

SUPREME COURT OF NEW JERSEY  
DOCKET NO. A-28/29-17 (079660)

STATE OF NEW JERSEY,

Plaintiff-Respondent/Cross-  
Petitioner,

v.

LAURIE WINT a/k/a  
LAURIE A. WINT, JR., LAURIE  
AINSWORTH WINT, LANCE,

Defendant-Petitioner/Cross-  
Respondent.

CRIMINAL ACTION

ON APPEAL FROM THE SUPERIOR  
COURT OF NEW JERSEY,  
APPELLATE DIVISION

Sat Below:

Jack M. Sabatino, P.J.A.D.  
William E. Nugent, J.A.D.  
Richard J. Geiger, J.A.D.

---

BRIEF OF AMICUS CURIAE,  
THE AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY

---

Alexi Machek Velez (148632015)  
Edward Barocas  
Jeanne LoCicero  
Alexander Shalom  
**American Civil Liberties Union  
of New Jersey Foundation**  
89 Market Street, 7<sup>th</sup> Floor  
P.O. Box 32159  
Newark, New Jersey 07102  
(973)854-1728

*Counsel for Amicus Curiae*

## TABLE OF CONTENTS

|   |    |
|---|----|
| TABLE OF AUTHORITIES.....   | ii |
| SUMMARY OF AURGUMENT.....   | 1  |
| FACTS AND PROCEDURAL HISTORY.....   | 1  |
| ARGUMENT.....   | 5  |
| I.    THE PENNSYLVANIA DETECTIVES' FIRST ATTEMPTED INTERROGATION<br>WAS GLARINGLY UNCONSTITUTIONAL.....                                     | 8  |
| II.   WHILE THE UNITED STATES SUPREME COURT HAS RECOGNIZED TWO<br>RELEVANT EXCEPTIONS TO MIRANDA'S PROPHYLACTIC RULE, NEITHER<br>APPLY..... | 11 |
| A.   Mr. Wint Did Not Reinitiate Questioning.....   | 12 |
| B.   There Was No "Break In Custody.".....  | 14 |
| III.  SUPPRESSION IS THE COURT'S DUTY IN THIS CASE.....   | 18 |
| CONCLUSION.....   | 24 |

## TABLE OF AUTHORITIES

### Cases

|   |                |
|---|----------------|
| <u>Arizona v. Roberson</u> , 486 U.S. 675 (1988).....     | 6, 11          |
| <u>Bradley v. Ohio</u> , 497 U.S. 1011 (1990).....        | 17             |
| <u>Brown v. Illinois</u> , 422 U.S. 590 (1975).....       | 7              |
| <u>Connecticut v. Barrett</u> , 479 U.S. 523 (1987).....  | 6              |
| <u>Davis v. United States</u> , 512 U.S. 452 (1994).....  | 6, 20          |
| <u>Edwards v. Arizona</u> , 451 U.S. 477 (1980).....      | 6, 12, 14, 15  |
| <u>Elkins v. United States</u> , 364 U.S. 206 (1960)..... | 20, 21         |
| <u>Fare v. Michael C.</u> , 442 U.S. 707 (1979).....      | 6              |
| <u>Hudson v. Michigan</u> , 547 U.S. 586 (2006).....      | 20             |
| <u>Illinois v. Perkins</u> , 496 U.S. 292 (1990).....     | 17             |
| <u>Linkletter v. Walker</u> , 381 U.S. 618 (1965).....    | 19             |
| <u>Mapp v. Ohio</u> , 367 U.S. 643 (1961).....            | 21             |
| <u>Maryland v. Shatzer</u> , 559 U.S. 98 (2010).....      | 12, 15, 16, 17 |
| <u>McNeil v. Wisconsin</u> , 501 U.S. 171 (1991).....     | 6              |
| <u>Michigan v. Payne</u> , 412 U.S. 47 (1973).....        | 7              |
| <u>Minnick v. Mississippi</u> , 498 U.S. 146 (1990).....  | 6, 8, 9        |
| <u>Miranda v. Arizona</u> , 384 U.S. 436 (1966).....      | passim         |
| <u>Missouri v. Seibert</u> , 542 U.S. 600 (2004).....     | 20             |
| <u>Oregon v. Elstad</u> , 470 U.S. 298 (1985).....        | 20             |
| <u>Oregon v. Hass</u> , 420 U.S. 714 (1975).....          | 19             |
| <u>Rhode Island v. Innis</u> , 446 U.S. 291 (1980).....   | 6              |
| <u>State v. Evers</u> , 175 N.J. 355 (2003).....          | 21             |
| <u>State v. Hartley</u> , 103 N.J. 252 (1986).....        | 9, 21          |

