "I'm not going to let you go down for murder." He testified he was told that he had to say he had a gun and had to go along with that and told him that he had to go on tape and they would go over the story until it came out right and then go on tape. He also testified that Moore told him he was facing a murder charge at the very start of the interview (before the *Miranda* Card was read) but wouldn't if he listened to him and he would only be charged with aggravated assault.

He also testified that Melendez told him that he faced a possible murder charge after he signed the card. He was not aware of the "felony murder rule" because if he were, he would not have given a statement.

On cross-examination, the defendant first acknowledged his understanding of his penal exposure upon conviction and the importance of a statement as evidence. He stated that he had taken a criminal justice class for which he received a B grade but denied the *Miranda* Rights were a part of that class. He was arrested in 2001, 2003 and 2005 as a juvenile and appeared in front of Judge Jackson several times. He was adjudicated a delinquent for robbery and firearm charges but does not recall having been advised of his rights at the time of his arrest.

As to the contents of the statement he gave, he testified that Det. Moore told him about the gun and to say that the victim took off his clothes. He did agree that he came to the police station on his own and was not under arrest and that he had been offered a bathroom break and something to drink. Further, he agreed that he was not hit or threatened and that he took an oath at the beginning of the taped statement. The prosecutor then played the tape in open court and asked the defendant what was true and not true that the defendant said during the taped interview. The defendant testified that he made up the detail about the gun being a two shot Dillinger, silver in color, that he found a year ago. He testified that Det. Moore didn't tell him to say those things but that he made it up as he went along. He also testified that he made up the detail of pulling the gun out when the victim began to awaken and that he made the victim take off his clothes and that he threw the gun in the woods. He was told, however, to say that he had blood on his jeans and that he threw away his clothes which he never did. He also says that [he] made up the portion of the statement where he said [that] he took money from the victim.

*9 The defense also called Patrolman Shawn Brown of the Pleasantville Police Department. Officer Brown testified that at the time in question he was helping out and learning by tagging along with Sgt. Melendez. On January 20th he appeared at the station to help out and was there when the defendant arrived. It was his belief that defendant was "just a witness." He also knew the defendant before that time and shook

his hand when he arrived. He brought him to the interview room and sat with him. He testified the defendant said he was scared and worried about his mother and he tried to calm him down. At that time, Sgt. Melendez arrived and with Det. Moore. When the defendant began to talk about being involved in a fight with the victim, he was stopped and Mirandized. Melendez and Moore left at that time with he and the defendant the only ones in the room. Det. Moore returned with a Prosecutor's investigator. No one had come into the room in the interim. He also testified that Investigator Campbell did not do a pre-tape interview.

On cross-examination, the witness testified that he spent the whole previous day with Det. Moore and had known that [Sgt.] Melendez called him requesting that he get the "defendant in." He testified that he was present when Det. Moore received a phone call from defendant's mother and heard Moore say that it was okay to bring him in the next morning. He denied that the defendant ever asked for a lawyer or that he was intoxicated or under the influence of anything. He testified that at no time did the defendant say he did not wish to talk or stop talking and that he never asked for his mother. He testified that no promises or threats were made by anyone regarding bail, charges, etc.

The defense next called the defendant's mother, Bernice Campfield. She testified that she knew Det. Moore socially and had his cell phone number. She testified that she called him on January 19th about him looking for the defendant. She asked if he was in trouble and Moore responded that he just needed to talk to him. This phone call occurred between 3:30 p.m. and 4:00 p.m. She thereafter called her son on his cell phone and told him that Moore was looking for him and gave him Moore's cell phone number. Throughout that day she had about five contacts with Det. Moore where she placed the calls between 3:00 p.m. and 5:00 p.m. Later she called him from her employment while the defendant was with her and asked what he should do. She let the defendant speak to Moore and heard him say that he had a fight with the victim and they had been out drinking. She made arrangements to have her son come in the next day and asked Det. Moore what might happen to which he responded that if anything, he'd be charged with aggravated assault. He testified that Moore asked her to call before coming out the next day which she did at approximately 10:00 a.m. It was her sister who drove the defendant to the police station. On cross-examination, the witness testified that she knew Moore for about 15 years and trusted him with her son. There had been no threats, she was never told that her son was suspected of killing anyone or that he was under arrest. Moore said that he was just "wanted for questioning" and that it was not urgent or an emergency. She said next time she saw her son was a week later.

