

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 1376-2005
 :
 CHRISTINE SAIERS, : CRIMINAL ACTION - LAW
 :
 Defendant :
 : OMNIBUS PRE-TRIAL MOTION

DATE: December 22, 2006

OPINION

On December 18, 2006, this court issued an order denying in part and granting in part Defendant Christine Saiers's Motion to Suppress that was alleged in her Omnibus Pre-trial Motion filed May 1, 2006. The Motion to Suppress was granted in that a portion of the statements Defendant Saiers made to police on July 15, 2005 were obtained in violation of her right against self-incrimination. This Opinion is issued in support of the December 18, 2006 order and to further explain the court's reasoning.

I. BACKGROUND

A. Facts

1. Initial Police Investigation

On July 9, 2005, at approximately 7:00 a.m. the Lycoming County 911 Center received a call from 435 Park Avenue, Williamsport, Pennsylvania. Defendant Christine Saiers (hereafter "Saiers") reported to the dispatcher that she needed an ambulance to respond to the residence. She thought that her baby might be dead.

Officers from the Williamsport Bureau of Police responded to 435 Park Avenue. There they discovered four month old Alexandria Harris dead on the couch. The officers determined that Alexandria's father, Charles Harris, found her just before he dialed 911. Harris told the officer that Alexandria was wedged head first between the back of the couch and the bottom cushion of the couch. Harris told the officer that when he found Alexandria she was covered with a pillow. Harris also told the officers that he had to use both hands to pull Alexandria from the couch. The officers then summoned Agent Stephen Sorage (hereafter "Sorage"), who is a member of the Williamsport Bureau of Police and charged with investigating crimes that occur within the Bureau's jurisdiction.

Agent Sorage and Deputy Coroner Beth Wilson arrived at 935 Park Avenue. Both Agent Sorage and Deputy Coroner Wilson questioned Saiers. Saiers proved her version of the previous evening's events, and admitted no wrongdoing in the death of Alexandria. Agent Sorage requested that Saiers go to the Williamsport Bureau of Police Headquarters located at City Hall to be interviewed. Saiers declined Agent Sorage's offer to transport her to City Hall. Instead, Saiers had her mother, Connie Saiers, drive her to City Hall for the interview.

Saiers and her mother arrived at City Hall at approximately 12:25 p.m. Agent Sorage asked Saiers if he could talk to her in private, and she agreed. Agent Sorage then led Saiers to the interview room inside Police Headquarters.

2. The July 9, 2005 Interview

The interview room is located about fifteen feet from the main hallway within Police Headquarters. The interview room has only one entrance, which is secured by a solid wooden

door. The door can only be locked and unlocked from the outside of the interview room. To do this, one must have the key. To exit the interview room, all one need do is turn the door knob and push the door open, so long as the door is not locked from the outside. The interview room is approximately ten feet by twelve feet. Inside the interview room, there is a desk and some chairs. The interview room has audio and video capability.

Agent Sorage started the interview by informing Saiers that the interview room was a monitored room that was audio and video equipped. Court Exhibit 1A, 2. Agent Sorage then asked Saiers if she understood that she was not under arrest, to which she responded that she did, confirmed with Saiers that she came to Police Headquarters voluntarily, and then told Saiers that she was free to leave at anytime. Id. at 2, 3. Agent Sorage did not provide Saiers with any *Miranda* warnings at this time.

Agent Sorage then proceeded to gather background information from Saiers. Saiers told Agent Sorage that she was twenty-nine years old, had only completed the ninth grade, and was in the process of obtaining her GED. Court Exhibit 1A, 2, 5. Saiers told Agent Sorage that she could read and write just so long as no “real big words” were involved. Id. at 5. Saiers told Agent Sorage that she had been in a relationship with Harris for about ten years. She told Agent Sorage that she and Harris had two children together, Tyler, age five, and Alexandria, age four months. Id. at 6. Saiers told Agent Sorage that Harris was not involved with the care of their two children and that she was both mother and father to Tyler and Alexandria. Id. at 11, 12. With regard to Alexandria’s medical problems, Saiers told Agent Sorage that Alexandria had been born with Down Syndrome. Id. at 15, 16. Saiers also told Agent Sorage that Alexandria had recently

suffered from a bout of congestion that required Saiers to administer daily medication to Alexandria. *Id.* at 20.

After obtaining this background information, Agent Sorage focused his questioning of Saiers on the events of the day that proceeded Alexandria's death. Saiers told Agent Sorage that she arrived at Harris' residence, 435 Park Avenue, between 11:30 p.m. and 12:00 midnight. Court Exhibit 1A, 30. Saiers said that she took Alexandria out of the stroller to get her ready for bed. As she was doing this, Alexandria started to wake up so Saiers held Alexandria in her arms and rocked her. *Id.* at 28. After this, Saiers said she prepared the couch for Alexandria to sleep on. Saiers told Agent Sorage that she laid a blanket down on the couch. *Id.* at 30. Saiers then removed the pillow from the back of the couch and pushed the seat cushion of the couch all the way back until it was flush with the back of the couch. *Id.* at 31-32, 33. Saiers said she then placed Alexandria on her back on the couch and made sure Alexandria was asleep before she left. *Id.* at 31, 33.