|   |        |
|---|--------|
| <u>State v. Malik-Ismail</u> , 292 <u>N.J. Super.</u> 590 (App. Div. 1996)... | 19     |
| <u>State v. Novembrino</u> , 105 <u>N.J.</u> 95 (1987).....                   | 19     |
| <u>State v. Nyhammer</u> , 197 <u>N.J.</u> 383 (2009).....                    | 7      |
| <u>State v. Reed</u> , 133 <u>N.J.</u> 237 (1993).....                        | 10     |
| <u>State v. S.S.</u> , 229 <u>N.J.</u> 360 (2017).....                        | 7      |
| <u>State v. Shannon</u> , 222 <u>N.J.</u> 576 (2015).....                     | 19     |
| <u>State v. Smith</u> , 212 <u>N.J.</u> 365 (2012).....                       | 21     |
| <u>State v. Wessells</u> , 209 <u>N.J.</u> 395 (2012).....                    | 11, 15 |
| <u>State v. Wint</u> , A-2182-14 (App. Div. June 20, 2017).....               | passim |
| <u>State v. Yough</u> , 49 <u>N.J.</u> 587 (1967).....                        | 19     |
| <u>Stone v. Powell</u> , 428 <u>U.S.</u> 465 (1976).....                      | 19     |
| <u>Terry v. Ohio</u> , 392 <u>U.S.</u> 1 (1968).....                          | 21     |
| <u>United States v. DeLuca</u> , 269 <u>F.3d</u> 1128 (10th Cir. 2001).....   | 22     |
| <u>United States v. Salerno</u> , 481 <u>U.S.</u> 739 (1987).....             | 18     |
| <u>Withrow v. Williams</u> , 507 <u>U.S.</u> 680 (1993).....                  | 19, 21 |

## **Statutes and Rules**

|                                |   |
|--------------------------------|---|
| <u>N.J.S.A.</u> 2A:84A-19..... | 7 |
| <u>N.J.R.E.</u> 503.....       | 7 |

## **Other Authorities**

|  |    |
|--|----|
| 1 Wayne R. LaFave, <u>Search and Seizure: A Treatise on the Fourth Amendment</u> § 1.5(c) (3d ed. 1996 & Supp. 2003) .....                     | 21 |
| 3 Wayne R. LaFave et al., <u>Criminal Procedure</u> § 9.3(c),<br>“Attenuated Connection” (3d ed. 2007) .....                                   | 22 |
| Anthony G. Amsterdam, <u>Search, Seizure, and Section 2255: A Comment</u> , 112 <u>U. PA. L. REV.</u> 378 (1964) .....                         | 22 |
| Marc L. Miller & Ronald F. Wright, <u>Leaky Floors: State Law Below Federal Constitutional Limits</u> , 50 <u>ARIZ. L. REV.</u> 227 (2008) ... | 16 |

### **SUMMARY OF ARGUMENT**

In this case police obtained an inculpatory statement from Mr. Wint during a custodial interrogation in violation of his Fifth Amendment rights and New Jersey law; as a result, the statement must be suppressed. Contrary to what the Appellate Division held, the connection between the constitutional violation and the evidence sought to be suppressed is not at all attenuated, because there was no punctuated break in Mr. Wint's pretrial, pre-indictment custody following the invocation of his right to an attorney under Miranda. Indeed, Mr. Wint remained in custody for the purpose of Miranda-analysis from the time he invoked his right to have counsel present until the time the statement was elicited, outside the presence of counsel, approximately six months later. Accordingly, the Appellate Division's remand to the trial court for a break-in-custody analysis or a taint/attenuation hearing was improper. Based on the undisputed fact of continuous custody, there can be no set of facts under which the elicitation of inculpatory evidence from Mr. Wint would be lawful.

### **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

For the purposes of this brief, *amicus curiae* American Civil Liberties Union of New Jersey (ACLU-NJ) accepts the facts and procedural history as recounted by the Appellate Division in the unpublished opinion, State v. Wint, A-2182-14 (App. Div. June 20, 2017), adding the following for clarity.

Mr. Wint was arrested by Camden police on July 31, 2011, and taken to the Camden County Prosecutor's office. Id. at 7. At the Prosecutor's office, Camden officers sought to interrogate him regarding a homicide that occurred in New Jersey. Ibid. While this occurred, two Pennsylvania detectives watched everything unfold from an adjacent room in the Prosecutor's office. Ibid.

The Camden officers began by giving Mr. Wint his Miranda warnings. Ibid. In response, Mr. Wint clearly and unequivocally invoked his rights to remain silent and to have counsel present, at which time the Camden officers rightly stopped all questioning. Ibid. It is undisputed that the Pennsylvania detectives saw and heard Mr. Wint clearly and unequivocally invoke his rights. Ibid. However, as the Camden officers exited the interrogation room, they told Mr. Wint that a "couple more people [would] just stop in for you. Okay?" Id. at 8 (alteration in original).