*10 Based upon the testimony and his opportunity to observe and assess the credibility of the witnesses,[FN2] the judge reached the following conclusion with respect to Campfield's contention that he should have been given his *Miranda* warning as soon as he entered the police headquarters:

FN2. As will be seen below, the judge had some skepticism with respect to some of the testimony given by Melendez and Moore, but only in a very narrow area not determinative on the issue of when the custodial interrogation began.

There is no dispute that the defendant presented himself at the Pleasantville Police Department voluntarily. Defense counsel himself concedes that fact ... and defendant did as well during his own testimony. Rather the defendant argues that the very moment that police suspected him of being involved in the death of Ivory Bennett he was not free to leave and therefore, should have been "Mirandized." That moment, he argues, was on his arrival at the police station when Det. Melendez observed, according to his report, "... the subject had scratches on his hands and head that are consistent with scratches one would receive from briar thorns, like the ones in the wooded area where the victim's clothing was located."

Notwithstanding the defendant's concession, I will discuss the manner of defendant's arrival at the station. While it is true that police were persistent in contacting him, once they had and even knew where he was, they did not go to him and bring him in, but instead told him he could come in on his own the next day. He did at a time and in a manner chosen by him. Once there, he was subject to none of the usually [sic] trappings of custody. He was not arrested. He was in the company of a police officer he himself says was a trusted family friend, and to all appearances was treated courteously and respectfully. He was not subjected to a lengthy or confrontational-type interrogation. He testified he was not hit or threatened during the

process and was offered use of the bathroom and something to drink. In sum, he was not treated as a murder suspect might be. The defendant himself never testified that he believed he was in custody. It is his perception on which the issue of custody turns. *Miranda v. Arizona,* 384 *U.S.* 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966); *Oregon v. Mathiason,* 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 714 (1993); *Stansbury v. California,* 511 *U.S.* 318, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994); *State v. Marshall,* 148 *N.J.* 89, 690 A.2d 1 (1997); *State v. Pierson,* 223 *N.J.Super. 62, 537 A.2d 1340* (App.Div.1988). Whether police were of the belief that the defendant was involved in a homicide, that belief was never articulated to the defendant. As the Supreme Court stated in *Stansbury v. California,* Supra., "... an officer's evolving but unarticulated suspicions do not affect the objective circumstances of an interrogation or interview, and thus cannot affect the Miranda custody inquiry." *Id.* at 324.

Defendant's non-custodial status lasted at least up to the point of his first admission if not beyond that. When told he was the last person seen with the victim, he responded that he had a fight but didn't kill him. It was at that very point that he was read his *Miranda* Rights and signed the waiver, rendering unnecessary any further discussion as to when he objectively reasonably believed he was in custody. Thus, adherence to *R.* 3:17 as to the recordation of the defendant's statements, no violation occurred given that there was no custodial interrogation. The subsequent statement was recorded in its entirety.

*11 We are satisfied, after according the required deference to the judge's findings of fact, that the judge's legal conclusions are fully supported by the record and the law. Even if the police viewed Campfield as a suspect, or even the prime suspect, those suspicions need not have been disclosed to Campfield and they did not automatically convert any contact with Campfield into a custodial interrogation. *Nyhammer, supra,* 197 *N.J.* at 406, 963 A.2d 316. As the judge aptly observed, the inquiry turns not on what the police knew or suspected, but on whether objective evidence of the surrounding circumstances would lead a reasonable person to believe that he or she was free to leave. *Stott, supra,* 171 *N.J.* at 367–68, 794 A.2d 120.

The judge then turned to the question of whether there was coercion or other improper conduct on the part of the police to induce Campfield to waive his *Miranda* rights unwillingly or to make a false confession. He concluded:

In addressing the remaining issues, it is necessary to discuss the credibility of the State's versus the defendant's witness. The defendant disputes the credibility of police on two factual issues: (1) What was said to him by Det. Moore before he arrived at the police station; and (2) What was said to him by Det. Moore after he arrived and during the interrogation.

The defendant testified that contrary to Moore's testimony, he [told] him on the phone that he had a fight with the victim and that Moore said "Trust me, everything will be alright." Defendant also testified that at the station when he denied involvement in the death of the victim, Moore told him "It wasn't going to work like that ... just go with the flow ... I'm not going to let you go down for murder." He testified further that he was told he had to say he had a gun and had to go along with it; that they would go over the story until it came out right and then go on tape.