Saiers said she then went into the bedroom where Harris was. Saiers said she later went to the kitchen to get something to drink. Court Exhibit 1A, 33. Saiers told Agent Sorage that after she had poured her drink she went to the bathroom. *Id.* at 34. Saiers said she then picked up the cup from the kitchen sink and went to check on Alexandria. *Ibid.* Saiers told Agent Sorage that she peaked around the corner into the living room and saw that Alexandria was alright, that is, Alexandria was breathing and moved her hand. *Ibid.* Saiers then told Agent Sorage that she then went into the bedroom where Harris was and the two made love. *Id.* at 33, 34. Agent Sorage then confirmed with Saiers that she was sure that when she looked in on Alexandria from around the corner she was able to see Alexandria move her arm and that she was breathing. *Id.* at 35. Saiers

said yes, and then asked if there were restrooms in Police Headquarters. Ibid. At that time, a break in the questioning was taken to allow Saiers to use the restroom.

Agent Sorage escorted Saiers into the main hallway and indicated to Saiers the location of the ladies' room by pointing down the hallway toward it. Saiers then walked down the main hallway by herself to the ladies' room. Agent Sorage returned to the interview room.

After a few minutes, Saiers returned to the interview room. Upon returning, Agent Sorage asked Saiers if he could get her a jacket. Court Exhibit 1A, 35. Agent Sorage apologized for the temperature in the interview room being so cold and told her that there was not a much he could do about it. Ibid. Saiers told Agent Sorage that it was okay. Ibid.

The focus of Agent Sorage's interview now became discounting Saiers' story. The first thing he did was point out how the evidence did not support Saiers' claim that she placed Alexandria in the middle of the cushion. Agent Sorage told Saiers that if the cushion was pushed all the way back, as she claimed, there still would have been a gap, but Agent Sorage told Saiers that Alexandria would not have been able to move the cushion and get into the gap on her own. Court Exhibit 1A, 37-38. Agent Sorage told Saiers that he had developmental experts who told him that a four month old Down Syndrome baby could not roll from her back to her stomach. Id. at 38. Therefore, Alexandria could not have gotten in between the back of the couch and the cushion if she was laid on her back like Saiers claimed. Agent Sorage flat out told Saiers that "...what happened to this baby was not accidental." Id. at 39. Agent Sorage told Saiers, "...the fact of the matter is that child did not roll that way, that child was placed there. Okay. That child was placed in that gap. It was made to look like the child rolled like that." Id. at 40.

Then Agent Sorage focused on an inconsistency in Saiers' story. Agent Sorage told Saiers that he did not believe her statement that she poked her head around the corner to look in on Alexandria. He told Saiers that it would have been impossible to see Alexandria on the couch from that vantage point, and you would not be able to see her until you were three feet inside the room. Court Exhibit 1A, 42. After a few minutes, Saiers admitted that she did not check on Alexandria. She told Agent Sorage that she thought she was going to get into trouble for not checking on Alexandria. Id. at 43. Agent Sorage told Saiers that he did not believe that she planned to kill Alexandria. But, he told Saiers that he knew the reason she did not check on Alexandria because Saiers knew Alexandria was already dead. Id. at 44.

Later, Agent Sorage told Saiers that Alexandria's death happened only one of two ways. Agent Sorage told Saiers that either she intended to hurt Alexandria and it was planned out or Saiers just lost control because of the stress she was under. Court Exhibit 1A, 47. Saiers told Agent Sorage that it was not planned. Ibid. Agent Sorage then said to Saiers, "The only way I can know that it wasn't some plan, that you hadn't thought this all out Christine is for you to tell me how you did this." Ibid. Saiers told Agent Sorage, "I didn't put her back in the crack of the couch. I mean I know you want to blame me for her but I didn't". Id. at 48. Agent Sorage countered Saiers' denial by again asking her if Alexandria's death was the result of Saiers losing control. Id. at 49. Saiers again told Agent Sorage that Alexandria's death was not intentional. Saiers then asked when her mother could come in to the interview room. Ibid. Agent Sorage told Saiers that he would have her come in in a little while. Ibid.

A little later in the interview, Agent Sorage summed up for Saiers what he believed to be the situation. He said:

But you know what the short of it is, the short of it is that the baby can't get from here to the position she is in without help. That's the short of it. Wherever you were standing here, where - - however you moved the cushion, the baby can't get there without getting help there. That's the short of it. That's right where we are at girl. That's right where we are at. That's it in a nut shell. That baby can't get there. That baby can't get to that gap unless somebody puts her there. That's as simple as I can make this.

Court Exhibit 1A, 54. Agent Sorage then tells Saiers that it all comes down to whether the death of Alexandria was intentional or a momentary lapse on Saiers's part caused by stress. *Id.* at 55.

Saiers then asked Agent Sorage when Alexandria's autopsy will take place. Court Exhibit 1A, 55-56. Agent Sorage told her that it will be performed the next day. *Id.* at 56. Saiers then asked Agent Sorage if she can wait till after the results of the autopsy before making any statement as to what she did or did not do. Court Exhibit 1. Agent Sorage told Saiers that she does not have to talk to him at all. Court Exhibit 1A, 56.

Agent Sorage then said:

I think we both have an idea, I mean where we are headed here. Okay. What I am telling you now is I have a decent idea what the autopsy results are going to be and so do you.