The Pennsylvania detectives entered the room and again provided Mr. Wint with his Miranda warnings, despite just having watching him invoke his rights to remain silent and have counsel present. Ibid. During these Miranda warnings, Mr. Wint again clearly invoked his right to not speak without having counsel present. Specifically, the following exchange occurred:

**Detective:** Okay, the last question [is] do you wish to speak to us without a lawyer being present?

**Mr. Wint:** I want [the lawyer] to sit here while we talk.

**Detective:** I didn't hear. Do you wish to speak to us without a lawyer being present?

**Mr. Wint:** I want him to sit here while we ta[lk].

**Detective:** You want a lawyer here with us?

**Mr. Wint:** Yeah.

**Detective:** You're welcome to do that but, um, if you wanted to talk to us today then, then your answer here would be no?

**Mr. Wint:** No. I would . . .

**Detective:** Or do you want to talk to us today?

**Mr. Wint:** I wanna talk to y'all but I want a lawyer here present cause I don't, I don't . . .

**Detective:** I got ya. I got ya. That, that, that's, if that's your answer, that's you[r] answer.

**Mr. Wint:** Yeah. So . . .

**Detective:** So, you do not want to talk to us right now.

**Mr. Wint:** Without a lawyer?

**Detective:** Correct. So you write no there [on the form]. And you put your initials there. And do me a favor, sign the, sign this across here.

[Id. at 24-25.]

Mr. Wint therefore told the Pennsylvania detectives, who should never have sought to question him at all after watching his clear and unequivocal invocation of his rights when given Miranda warnings by Camden officers, at least five (5) times that he did not wish to speak with them unless and until counsel was made available to him. Ibid.

Mr. Wint remained in custody and was moved into a hallway of the Camden County Prosecutor's office. Id. at 8. While in the hallway, he apparently encountered the Pennsylvania detectives and conveyed some willingness to speak with them, at a later date and in Pennsylvania. Ibid. However, at no point did he state that he would do so without counsel. Mr. Wint remained in custody and was taken to the Camden County Jail.

Several months later, before Mr. Wint had been indicted, let alone tried in New Jersey, the Pennsylvania detectives met with Mr. Wint where he was housed in the Camden County Jail for the purpose of obtaining from him a DNA sample. Ibid. The detectives told Mr. Wint that they were processing paperwork to bring him to Pennsylvania for questioning, to which Mr. Wint replied, "Yeah, I'll talk to you when I get back to Bucks [County]." Id. at 8 (alteration in original).

Six months after Mr. Wint's initial questioning at the Camden County Prosecutor's Office, he was taken from the Camden County Jail to a police station in Warminster, Pennsylvania. Id. at 9. Then, without any counsel for Mr. Wint in the room, he was for a third time given his Miranda warnings, which he then waived. Ibid. It was at this time that Mr. Wint then made a confession regarding the "murder in Camden." Ibid.

The trial court denied Mr. Wint's motion to suppress his statements. Id. at 3. Following a 2014 jury trial, Mr. Wint was



convicted of second-degree passion/provocation manslaughter, N.J.S.A. 2C:11-4(b)(2); fourth-degree resisting arrest, N.J.S.A. 2C:29-2(a); and related weapons offenses. Id. at 2. Mr. Wint appealed.

On appeal, the panel found that the Pennsylvania detectives had violated Mr. Wint's constitutional rights in attempting to interrogate him immediately after watching Mr. Wint invoke his rights to remain silent and to have counsel present to the Camden officers. Id. at 27-29. However, despite that Mr. Wint remained in custody from the time he first invoked his rights until the time of the re-interrogation when he confessed six months later, the panel remanded the matter to the trial court for reconsideration of the suppression issue and a taint/attenuation hearing. Id. at 3.

By orders dated December 12, 2017, this Court granted Mr. Wint's Petition for Certification and the State's Cross-Petition for Certification. Thereafter, the ACLU-NJ filed a Motion for Leave to Appear as *Amicus Curiae* simultaneously with this brief, pursuant to Rule 1:13-9.

### **Argument**

The power differential between the police and an accused during a custodial interrogation is incredibly lopsided in favor of police, and courts do not question the fact that custodial interrogations are "inherently coercive." That is why an officer

is required to give Miranda warnings before she can interrogate the accused. Miranda v. Arizona, 384 U.S. 436, 445-56 (1966). That is also why, once an accused has invoked her right to silence or to have an attorney present during an interrogation, the interrogation must cease and the suspect cannot be re-interrogated thereafter<sup>1</sup> (unless a limited exception applies which, as explained *infra*, Point II, it does not apply here). The strength of this rule "lies in the clarity of its command and the certainty of its application." Minnick, 498 U.S. at 151.