How much police knew or what was said to or by the defendant before he came in is not relevant as has been shown. Nonetheless, it is my observation that [Sgt.] Melendez's testimony that he did not view the defendant as a suspect after noting the scratches on his arms and face is not credible. Likewise, Det. Moore's credibility is suspect as to how little he knew of the investigation before the interrogation.

However, the defendant's testimony concerning the contents of his tape recorded statement ... is fatal to his own credibility.... On hearing the statement itself, the defendant's aural demeanor and responsiveness belies any possible claim that he had been coached as to what to say. The details of the gun, the victim awakening during the robbery, details of blood on clothes, all were given without a moments hesitation [not] likely possible if he had been provided with such information and details only moments before. His ability to regurgitate such information convincingly and thoroughly is too implausible a proposition for this [c]ourt to accept. The defendant even testified that he made up a portion of his taking money from the victim himself; that it was not a detail given to him by police.

*12 As to "going with the flow," what was "the flow?" If the police were going to have it their way, it would seem that they could contrive a more simple, straight-forward scenario than the one given by the defendant. In fact, what was created is a rather arcane state of facts with a causation of death issue likely to be hotly contested at time of trial. Defendant's entire version of how he gave his statement is so implausible as to place into doubt the entirety of his testimony. Of the conflicting versions, the one given by the police is [the] entirely more "logical, reasonable version based on [the] perception of how people behave."

As to whether defendant was told he would only be charged with assault? That is not so [far] from what could have been his ultimate culpability. He changed all of that when *HE* admitted to the robbery of the victim. Moreover, defendant's credibility is strained in this area as well. He testified that [Sgt.] Melendez told him he knew he was involved in the homicide because of the scratches on him but then that Det. Moore told him he would "not let [him] go down for murder." Could he be so naïve as to believe [Sgt.] Melendez (not Moore) was willing to "look the other way" on a homicide charge?

My view is that the police interaction with the defendant was more of a "softball' approach to a local young man, known for his athletic ability in the City and likely not seriously viewed as a murder suspect. The defendant's proposition that the police engaged in a calculated effort to "frame" him with a factual scenario made of gossamer thread is not plausible.

After concluding that "promises of lenity" were not made to defendant, the judge nonetheless addressed "whether such promises could have had an effect on the defendant's waiver of his Constitutional rights."

Ultimately, the issue turns on whether the alleged inducement of the promise of lenity was coercive in nature....

It is essential to remember here that the police had no information that the defendant had robbed the victim until he told them. The defendant himself said that had he been aware of the "felony murder rule" he never would have given a statement. By his own statement, the defendant is indicating he did not rely on the promise of lenity but did rely on a lack of knowledge of the law. Thus, within the totality of circumstances, including defendant's voluntary arrival at the police station, the length and manner of his interrogation, the rendition of his *Miranda* Rights *after* he said he only had a fight with the victim; I conclude that his decision to answer questions was not the product of coercion.

We are again satisfied that the judge's decision is factually supported in the record and consistent with applicable law.

While there was testimony in the record from which a different conclusion could have been reached, depending upon the fact-finder's assessment of credibility, the judge's factual findings were fully supported by the record and were not "so clearly mistaken 'that the interests of justice demand intervention and correction.' " *Elders, supra,* 192 *N.J.* at 244, 927 A.2d 1250 (quoting *State v. Johnson,* 42 *N.J.* 146, 162, 199 A.2d 809 (1964)).

*13 Consequently, we affirm the judge's denial of the motion to suppress Campfield's recorded statement.

## B.

We now turn to the issue of whether there was a factual basis for Campfield's plea to reckless manslaughter. He argues that there was not because there was no basis in fact for a finding that, through his actions, he recklessly subjected Bennett to a substantial and unjustifiable risk of death.

In order to accept a guilty plea, a judge must be satisfied that there is a factual basis for the plea. *R.* 3:9–2. If there is not a factual basis for every element of the crimes to which a defendant is pleading guilty, the judge must reject the plea. *State v. Pineiro,* 385 *N.J.Super.* 129, 137, 896 A.2d 480 (App.Div.2006) (citing *State v. Sainz,* 107 *N.J.* 283, 293, 526 A.2d 1015 (1987)).