Court Exhibit 1A, 56. Agent Sorage told Saiers that they both knew Alexandria was killed; the only question is whether it was intentional or a result of a momentary snap caused by stress. *Id.* at 57. Agent Sorage told Saiers that the autopsy is going to tell him what he already knows – that Alexandria was suffocated. *Id.* at 61. He then told Saiers that while the autopsy will tell him what

happened it cannot tell him why it happened. Agent Sorage told Saiers that only she can tell him what happened. She is the only one that can tell him if it was intentional or the results of her losing control. *Id.* at 61, 67. Saiers told Agent Sorage that she wants her mother to come in. *Id.* at 63. Agent Sorage said okay and then left the room. *Ibid.*

Agent Sorage returned to the interview room without Saiers's mother. Agent Sorage told Saiers that he has a question he wants to ask her without her mother being there. Court Exhibit 1A, 63. He asked her why she wants to wait for the results of the autopsy. *Ibid.* Saiers told him that she wanted to see what it says so that she will not say anything that might blow up in her face. *Id.* at 63-64. Agent Sorage responded, "[L]ike I said we already know the baby was killed, okay. It's a question of whether it was a deliberate planned thing or something that happened spur of the moment, accidentally, okay." *Id.* at 64. Saiers told Agent Sorage that she placed Alexandria in the middle of the cushion and that Alexandria could move around and roll over. *Id.* at 64, 5. Agent Sorage then left the room to get Saiers's mother. *Id.* at 65.

Agent Sorage came back into the interview room with Connie Saiers. Once in the room, Agent Sorage told Connie that Alexandria was found wedged down in a corner of the couch and covered with a pillow. Court Exhibit 1A, 66. He told Connie that it would have been impossible for Alexandria to get into that position on her own. *Id.* at 67. Connie told Agent Sorage that she does not believe that Saiers would intentionally hurt Alexandria. *Id.* at 67-68. Agent Sorage then leaves the interview room so that Connie and Saiers could talk.

Saiers adamantly told her mother that she did not hurt Alexandria. Court Exhibit 1; Court Exhibit 1A, 68, 69. She told her mother that she put Alexandria in the middle of the cushion. *Id.* at 69. Saiers told her mother that the police were blaming her for Alexandria's death. *Ibid.*

Then, Saiers told her mother that although Agent Sorage told her that she did not have to talk to him, he wanted her to tell him whether she planned Alexandria's death or if she did it by accident. Court Exhibit 1A, 70. Saiers told her mother that she was not going to answer him and then have her answers somehow used against her. *Ibid.* Saiers described how she tried to accomplish this when she told her mother that when Agent Sorage asked questions she did not want to answer she would remain silent and look down at the ground. *Ibid.* Connie told Saiers that the next thing they need to do was go home and if the police needed to talk to her again they had to provide her with an attorney. *Id.* at 71. Saiers acknowledged her mother's advice. *Ibid.*

After a few minutes, Agent Sorage came back into the interview room. Agent Sorage brought up the subject of a polygraph examination. Court Exhibit 1A, 73. Agent Sorage told Saiers and her mother "...a polygraph could clear a lot of things up, either yes or no. I mean it's what it is." *Id.* at 74. Saiers told Agent Sorage that she would have to think about taking a polygraph examination. *Id.* at 79. Saiers then left the interview room and Police Headquarters with her mother.

3. The July 12, 2005 Interview

Lieutenant Thomas Ungard, a member of the Williamsport Bureau of Police, was assisting Agent Sorage with his investigation of Alexandria's death. On July 12, 2005, Ungard called Saiers and asked her if she could come down to Police Headquarters and talk because there were a

few more questions regarding the death of Alexandria. Saiers told Ungard that she would be down as soon as she got a ride.

Saiers arrived at Police Headquarters with her mother's boyfriend, Thomas Harlan. Ungard met them in the hallway of City Hall. He told them that there were a few things he wanted to clear up with Saiers. Ungard told Harlan that he could leave and he would call him when he and Saiers were done. Harlan said he would wait. Ungard and Saiers went back to the interview room inside Police Headquarters. It was the same room Saiers had been in on July 9, 2005.

Once they were in the interview room, Ungard advised Saiers that the interview room had audio and video capability. Court Exhibit 2A, 2. Ungard also told Saiers that she was free to leave any time she wanted and that she was not under arrest. Ibid. Ungard also made it clear to Saiers that the door of the interview room was not locked and could not be locked from the inside. Id. at 2-3. Saiers had thought that the door was locked when she was in the room with Agent Sorage on July 9, 2005.

Ungard wanted to go over with Saiers what had happened the night before Alexandria died, especially how Saiers put Alexandria down on the couch. Saiers told Ungard that she took Alexandria out of her stroller and she started to wake up. Court Exhibit 2A, 15. Saiers said she held Alexandria in her arm rocking her and patting her bottom. Ibid. Saiers said she then laid a blanket down on the couch. Ibid. Saiers told Ungard that she laid Alexandria on her back in the middle of the cushion at the end of the couch. Id. at 15, 16. She also told Ungard that she moved the pillow that was down there and placed it at the other end of the couch. Id. at 16, 22. Saiers

told Ungard that she was positive that the pillow would not have fallen on Alexandria from the position she had placed it. *Id.* at 22.