"In Miranda, the United States Supreme Court put in place constitutional safeguards to give an individual a meaningful

---

<sup>1</sup> See, e.g., Davis v. United States, 512 U.S. 452, 458 (1994) ("If a suspect requests counsel at any time during the interview, he is not subject to further questioning."); McNeil v. Wisconsin, 501 U.S. 171, 176-77 (1991) ("Once a suspect asserts the right [to counsel], . . . the current interrogation [must] cease."); Minnick v. Mississippi, 498 U.S. 146, 153 (1990) ("when counsel is requested, interrogation must cease"); Arizona v. Roberson, 486 U.S. 675, 682 (1988) ("after a person in custody has expressed his desire to deal with the police only through counsel, he 'is not subject to further interrogation'") (quoting Edwards v. Arizona, 451 U.S. 477, 484-85 (1980)); Connecticut v. Barrett, 479 U.S. 523, 528 (1987) (same) (quoting Miranda, 384 U.S. at 474); Edwards, 451 U.S. at 485 (once the right to counsel is "exercised by the accused, 'the interrogation must cease'") (quoting Miranda, 384 U.S. at 474); Rhode Island v. Innis, 446 U.S. 291, 293 (1980) ("once a defendant in custody asks to speak with a lawyer, all interrogation must cease until a lawyer is present"); Fare v. Michael C., 442 U.S. 707, 719 (1979) ("an accused's request for an attorney is *per se* an invocation of his Fifth Amendment rights, requiring that all interrogation cease"); Miranda, 384 U.S. at 473-74 ("If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.") (footnote omitted).

opportunity to exercise his right against self-incrimination when subject to police interrogation while in custody." State v. S.S., 229 N.J. 360, 382 (2017) (citing Miranda, 384 U.S. at 477). "Miranda warnings [have been described] as a 'prophylactic rule,' and as a 'procedural safeguard,' employed to protect Fifth Amendment rights against 'the compulsion inherent in custodial surroundings.'" Brown v. Illinois, 422 U.S. 590, 600 (1975) (quoting Michigan v. Payne, 412 U.S. 47, 53 (1973) and Miranda, 384 U.S. at 457-58, 478). "The purpose of Miranda warnings is '[t]o counteract the inherent psychological pressures in a police-dominated atmosphere that might compel a person to speak where he would not otherwise do so freely.'" S.S., 229 N.J. at 381-82 (quoting State v. Nyhammer, 197 N.J. 383, 400 (quoting Miranda, 384 U.S. at 467), cert. denied, 558 U.S. 831 (2009)). "The function of the warnings relates to the Fifth Amendment's guarantee against coerced self-incrimination, and the exclusion of a statement made in the absence of the warnings . . . serves to deter the taking of an incriminating statement without first informing the individual of his Fifth Amendment rights." Brown, 422 U.S. at 600-01.

Additionally, "the right against self-incrimination is guaranteed [not only] by the Fifth Amendment to the United States Constitution" but also by New Jersey's "common law, now embodied in statute, N.J.S.A. 2A:84A-19, and evidence rule, N.J.R.E. 503." Nyhammer, 197 N.J. at 399.

Here, Mr. Wint's statements were obtained in violation of his Fifth Amendment right to have counsel present and against self-incrimination under Miranda and its progeny, as well as his rights under New Jersey law, and his illegally obtained confession must be suppressed.

**I. THE PENNSYLVANIA DETECTIVES' FIRST ATTEMPTED INTERROGATION WAS GLARINGLY UNCONSTITUTIONAL.**

As the Appellate Division rightly held, "the Pennsylvania detectives' first attempt to question defendant, only a few minutes after they witnessed him invoking his right to counsel to the Camden detectives, violated his constitutional rights." Wint, A-2182-14, slip op. at 26. There is no question that the Pennsylvania detectives' immediate attempt to interrogate Mr. Wint after witnessing his invocation of the right to counsel from another room at the Prosecutor's office was unconstitutional.

It is of no moment that the Pennsylvania detectives sought to interrogate defendant with regard to an unrelated crime. See generally, Minnick, 498 U.S. 146 (holding that because suspect invoked his right to counsel during FBI interrogation while in custody, Mississippi sheriff's interrogation of suspect on another matter - without counsel present and during continued custody - was unlawful). A constitutional violation is most obvious when the second interview immediately follows an accused's invocation of his rights under Miranda. See, e.g., State v. Hartley, 103 N.J.

252, 280 (1986) (an accused invoked his rights under Miranda and then was subject to a second interview minutes later; this Court held that when a "second interview follow[s] so closely on the heels of the first as to be part and parcel of it," the second interview is plainly "burdened with the same constitutional infirmities."). However, a second interrogation after an accused invokes his or her rights under Miranda need not occur on the same day to be unconstitutional, let alone where one follows on the heels of the other.

In Minnick, agents from a separate law enforcement entity sought to re-interrogate an accused, with regard to a wholly unrelated crime, two days after he had invoked his right to counsel in a formal interview with the FBI. Id. at 156. The United States Supreme Court held it was unconstitutional for the second interrogation to occur outside the presence of counsel, because "there can be no doubt that the [second] interrogation in question was initiated by the police" and "it was a formal interview which [the accused] was compelled to attend." Ibid. Minnick's bright-line rule is that, when an accused makes "a specific request for counsel before [a formal] interview, [any] police-initiated interrogation [is] impermissible." Ibid.

