

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

JASON ERIC KUHNS

Appellant

No. 1909 WDA 2015

Appeal from the PCRA Order December 1, 2015
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0005268-2011

BEFORE: GANTMAN, P.J., OLSON, J., and FITZGERALD, J.*

DISSENTING STATEMENT BY FITZGERALD, J.: **FILED JULY 29, 2016**

I believe that an evidentiary hearing was necessary to consider Appellant's Post Conviction Relief Act¹ ("PCRA") petition. Appellant claimed trial counsel's ineffectiveness for failing to seek suppression of his statements and asserted that he (1) did not receive **Miranda**² warnings, (2) signed a **Miranda** waiver form without being apprised of his rights, and (3) requested trial counsel to seek suppression on this basis, but counsel refused. He noted he did not initial the **Miranda** waiver form beside each warning, which was inconsistent with the interrogating detective's trial testimony about her general practices. The PCRA court ultimately dismissed

* Former Justice specially assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541-9546.

² **Miranda v. Arizona**, 384 U.S. 436 (1966).

Appellant's petition without a hearing. The court noted the detective testified at trial that she apprised Appellant of his **Miranda** rights. The court found Appellant's assertion that he did not receive **Miranda** warnings was not credible and self-serving when contrasted with the detective's trial testimony.

A review of the record confirms that the interrogating detective testified that she read Appellant his **Miranda** rights and transcribed his answers on the form. Trial counsel, through cross-examination of the detective, contested the voluntariness of Appellant's inculpatory statements. However, counsel's cross-examination focused on the detective's training in interrogation techniques, the length of the interrogation, and Appellant's substance abuse history.³ Counsel did not contest the threshold issue of Appellant's waiver of his **Miranda** rights. Moreover, Appellant elected not to testify at trial.

In my view, Appellant's petition raised genuine issues of fact that required credibility determinations from the PCRA court. I further believe that the court's attempt at credibility determinations were premature because the issue of whether Appellant was apprised of and waived his **Miranda** rights was not developed at trial. Therefore, I would remand for an evidentiary hearing. **See** Pa.R.Crim.P. 907(1).

³ The trial court also issued an instruction to the jury to determine the voluntariness of Appellant's inculpatory statement.

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Thus, I respectfully dissent.