Later in the interview, Ungard and Saiers left the interview room to watch a video tape of a statement Harris gave to the police. The two then returned to the interview room and the questioning resumed.

By Saiers' reaction, it appeared that Harris must have told the police that he found the pillow on top of Alexandria when he went into the living room the morning of the 9th. The first thing Saiers said upon re-entering the interview room was, "I don't know how because I put it down by her feet and if it fell over it wouldn't have fell over her head like that." Court Exhibit 2A, 28-29. Saiers told Ungard again that she put the pillow at the other end of the couch down by Alexandria's feet and was sure that if fell it would not have fallen on her. *Id.* at 29. Saiers told Ungard that she was dead sure that when she left Alexandria on the couch the pillow was still at the other end of the couch. *Id.* at 34.

In addition to the location of the pillow, Ungard told Saiers that Harris told them that he found Alexandria wedged deep down in the couch and that he had to use two hands to get her out. Court Exhibit 2A, 35. Saiers told Ungard that Harris never told her any of this. She told Ungard that Harris told her that he found Alexandria laying on her side on the couch. *Ibid.*

The interview concluded after this, and Saiers left the interview room and Police Headquarters.

4. The July 15, 2005 Interview

In the morning of July 15, 2005, Ungard contacted Saiers to determine if she had decided to take a polygraph examination. She agreed to take the exam and to come down to City Hall. Saiers went to City Hall with Harlan, and was met at City Hall by Ungard. Harlan asked Ungard how long it would take, and Ungard told him about two to three hours. Ungard also told Saiers that she could leave at the end of the day. Ungard then escorted Saiers back to the room where the polygraph exam was to be conducted.

The room where the polygraph exam was to be conducted was inside Police Headquarters. To access it, one had to turn from the main hallway, go down the side hallway, past the interview room, and into a larger room at the end of the hall where the homicide division office was located. The entrance to the room where the polygraph exam was to be held was just to the left of the entrance to the larger room. Inside that room were a table and a couple of chairs. The room was also audio and video equipped.

When they reached the room, Ungard introduced Saiers to Trooper Kenneth Davis (hereafter "Davis"), a member of the Pennsylvania State Police, who would be conducting the exam. Trooper Davis said to Saiers, "Before I can talk to you any further or conduct a polygraph test I have a form we will have to fill out, its pretty self explanatory." Court Exhibit 3A, 2. That form contained the *Miranda* warnings.¹ Trooper Davis read the form to Saiers and then had her

¹ Court Exhibit 3, the video tape of the July 15, 2005 interview, does not show Trooper Davis telling Saiers about the form, reading her the form, or Saiers signing the form. Court Exhibit 3A, the transcript of that interview, indicates that Trooper Davis did read the *Miranda* rights waiver form to Saiers. The Commonwealth did not introduce into evidence the *Miranda* rights waiver form signed by Saiers. At the evidentiary hearing on the Motion to Suppress, Trooper Davis testified that he read the *Miranda* rights waiver form to Saiers, had her review it, and she signed it.

review it. *Ibid.* After reviewing it, Saiers indicated to Trooper Davis that she had no questions and signed the form. *Id.* at 2, 3.

Trooper Davis then explained to Saiers how the polygraph exam would proceed. He explained to Saiers the equipment that would be used. Court Exhibit 3A, 4, 6. He then explained the process. *Id.* at 4-9.

Trooper Davis then asked Saiers some questions to get background information. The questions covered such topics as Saiers' address, date of birth, education, family, whether she was on medication, and health. Court Exhibit 3A, 9-18. With regard to her health, Saiers told Trooper Davis that she was suffering from a migraine, but she did not take her medication because she was afraid it might affect the polygraph exam. *Id.* at 5, 6, 12.

Trooper Davis continued to ask questions to get to gather information for the exam. One of these questions was why Saiers was taking the polygraph exam. Saiers answered, "To find out, to see who moved the pillow on top of the baby. That's the main thing, the pillow." Court Exhibit 3A, 27. Trooper Davis continued his questioning of Saiers, and asked her to recount the events of the night before Alexandria died. *Id.* at 28. Saiers told Trooper Davis that she took Tyler and Alexandria to Tyler's godparent's home and they visited for a good part of the night. *Id.* at 28-32.

Saiers told Trooper Davis that she let Tyler spend the night there and she left with Alexandria for Harris' residence. *Id.* at 32. Saiers said that when she got to Harris's, Alexandria started to wake up, so she took Alexandria out of the stroller and rocked Alexandria in her arms. *Ibid.* Saiers told Trooper Davis that she then laid Alexandria down on the couch on her back and moved the pillow

that was next to her head down by her feet. *Id.* at 32-33. Saiers said she stayed there until Alexandria was asleep. *Id.* at 33.

After this, Trooper Davis asked Saiers if she had any questions, to which she responded no. Court Exhibit 3A, 37. Trooper Davis then asked Saiers if she were him what question would she ask on the test. She responded by saying she would ask about the pillow. *Ibid.*

Following the exchange, Trooper Davis went over the specific questions he would ask Saiers on the exam. Court Exhibit 3A, 37-41. Trooper Davis asked Saiers if she understood the questions and she said she did. *Id.* at 42. Trooper Davis then told Saiers he was going to have her wait out in the hallway while he set up the equipment for the test. *Ibid.* She asked Trooper Davis if she could go out and smoke a cigarette. *Ibid.* Trooper Davis told her she could and also told her she could take the medication for her headache and use the restroom if she needed. *Id.* at 42-47. Saiers left the room and Trooper Davis set up the equipment.