Camden police gave Mr. Wint his Miranda warnings while Pennsylvania detectives watched on from an adjacent room in the Camden County Prosecutor's office. Wint, A-2182-14 (slip op. at

7). The Pennsylvania detectives watched as defendant responded to the Miranda warnings by affirmatively and unequivocally invoking his right to remain silent until counsel was present. Ibid. The Camden police then appropriately suspended their questioning, but told Mr. Wint that a "couple more people [would] just stop in for you. Okay?" Id. at 7-8. Moments later, Pennsylvania detectives walked into the interrogation room to have their own go at interrogating Mr. Wint, outside the presence of counsel. Id. at 8. The detectives provided their own Miranda warnings, and defendant, for the second time, affirmatively and unequivocally invoked his right to remain silent until counsel was present. Ibid.

As a matter of law, it is of no moment that, during this unconstitutional attempt at a second interrogation as to an unrelated offense, Mr. Wint expressed some willingness to later speak with Pennsylvania detectives, in Pennsylvania, see ibid., for two reasons. First, because the Pennsylvania detectives should not have sought to have any communication with defendant after watching him explicitly state his desire to have counsel present, any putative agreement to speak later is tainted by the inherently coercive nature of any interrogation continued after invoking the right to counsel. See, e.g., State v. Reed, 133 N.J. 237, 256 (1993) (noting that, despite disagreement regarding whether police must advise an accused that her attorney is present and waiting to confer, all courts agree that "the atmosphere of custodial

interrogation is inherently coercive and protecting the right against self-incrimination entails counteracting that coercion." ). Second, nothing in the record suggests that an agreement to speak later, if it had otherwise been properly secured, amounted to an agreement to speak later in Pennsylvania *without counsel*. Wint, A-2182-14 (slip op. at 30).

The further communications, which were initiated by Pennsylvania detectives while Mr. Wint remained in pretrial custody at the Camden County Jail and after he was extradited to Warminster, Pennsylvania, were also in violation of Mr. Wint's Fifth Amendment rights. See infra at Point II. Accordingly, Mr. Wint's statements must be suppressed.

**II. WHILE THE UNITED STATES SUPREME COURT HAS RECOGNIZED TWO RELEVANT EXCEPTIONS TO MIRANDA'S PROPHYLACTIC RULE, NEITHER APPLY.**

If an accused invokes her right to remain silent or to have counsel present, then an interrogation must immediately cease. Miranda, 384 U.S. at 473-74. This rule applies "to any subsequent interrogation," regardless of whether it pertains to the same crime that prompted the initial interrogation. State v. Wessells, 209 N.J. 395, 403 (2012) (citing Roberson, 486 U.S. at 683-84). However, the United States Supreme Court has recognized two relevant exceptions to Miranda's clear mandate.

First, where an accused has "expressed his desire to deal with the police only through counsel," he may be subject to further

questioning *only if* "the accused himself initiates further communication, exchanges, or conversations with the police." Edwards, 451 U.S. at 484-85. Second, "[t]he protections offered by Miranda" do not prohibit re-interrogation of an accused who has enjoyed a "break in custody that is of sufficient duration to dissipate [custody's] coercive effects." Maryland v. Shatzer, 559 U.S. 98, 109 (2010).

Here, neither exception applies, as Mr. Wint certainly did not reinitiate questioning or contact with police from the Camden County Jail, where he sat for months in pre-trial custody. And Mr. Wint did not experience a "break in custody . . . of sufficient duration" to alleviate the inherently coercive nature of interrogations of an accused who remains in pre-trial detention, because he did not experience a break in pre-trial custody of *any duration*.

**A. Mr. Wint Did Not Reinitiate Questioning.**

As the Appellate Division rightly noted, there is no evidence in the record that suggests Mr. Wint reinitiated questioning with the Pennsylvania detectives. Wint, A-2128-14 (slip op. at 30). Instead, the Pennsylvania detectives "were the primary, if not sole, initiators of the Warminster interrogation." Id. at 29.

Mr. Wint did not reinitiate questioning when, immediately after his first unconstitutional interrogation by Pennsylvania detectives, he "encountered" the Pennsylvania detectives in the



hallway of the Camden County Prosecutor's Office. See, id. at 7-8, 29-30. Despite that Mr. Wint told them he would talk to them in Pennsylvania at some later date, the Appellate Division rightly found: (1) there is no evidence in the record to suggest that Mr. Wint initiated whatever exchange took place in the hallway; (2) the testimony evidence suggests it was the detectives who reinitiated communication;<sup>2</sup> and (3) there is no suggestion in the record that Mr. Wint ever agreed to speak with the detectives without counsel present. Id. 29-31.