At the plea hearing, Campfield admitted to the following facts during questioning by his attorney and the prosecutor. He came in contact with Bennett on January 17, 2006.[FN3] He followed Bennett up a stairway at the apartment building. Bennett tried to escape from Campfield, fell over the railing in the process, and hit his head. Bennett was injured as a result of the fall. Campfield saw blood where Bennett fell. Bennett was initially incoherent, during which time Campfield went through his pockets looking for money. When Bennett woke up, there was a scuffle during which Campfield punched Bennett in the face. Campfield told Bennett to remove his jeans. Bennett ran away into an adjacent wooded area. It was cold and Bennett was wearing only "boxer shorts and a T-shirt." Bennett was "pretty drunk" that night. Campfield agreed that "the fact that [Bennett] had his clothes off on a cold night and he was drunk and [Campfield] forced him to go into the wooded area" was "reckless" on Campfield's part, which recklessness was "a contributing cause to [Bennett's] death." The judge and both counsel accepted that as a sufficient factual basis for the plea, but Campfield now argues that it was not.

FN3. Although the record reflects that Campfield was asked about and agreed to a date in 2007, it is clear from the record that the date was in 2006, not 2007. It is not clear whether defense counsel misspoke or there was an error in transcription.

Manslaughter is a form of criminal homicide. *N.J.S.A.* 2C:11–2(b). "A person is guilty of criminal homicide if he purposely, knowingly, recklessly or, under the circumstances set for in section 2C:11–5 [death by auto], causes the death of another human being." *N.J.S.A.* 2C:11–2(a). Manslaughter can be aggravated, reckless, or passion/provocation manslaughter pursuant to *N.J.S.A.* 2C:11–4(a), (b)(1), or (b)(2), respectively. Campfield pled guilty to reckless manslaughter.

To convict a defendant of reckless manslaughter, the State must prove that the defendant "cause[d] the death of another human being," *N.J.S.A.* 2C:11–2(a), and that the defendant "consciously disregard[ed] a substantial and unjustifiable risk that ... [death] will result from his conduct." *N.J.S.A.* 2C:2–2(b)(3).

According to *N.J.S.A.* 2C:2–3,

a. Conduct is the cause of a result when:

(1) It is *an antecedent but for which the result in question would not have occurred;* and

*14 (2) The relationship between the conduct and result satisfies any additional causal requirements imposed by the code or by the law defining the offense.

....

c. When the offense requires that the defendant *recklessly* or criminally negligently *cause a particular result, the actual result must be within the risk of which the actor is aware* or, in the case of criminal negligence, of which he should be aware, or, *if not, the actual result must involve the same kind of injury or harm as the probable result and must not be too remote, accidental in its occurrence, or dependent on another's volitional act to have a just bearing on the actor's liability or on the gravity of his offense*.

d. A defendant shall not be relieved of responsibility for causing a result if the only difference between what actually occurred and what was designed, contemplated or risked is that a different person or property was injured or affected or that *a less serious or less extensive injury or harm occurred*.

[ (Emphasis added).]

In this case, the "result" at issue is "death." Pursuant to the language in subpart (c), therefore, "death" must have been "within the risk of which the [defendant was] aware" at the time. That is in contrast to criminal negligence, for which it would have been enough if the defendant "should" have been aware of the risk of death. *N.J.S.A.* 2C:2–2(b)(4).

*N.J.S.A.* 2C:2–2(b)(3), which defines "recklessly," also requires that the actor be aware of the risk that the required element, here death, will result from his conduct.

A person acts recklessly with respect to a material element of an offense when *he consciously disregards a substantial and unjustifiable risk that the material element* exists or *will result from his conduct*. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves *a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation*. "Recklessness," "with recklessness" or equivalent terms have the same meaning.

Pursuant to that provision, the defendant must have "consciously disregard [ed] a substantial and unjustifiable risk" that death, the "material element," would "result from his conduct." We held, however, in *State v. Curtis*, 195 *N.J.Super*. 354, 364, 479 A.2d 425 (App.Div.), *certif. denied*, 99 *N.J.* 212, 491 A.2d 708 (1984), that "the Legislature intended that the degree of risk in reckless manslaughter be a mere possibility of death." *See also State v. Jenkins*, 178 *N.J.* 347, 363, 840 A.2d 242 (2004).