A few minutes later, Saiers returned to the room and Trooper Davis attached the equipment to her. Trooper Davis then conducted the polygraph exam. At the conclusion of the exam, Trooper Davis had Saiers leave the room so that he could review and score the results. Trooper Davis obtained the results of the test, and then rearranged the chairs in the room. During the test, the chairs he and Saiers had been seated in were separated by the desk. Now, Trooper Davis positioned the two chairs so that they would be seated face to face and close enough that their knees would almost be touching. After this, Trooper Davis brought Saiers back into the room.

Once in the room, Trooper Davis told Saiers that he had reviewed the test and she did not pass. Court Exhibit 3A, 43. Trooper Davis said:

You weren't being a hundred percent truthful with me. So there is something still there, Chris, you're not being honest with me about your baby. And now is the time to talk about this.

Ibid. When Trooper Davis said this to Saiers he was seated in a chair directly in front of Saiers, who was also seated in a chair that was located close to the center of the room. Trooper Davis and Saiers were in close proximity to each other, and Trooper Davis was closer to the exit than Saiers.

Trooper Davis reiterated to Saiers that now was the time to talk. Court Exhibit 3A, 44. He told Saiers that she was not being one hundred percent honest about Alexandria's death and that "we need to get to the truth." Ibid.² Trooper Davis told Saiers that "... there are, you know, definite problems here we need to rectify." Ibid. Trooper Davis repeated the theme of "we need to" stating to Saiers that: "There are a lot of stressors going on and things happen. That's where we are at now and we need to correct these mistakes."; "Because we need to work these things out Chris because you're not being a hundred percent honest with me. I know that for a fact."; and "And there is more things you're not being honest with me Chris, that's what we need to work out." Id. at 45, 46, 48. Trooper Davis told Saiers that she was not being honest about more than just the location of the pillow. Id. at 48. Trooper Davis told Saiers that he had no doubt that she did something to cause Alexandria's death. Id. at 50, 52, 54.

² Line 15, page 44 of Court Exhibit 3A indicates the statement to be "inaudible." However, the court heard the phrase "we need to get to the truth" when reviewing the video tape of the interview, Court Exhibit 3B.

After the third time Trooper Davis told Saiers that he had no doubt she caused Alexandria's death, Saiers requested to speak with an attorney. She said:

Well I need a lawyer before I say that I actually set there and did whatever. I don't know what I did. I am trying to get a lawyer now but I am not making out very well. I don't know, I mean didn't - - I didn't purposefully kill her I know.

Court Exhibit 3A, 54. Trooper Davis made no physical response, but asked Saiers, "What did you do then?" Id. at 55. Saiers responded by saying, "What did I do?" Ibid. Trooper Davis then said, "You said you purposely didn't do it so what did you by accident ---." Ibid. Saiers responded by telling Trooper Davis that she placed Alexandria on the couch. Ibid.

Trooper Davis again told Saiers that he had no doubt that she did something to cause Alexandria's death in addition to just laying her on the couch and not checking on her. Court Exhibit 3A, 55. Saiers then said to Trooper Davis, "Do I have to answer these questions right now or can I - - ." Ibid. Trooper Davis interrupted Saiers and stated, "You don't have to answer anything you don't want to answer Chris. I am trying to put this to rest now alright because you're here now. You know what you did and didn't do." Ibid.

Saiers tells Trooper Davis that she knows that she did not kill Alexandria. Court Exhibit 3A, 55. Trooper Davis then asks Saiers why she cannot answer his questions as to what she did to cause Alexandria's death. Ibid. Saiers said, "Because my mother told me not to talk unless I have a lawyer with me." Ibid. Trooper Davis again made no physical response, but said, "That's your choice." Ibid. Saiers further said to Trooper Davis that, "...I couldn't get a lawyer right now today to meet with me at this time. Because my mom said not to give no information out unless I

have a lawyer with me.” Ibid. Trooper Davis then tells Saiers that he is going to talk with Agent Sorage to see if he has any questions he wants to ask Saiers. Id. at 56. Trooper Davis leaves the room, while Saiers remains.

Trooper Davis returned to the room with Agent Sorage. Agent Sorage began to interrogate Saiers by pointing out to her two facts that tended to demonstrate that she did something to cause Alexandria’s death. First, he told her that the preliminary autopsy results put Alexandria’s time of death around midnight, approximately when Saiers and Alexandria had arrived at Harris’s residence. Court Exhibit 4A, 2-3. Agent Sorage also pointed out that Saiers was the only one with Alexandria at this time. Id. at 3. The second fact is that the 911 call shows that Saiers told the operator that she had taken the pillow off the baby and that the baby was stuck in between the cushions. Id. at 4. Since Harris was the one who had found Alexandria and had placed her on her back on the couch cushion before waking Saiers, Agent Sorage told Saiers that she could only have known about the placement of the pillow and location of Alexandria if she had done it. Id. at 5, 6. Agent Sorage told Saiers that he believes that she loved Alexandria, but that she had become overwhelmed by her circumstances.