Certainly, Mr. Wint did not reinitiate questioning when Pennsylvania detectives met with him several months later, in the Camden County Jail where he was being held as a pre-trial detainee, to obtain from him a DNA sample. See, id. at 8. At that time, the Pennsylvania detectives "advised [Mr. Wint] that they were processing paperwork to bring him to Pennsylvania for questioning," and it was apparently in response to this statement by detectives that he allegedly replied, "Yeah, I'll talk to you when I get back to Bucks [County]." Ibid. However, as the Appellate Division rightly noted, not only was this encounter re-initiated

---

<sup>2</sup> While evidence suggests that the police rather than Mr. Wint initiated the hallway contact, even had Mr. Wint initiated the contact upon seeing the Pennsylvania officers in the hallway, the court would be required to discount such an action, as it would have been tainted by the unlawful interrogation by the Pennsylvania officers that had just occurred. See supra, Point I at p. 9-11.

by Pennsylvania officers, but Mr. Wint's statement in no way suggests that he agreed to speak with detectives in Pennsylvania without his counsel present. And indeed, the alleged hallway statement is absolutely consistent with what we know Mr. Wint repeatedly said as he was invoking his right to remain silent and have counsel present: that he would be willing to speak to Pennsylvania detectives once a lawyer was made available to him, and was sitting next to him. Id. at 24-25.

Indeed, Mr. Wint never reinitiated contact with the Pennsylvania detectives. Id. at 29 (noting the detectives were the primary, if not sole, initiators of all communication). Instead, during the months in which Mr. Wint remained a pretrial detainee in Camden County Jail after having invoked his right to counsel under Miranda, it was the Pennsylvania detectives who reinitiated each contact with Mr. Wint, both times without his counsel present. Ibid.

Therefore, the Edwards exception to Miranda's prophylactic rule does not apply, and Mr. Wint's statements made during the detectives' visit to the jail and during the unconstitutional Warminster, Pennsylvania interrogation must be suppressed as a matter of law.

**B. There Was No "Break In Custody."**

Mr. Wint remained in pretrial custody during the entire relevant period. This Court must hew to the bright-line rule

defining when a break is of "sufficient duration to dissipate [custody's] coercive effects." Shatzer, 559 U.S. at 109. The United States Supreme Court has held that a break in custody must be fourteen days or longer to trigger the break-in-custody exception to Miranda's exclusionary rule. Id. at 210. Accordingly, this Court has interpreted Shatzer "to conclude that . . . a break in custody shorter than fourteen days is insufficient." Wessells, 209 N.J. at 409. But in any event, in the present case there was no break in custody of any duration. Therefore, the Shatzer exception to Miranda's prophylactic rule does not apply, and Mr. Wint's statements made during the unconstitutional Warminster, Pennsylvania interrogation must be suppressed as a matter of law.

The Appellate Division thus should not have remanded the case. The Appellate Division apparently concluded, in error, that the time Mr. Wint spent in pretrial detention could possibly amount to a break in custody under Edwards as modified by Shatzer. In essence, the Appellate Division is suggesting that being returned to (or more accurately, continuing in) pretrial detention may amount to the same return to "normalcy" that the Shatzer Court found with regard to a *convicted* inmate who had been returned to general population for fourteen days or longer between interrogations. See, Wint, A-2182-14 (slip op. at 31). Yet, as explained below, court cases clearly establish that this exception only applies to post-conviction custody, not any other type of

custody. The panel thereby invited the trial court to consider going beneath what the United States Supreme Court has determined to be the constitutional floor.<sup>3</sup>

The Supreme Court decision in Shatzer made very clear that pretrial detention is different from post-conviction incarceration in the context of Edwards analysis. 558 U.S. at 113. In so doing, the Shatzer decision necessitated the Court explain what, exactly, custody for the purpose of Miranda means, and whether it includes *post-conviction* "incarceration":

We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue. Whether it does depends upon whether it exerts the coercive pressure that *Miranda* was designed to guard against - the "danger of coercion [that] results from the *interaction*

---

<sup>3</sup> As explained in Marc L. Miller & Ronald F. Wright, Leaky Floors: State Law Below Federal Constitutional Limits, 50 ARIZ. L. REV. 227, 228 (2008):

One of the most widely accepted notions in American constitutional law is that the federal Constitution and interpretations of that Constitution by the Supreme Court of the United States set a "floor" for personal liberties. State courts and state legislatures cannot properly go below the federal floor. This is a proposition confidently stated by both proponents and skeptics of federal power, by justices and judges in the federal and state systems, and by scholars across the political spectrum. It is a position anchored not just to constitutional theory but to plain constitutional text, in the form of the Supremacy Clause, which provides that: "This Constitution . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

of custody and official interrogation."