The question before us then is whether Campfield's admissions at the plea hearing that his conduct in forcing [FN4] Bennett into the wooded area at night in January when he was partially undressed, drunk, had undergone a serious fall, and had been punched following the fall was (1) "reckless" and (2) "a contributing cause to [Bennett's] death" provided a sufficient basis for conviction of reckless manslaughter.

FN4. Campfield said at one point during his recorded statement to police that Bennett ran into the woods, but subsequently agreed that he "forced" him into the woods. Although the facts set forth in Campfield's recorded statement are not relevant to our analysis, we note that his statement suggests that Bennett ran into the woods to escape from him.

*15 There can be little doubt that Campfield's conduct was "an antecedent [event] but for which" Bennett's death "would not have occurred." Had Bennett been allowed to remain at the apartment complex, where he resided, it is unlikely that he would have met the same end because aid would have been more readily available and he would not have been wandering around on a cold night in the woods. The more difficult question is whether Bennett's death, whether from exposure, drowning, or some other cause not "dependent on another's volitional act," was "within the risk of which [Campfield was] aware" at the time. *N.J.S.A.* 2C:2–3(c).

Consequently, the missing element is awareness. At the plea hearing, Campfield was not asked whether he appreciated that there was a risk, even a "mere possibility," that Bennett might die after he ran out into the woods under the circumstances then existing. Given the lack of any admission by Campfield that he was aware of a risk of death and the sparse nature of the facts to which Campfield did admit at the plea hearing, we are unable to conclude that there was a factual basis for the plea to reckless manslaughter. Even taking into account the reasonable inferences to be drawn from those facts, there is not enough to support a finding, beyond a reasonable doubt, that Campfield was actually aware of the risk of death and that he consciously chose to ignore it, elements of the offense to which he pled.

We vacate the guilty plea with respect to reckless manslaughter. Because we have vacated one of the guilty pleas, we need not reach the issues raised with respect to the sentence.

## III.

Neither Campfield nor the State addressed the consequences for the remainder of the plea agreement of our vacating the plea to reckless manslaughter.

Where a factual basis has not been established, the resulting conviction must ordinarily be vacated and the parties restored to their pre-plea posture. *State v. Barboza*, 115 *N.J.* 415, 420, 558 A.2d 1303 (1989). However, this case is complicated by the fact that Campfield pled guilty to two second-degree offenses, both subject to NERA, as to one of which he has not challenged the factual basis. In addition, he has been

serving his sentence for almost four years. In *State v. Lightner,* 99 *N.J.* 313, 316–17, 491 A.2d 1273 (1985), which also involved a plea to two counts with resulting consecutive sentences, the Supreme Court affirmed our unreported decision vacating the conviction for one of the counts and remanding it to the trial court for disposition, but directing that the counts that had been dismissed as part of the plea agreement not be reinstated. The Court held:

Under the singular facts of this case, we find that the defendant need not forfeit the benefit of his plea agreement for the dismissal of Counts Two, Four, Five, Six, and Seven. He kept his part of the bargain by pleading guilty to the charges of incest and sexual assault and by serving his prison sentence on the incest conviction. Having failed to assure an adequate factual basis for the conviction of sexual assault, the State can hardly be heard to complain now that the dismissal of other counts, to which it previously consented, defeated its reasonable expectations. Fundamental fairness requires, therefore, that the defendant be placed in no worse position than he was at the time of the plea bargain. *State v. Thomas,* 61 *N.J.* 314, 322, 294 A.2d 57 (1971). Under the facts of this case, it would be impossible to restore the defendant to the status he held at the time the plea bargain was approved. In remanding the matter to the trial court for disposition of Count Three, the Appellate Division reached the proper result.

*16 [ *Ibid.*]

The same considerations apply in this case.

Consequently, we vacate the plea and remand to the trial court for further proceedings. The State may seek to try Campfield on Count Five, although we question whether it can establish facts sufficient for a conviction based upon what we have seen from the record, including Campfield's confession. The State may instead pursue any lesser-included offenses, such as aggravated assault. *See State v. Clark,* 255 *N.J.Super.* 14, 23, 604 A.2d 609 (App.Div.1992). The dismissed counts, however, shall not otherwise be reinstated.

Affirmed in part, vacated in part, and remanded.

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