Agent Sorage then asked Saiers what happened when she and Alexandria arrived at Harris’ residence. Court Exhibit 4A, 13. Saiers told him that Alexandria woke up so she picked Alexandria up and rocked her in her arms until she fell asleep. Id. at 13-14. Saiers said that she then laid Alexandria down on the couch. Id. at 14. Agent Sorage then asked Saiers how the pillow got on top of Alexandria and accused Saiers of doing something to cause Alexandria’s death. Ibid. Agent Sorage told Saiers that it is important to know why she did what she did to

cause Alexandria's death. Ibid. Saiers told Sorage that it was probably because of the stress she was under. Saiers then she begins to cry. Ibid. Agent Sorage comforted Saiers and continued to ask Saiers what happened. Saiers told Agent Sorage that she does not remember. Ibid.

Agent Sorage posits the theory to Saiers that maybe she held Alexandria too tightly when she was rocking her back to sleep and accidentally suffocated her and then placed her between the couch cushions and placed one of the cushions over her. Court Exhibit 4A, 15. Saiers told Agent Sorage that she did not remember it happening that way. Ibid.

Agent Sorage continued to press the issue. He said, "Was she dead when you laid her down? Christine, I think you remember. I think I know it's hard for you, I know it's very hard." Court Exhibit 4A, 15. Saiers responded by saying, "My mother said I wasn't supposed to talk without a lawyer here." Ibid. In turn, Agent Sorage said, "It's up to you if you want to talk to us or not, but I think it's important for you to resolve this." Id. at 16. Saiers then told Agent Sorage that she does not remember putting the pillow on Alexandria. She only remembers picking Alexandria up, rocking her to sleep, and then placing her down on the couch. Ibid. Saiers indicated to Agent Sorage and Trooper Davis that she must use the restroom. Ibid. A break in the questioning was taken; Saiers was permitted to use the restroom.

Saiers returned from the restroom and Agent Sorage continues his questioning of her. Agent Sorage started off by telling Saiers that he believes that she knows what she did, but it comes down to a matter of why. Court Exhibit 4A, 17. Agent Sorage then began to question Saiers to elicit from her why she killed Alexandria. At one point, Agent Sorage summarized what he believes happened. He told Saiers that he thinks she suffocated Alexandria while she was

holding Alexandria in her arms and that in a moment of panic placed her down between the cushions of the couch and placed the pillow over her to make it look like an accident. *Id.* at 38, 39.

Agent Sorage then asked Saiers point blank, “Now, is that what happened? You suffocated the baby. You panicked and put her down like that?” Court Exhibit 4A, 40. Saiers responded by asking if she could wait to get a lawyer before answering. Court Exhibit 3B; see also, Court Exhibit 4A, 40. Agent Sorage said, “You don’t have to talk to me at all, but if this was a horrible accident and you panicked you should tell us that now.” Court Exhibit 4A, 40. Saiers told Agent Sorage that she was nervous and scared. *Ibid.* Agent Sorage acknowledged this. Saiers then stated, “I didn’t mean to hurt my baby. I didn’t mean to kill her.” *Ibid.* Saiers said, “I guess I panicked and I did that. I mean I don’t remember everything cause of the alcohol and my mind was all things – everything that was going on it lasted two weeks and it’s running through my mind.” *Ibid.*

Agent Sorage left the room to get Saiers a soda and some cigarettes. Court Exhibit 4A, 41. He later returned and gave them to Saiers. Trooper Davis and Agent Sorage then continued to question Saiers in order to clarify how Alexandria died and how she came to be placed between the couch cushions with a pillow placed on top of her.

B. Saiers’s Arguments

In the Motion to Suppress, Saiers asserts that the statements she gave to police on July 9, 2005 and July 15, 2005 were obtained in violation of her right against self-incrimination guaranteed by the Fifth Amendment of the United States Constitution and Article I, Section Eight of the Pennsylvania Constitution, as well as, her due process rights. With regard to her right

against self-incrimination, Saiers asserts that she was in custody during the July 9, 2005 interview thereby requiring Agent Sorage to provide her with her *Miranda* warnings prior to questioning her. Saiers argues that Agent Sorage's failure to do so requires suppression of the statements she made on July 9, 2005. As to the July 15, 2005 interview, Saiers first asserts that the *Miranda* rights waiver she signed prior to the polygraph examination was an invalid waiver as it was not made knowingly, intelligently, and voluntarily. Second, Saiers asserts that Trooper Davis and Agent Sorage ignored her requests to speak with an attorney before they continued questioning her. With regard to her due process rights, Saiers asserts that the statements she made on July 9 and July 15, 2005 were not made voluntarily.

II. ISSUES

There are four main issues raised by Saiers's Motion to Suppress. They are:

- (1) Whether the statements Saiers gave to police on July 9, 2005 were obtained in violation of her right against self-incrimination?
 - (a) Whether Saiers was in custody on July 9, 2006 thereby requiring that she be provided *Miranda* warnings prior to any questioning by the police?
- (2) Whether, under the totality of the circumstances, the statements Saiers gave to police on July 9, 2005 were voluntarily made?
- (3) Whether the statements Saiers gave to police on July 15, 2005 were obtained in violation of her right against self-incrimination?
 - (a) Whether Saiers waiver of her *Miranda* rights waiver on July 15, 2006 was knowingly, voluntary, and intelligently made?