[Shatzer, 559 U.S. at 112 (alteration in original) (citing Illinois v. Perkins, 496 U.S. 292, 299 (1990); and Bradley v. Ohio, 497 U.S. 1011, 1013 (1990) (Marshall, J., dissenting from denial of certiorari).]

On that basis, the Court held that when a convicted inmate is returned to general population, there ends the "inherently compelling pressures of custodial interrogation" because *after conviction*, being returned to general population amount to a return to the convicted inmate's "normal life." Shatzer, 559 U.S. at 114. Importantly for purposes of the present case, the Court noted that the case before it differed from ones that involved multiple interrogations during continuing *pre-conviction* detentions. Id. at 114. Specifically, as opposed to other types of continuous detentions, the Court determined that "lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in Miranda." Id. at 113.

In Shatzer, which *amicus* notes is no gold star on the United States Supreme Court's civil liberties report card, the Court was clear in laying the floorboards flush against its reading of the Constitution: there are "vast differences between Miranda custody and incarceration pursuant to conviction." Id. at 114. Clearly, the "coercive pressures identified in Miranda" exist for pre-trial detainees such as Mr. Wint in a way they do not for those persons who are already convicted. As such, returning a convicted inmate

to general population on the one hand and continuously detaining a pre-trial detainee (who retains the presumption of innocence and who is uniquely subject to coercion related to Miranda in a way already-convicted inmates are not), are thus different in kind. Indeed, as stated by the Court in United States v. Salerno, 481 U.S. 739, 755 (1987): "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." Ibid. In short, unlike a convicted person being returned to general population, the continued custody of a pre-trial detainee is not a return to "normalcy." For non-convicted individuals, "normalcy" would be a return to the community. Ibid.

The Shatzer decision thus leaves no room for anything other than the singular outcome of suppression here: Because there was no break in custody (as Mr. Wint remained in pretrial detention between the first improper custodial interrogation and the interrogation where the inculpatory statement was coercively elicited), the connection between the violation of his constitutional rights and the obtaining of the evidence sought to be suppressed is *not at all* attenuated. The fact that there was never any break in custody ends the analysis.

### **III. SUPPRESSION IS THE COURT'S DUTY IN THIS CASE.**

Under Miranda's exclusionary rule, "[u]nless the prosecution can demonstrate the warnings and waiver as threshold matters . . . it may not overcome an objection to the use at trial of statements

obtained from the person in any ensuing custodial interrogation." Withrow v. Williams, 507 U.S. 680, 688-90 (1993) (citing, cf., Oregon v. Hass, 420 U.S. 714, 721-723 (1975) (permitting use for impeachment purposes of statements taken in violation of Miranda)). When a court finds a violation of Miranda, then the "statement obtained from a suspect in violation of Miranda rights must be suppressed." State v. Malik-Ismail, 292 N.J. Super. 590, 595-96 (App. Div. 1996) (citing Miranda, 384 U.S. at 444; and State v. Yough, 49 N.J. 587, 595 (1967)).

Indeed, as noted by the United States Supreme Court, "the exclusionary rule [under the Fourth Amendment], held applicable to the States in [Mapp v. Ohio], 'is not a personal constitutional right'; it fails to redress 'the injury to the privacy of the victim of the search or seizure' at issue, 'for any "reparation comes too late."'" Williams, 507 U.S. at 686 (quoting Stone v. Powell, 428 U.S. 465, 486 (1976) (quoting Linkletter v. Walker, 381 U.S. 618, 637 (1965))). In fact, New Jersey's exclusionary rule is even more protective, whereby this Court has explicitly declined to adopt the federal "good faith exception" to the exclusionary rule. State v. Shannon, 222 N.J. 576, 585 (2015) (citing State v. Novembrino, 105 N.J. 95, 157-59 (1987)).

"[U]nlike the Fourth Amendment exclusionary rule, the 'Miranda exclusionary rule . . . serves the Fifth Amendment and sweeps more broadly than the Fifth Amendment itself.'" Missouri v.

Seibert, 542 U.S. 600, 623 (2004) (quoting Oregon v. Elstad, 470 U.S. 298, 306 (1985)). Indeed, the Miranda exclusionary rule "may be triggered even in the absence of a Fifth Amendment violation." Elstad, 470 U.S. 298, 306-07.

Suppression deters unconstitutional action by law enforcement. Elkins v. United States, 364 U.S. 206, 217 (1960) (the primary purpose of the exclusionary rule "is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it."); see also, Davis, 564 U.S. at 237 (indeed, "deterrent value is a 'necessary condition for exclusion.'" ) (quoting Hudson v. Michigan, 547 U.S. 586, 596 (2006)). But the deterrent effect is not suppression's only benefit. Other rationales inform the suppression analysis, including the benefit of safeguarding judicial integrity and restoring the parties to the *status quo ante*.