- (b) Whether Saiers was in custody on July 15, 2006 when she requested to speak with an attorney before continuing with the questioning?
- (4) Whether, under the totality of the circumstances, the statements Saiers gave to police on July 15, 2005 were voluntarily made?

III. DISCUSSION

The discussion section will be divided into two main parts. The first part will set forth the applicable legal rules and principles. The second part will apply those legal rules and principles to determine the admissibility of the statements Saiers gave to police during the July 9 and July 15, 2005 interviews.

A. Legal Rules and Principles

1. Standard of Review

When a motion to suppress evidence has been filed, the Commonwealth bears both the burden of production and persuasion to prove that the challenged evidence was not obtained in violation of the defendant's rights. Pa.R.Crim.P. 581(H); *Commonwealth v. West*, 834 A.2d 625, 629 (Pa. Super. 2003), *app. denied*, 889 A.2d 1216 (Pa. 2005). The Commonwealth bears the burden of establishing by a preponderance of the evidence that the challenged evidence is admissible. *Commonwealth v. Lindblom*, 854 A.2d 604, 605 (Pa. Super. 2005), *app. denied*, 868 A.2d 1198 (Pa. 2005); *Commonwealth v. Smith*, 784 A.2d 182, 186 (Pa. Super. 2001).

2. The Right Against Self-incrimination

a. The Right and the *Miranda* Rule

The Fifth Amendment of the United States Constitution³ and Article I, Section 8 of the Pennsylvania Constitution⁴ both provide an accused with the right against self-incrimination. The right against self-incrimination protects an individual from being officially coerced into giving testimonial evidence that would incriminate him in the sense that such evidence would furnish a link in the chain of evidence needed to prosecute him. *Commonwealth v. Abbas*, 662 A.2d 562, 610 (Pa. Super. 2004). In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court established procedural safeguards designed to protect the right against self-incrimination from the compelling atmosphere of custodial interrogation. The Supreme Court stated, “Prior to any questioning, the person must be warned that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to the presence of an attorney, retained or appointed.” *Miranda*, 384 U.S. at 444. This has become

³ “No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; *nor shall be compelled in any criminal case to be a witness against himself*, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation..” U.S. Const. Amend. V. (emphasis added).

⁴ “In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; *he cannot be compelled to give evidence against himself*, nor can he be deprived of his life liberty or property, unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself.” Pa. Const Art. I § 8 (emphasis added).

known as *Miranda* warnings or rights. If the police fail to give these warnings to a defendant subject to custodial interrogation, then any statement the defendant makes is inadmissible against him. *Miranda*, 384 U.S. at 444; *In re R.H.*, 791 A.2d 331, 332 (Pa. 2002); *Commonwealth v. Benjamin*, 499 A.2d 337, 340 (Pa. Super. 1985), *app. denied*, 542 A.2d 1364 (Pa. 1986).

b. Custody

Miranda warnings are not required to be given where the interrogation is not custodial. *Commonwealth v. Smith*, 836 A.2d 5, 18 (Pa. 2003); *Commonwealth v. DiStefano*, 782 A.2d 574, 579 (Pa. Super. 2001), *app. denied*, 806 A.2d 868 (Pa. 2002); *Commonwealth v. Ellis*, 700 A.2d 948, 954 (Pa. Super. 1997). To determine whether “custody” exists, a court must look at the totality of the circumstances. *Commonwealth v. Turner*, 772 A.2d 970, 973 (Pa. Super. 2001). The standard for determining custody is an objective one, with due consideration given to the reasonable impression conveyed to the person being questioned. *Commonwealth v. Boczkowski*, 846 A.2d 75, 90 (Pa. Super. 2004); *Turner*, 772 A.2d at 973.

“Custody” does not require that the police make a formal arrest or intend to make an arrest. *Commonwealth v. Fisher*, 352 A.2d 26, 28 (Pa. 1979). “A person is in custody for purposes of a custodial interrogation when he is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by the interrogation.” *Commonwealth v. Dupre*, 866 A.2d 1089, 1106 (Pa. Super. 2005), *app. denied*, 879 A.2d 781 (Pa. 2005). In making this determination some of the factors that a court may utilize are:

the basis for the detention; the location; whether the suspect was transported against his will; how far, and why; whether restraints were used; the show, threat or use of force; and the methods of investigation used to confirm or dispel suspicion.

DiStefano, 782 A.2d at 579. While the fact that a defendant may be the focus of the investigation is a relevant factor in determining “custody, “ the fact that the police investigation has focused on one individual does not automatically require *Miranda* warnings to be given. *Commonwealth v. Fento*, 526 A.2d 784, 786 (Pa. Super. 1987), *app. denied*, 538 A.2d 875 (Pa. 1988). “Police detentions become custodial when under the totality of the circumstances the conditions and/or duration of the detention become so coercive as to become the functional equivalent of arrest.” *DiStefano*, 782 A.2d at 579.

c. The *Edward’s* Rule

In *Edwards v. California*, 451 U.S. 477 (Pa. 1981), the United States Supreme Court reaffirmed what it had stated in *Miranda* regarding what must occur when an individual subject to custodial interrogation invokes his right to speak with counsel. The Supreme Court stated that if the individual requests counsel, then the interrogation must cease. *Id.* at 485. (“We reconfirm these views and, to lend them substance, emphasize that it is inconsistent with *Miranda* and its progeny for the authorities, at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel.”). The Supreme Court when on to specifically hold:

when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. We further hold that an accused, such as Edwards, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has

been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.