While the suppression of ill-gotten confessions undoubtedly makes conviction more difficult, see, Davis, 564 U.S. at 237, *declining* to suppress such evidence – and thereby allowing the entry of tainted evidence into our courts and permitting the government to profit from its own wrongdoing – also comes at a significant social cost. For that reason, the "imperative" of preserving and protecting "judicial integrity" is at the forefront of the judicial function. Mapp v. Ohio, 367 U.S. 643, 659 (1961)



(quoting Elkins, 364 U.S. at 222); see also, State v. Williams, 192 N.J. 1, 14 (2007) ("A corollary purpose is to uphold judicial integrity by serving notice that our courts will not provide a forum for evidence procured by unconstitutional means."); State v. Smith, 212 N.J. 365, 388 (2012) ("Other than deterrence, the exclusionary rule advances the 'imperative of judicial integrity' and removes the profit motive from 'lawless behavior.'") (quoting State v. Evers, 175 N.J. 355, 376 (2003); 1 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 1.5(c) (3d ed. 1996 & Supp. 2003) (same). To admit ill-gotten evidence at a criminal trial "has the necessary effect of legitimizing the conduct which produced the evidence, while an application of the exclusionary rule withholds the constitutional imprimatur." Terry v. Ohio, 392 U.S. 1, 13 (1968).

Despite this fact - and despite the fact that *both* the initial interrogation of Mr. Wint by the Pennsylvania police and the interview months later - violated Miranda, the Appellate Division ordered a remand to assess whether the taint of the initial unlawful interrogation had been attenuated, apparently ignoring or misinterpreting the latter unlawful contact. Wint, A-2182-14, slip op. at \*35, citing State v. Hartley, 103 N.J. 252, 283 (1986). However, once again, there should be no remand to assess "attenuation of the taint" for the same reason that there should be no remand regarding whether a break in custody "dissipated" the

coercive harm of re-interrogation: There was no break of Miranda custody, and the second interrogation which arranged the Buck's County interview and the Buck's County interview itself were thus also unlawful. As a matter of law, no taint can be found to have been "attenuated" given the undisputed facts, and the remand was thus improper.

It is extremely important that circumstances such as this should not be subjected to some form of balancing. The attenuated connection exception to suppression should be "view[ed] from the perspective of the exclusionary rule's deterrence function." 3 Wayne R. LaFave et al., Criminal Procedure § 9.3(c), "Attenuated Connection" (3d ed. 2007). "'The Notion of the 'dissipation of the taint' attempts to mark the point at which the detrimental consequences of illegal police action become so attenuated that the deterrent effect of the exclusionary rule no longer justifies its cost.'" Ibid. (quoting United States v. DeLuca, 269 F.3d 1128 (10th Cir. 2001)). "In short, the underlying purpose of the 'attenuated connection' test is to mark 'the point of diminishing returns of the deterrence principle.'" Ibid. (quoting Anthony G. Amsterdam, Search, Seizure, and Section 2255: A Comment, 112 U. PA. L. REV. 378, 390 (1964)).

While it is true that "'the question of attenuation inevitably is largely a matter of degree,' and thus application of the test is 'dependent upon the particular facts of each case,'" there

should be no fact-sensitive attenuation analysis *where there is no attenuation* between the constitutional violation and obtaining the evidence. The relevant timeline here was not punctuated by any breaks in Mr. Wint's pretrial, Miranda custody that could possibly attenuate the connection between the multiple attempts to question him after his invocation of his right to counsel without his counsel present. Once he invoked his right to have counsel present, the Pennsylvania detectives should not have communicated with Mr. Wint in the hallway of the prosecutor's office, they should not have sought an agreement to speak with them further in Pennsylvania when they visited him in Camden County Jail, and they should not have extradited him for questioning outside the presence of counsel.

This Court should not endorse even the possibility of an outcome before the trial court where the longer a detainee is jailed prior to indictment, let alone prior to conviction, the greater the perverse incentive for law enforcement to continue to seek to question an individual who has unequivocally invoked his right to counsel. Remanding for a taint/attenuation hearing would do just that. This Court must act to avoid the perverse result of a decision permitting law enforcement to attempt to re-interrogate pretrial detainees as often as every fourteen days, outside the presence of counsel, after that detainee has invoked his right to counsel. Such an outcome would be permissive of exactly the

coercive abuse of the police/accused power differential that Miranda and its progeny demand that law enforcement avoid.

**CONCLUSION**

Mr. Wint's confession was obtained in violation of his Fifth Amendment rights against self-incrimination and to have counsel present. Accordingly, *amicus* respectfully requests that the Court order his statement suppressed.



ALEXI MACHEK VELEZ (ID #148632015)  
ALEXANDER SHALOM  
EDWARD BAROCAS  
JEANNE LOCICERO  
AMERICAN CIVIL LIBERTIES UNION OF  
NEW JERSEY FOUNDATION  
Counsel for *Amicus Curiae*

Dated: February 26, 2018