Id. at 484-85.

The rule enunciated in *Edwards* entails two distinct inquiries. *Smith v. Illinois*, 469 U.S. 91, 95 (1984); *Commonwealth v. Hubble*, 504 A.2d 168, 172 (Pa. 1986), *cert. denied*, 477 U.S. 904 (1986).

First, courts must determine whether the accused actually invoked his right to counsel. [(citation omitted)]. Second, if the accused invoked his right to counsel, courts may admit his response to further questioning only on finding that he (a) initiated further discussion with the police, and (b) knowingly and intelligently waived the right he invoked.

Smith, 469 U.S. at 95; *Hubble*, 504 A.2d at 172.

d. Waiver of Miranda Rights

A defendant may waive his *Miranda* rights and agree to answer questions or make a statement to police. *Commonwealth v. DeJesus*, 787 A.2d 394, 429 (Pa. 2001), *cert. denied*, 537 U.S. 1028 (2002). The Commonwealth bears the burden of establishing that a defendant knowingly and voluntarily waived his *Miranda* rights. *Commonwealth v. Kuzmanko*, 709 A.2d 392, 397 (Pa. Super. 1998). A waiver of *Miranda* rights must be knowing, voluntary, and intelligent to be valid. *DeJesus*, 787 A.2d at 429; *Commonwealth v. Paxton*, 821 A.2d 594, 598 (Pa. Super. 2003), *app. denied*, 847 A.2d 1282 (Pa. 2004). “In other words, the waiver must be ‘the product of a free and deliberate choice rather than intimidation, coercion, or deception,’ and ‘must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.’” *DeJesus*, 787 A.2d at 429. (quoting *Colorado*

v. Spring, 479 U.S. 564, 572 (1987)); *see also, Commonwealth v. Ellis*, 700 A.2d 948, 955 (Pa. Super. 1997), *app. denied*, 727 A.2d 127 (Pa. 1998) (“In order to determine the voluntariness of a waiver, we must ascertain whether the waiver was the result of an intentional choice that was not subject to undue governmental pressure.”). In assessing the validity of a *Miranda* rights waiver, a court must look at the totality of the circumstances. *DeJesus*, 787 A.2d at 429. Some of the factors that a court may consider are: the duration and means of interrogation; the defendant's physical and psychological state; the conditions attendant to the detention; the attitude exhibited by the police during the interrogation; and any other factors which may serve to drain one's powers of resistance to suggestion and coercion. *Ibid*.

3. Voluntariness of a Confession

Due process requires that a statement be voluntarily made before it may be admitted against a defendant. *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973); *Culombe v. Connecticut*, 367 U.S. 568, 306 (1961). As such, involuntarily made statements must be suppressed. *Commonwealth v. Johnson*, 442 A.2d 1098, 1101-02 (Pa. 1982). The voluntariness of a statement is a question of law. *Commonwealth v. Nester*, 709 A.2d 879, 881 (Pa. 1998); *Commonwealth v. Paxton*, 821 A.2d 594, 598 (Pa. Super. 2003), *app. denied*, 847 A.2d 1282 (Pa. 2004). The Commonwealth bears the burden of establishing by a preponderance of the evidence that a defendant's statement was voluntarily made. *DiStefano*, 782 A.2d at 581; *Commonwealth v. Watkins*, 750 A.2d 308, 314 (Pa. Super. 2000).

The voluntariness of a statement is determined by examining the totality of the circumstances surrounding the statement. *Commonwealth v. Harvey*, 812 A.2d 1190, 1198 (Pa.

2002); *DiStefano*, 782 A.2d at 581. In examining the totality of the circumstances, a court should consider the following factors: the duration and means of interrogation; the physical and psychological state of the accused; the conditions attendant to the detention; the attitude of the interrogator; and any and all other factors that could drain a person's ability to withstand suggestion and coercion. *DiStefano*, 782 A.2d at 581; *Watkins*, 750 A.2d at 314. "In determining voluntariness, the question is not whether the defendant would have confessed without interrogation, but whether the interrogation was so manipulative or coercive that it deprived the defendant of his ability to make a free and unconstrained decision to confess." *Commonwealth v. Templin*, 795 A.2d 959, 966 (Pa. 2002).

B. The Admissibility of Saiers's Statements Made on July 9 and July 15, 2005

1. Saiers's July 9, 2005 Statements

a. Saiers's Statements were not Obtained in Violation of her Right Against Self-incrimination

The statements Saiers gave to police during the July 9, 2005 interview were not obtained in violation of her right against self-incrimination. Saiers was not in custody during the July 9, 2005 interview; therefore, Agent Sorage was not required to provide Saiers with *Miranda* warnings at that time. As such, the lack of *Miranda* warnings prior to questioning does not require the suppression of Saiers' statements made in response to that questioning.

Saiers was not in custody during the July 9, 2005 interview because a reasonable person in that situation would not believe that her freedom of movement would have been restricted. First, Saiers was not forcibly hauled down to Police Headquarters. Agent Sorage asked, not told, Saiers if she would come down to Police Headquarters to answer some questions. Saiers assented Agent

Sorage's request and voluntarily agreed to go down to Police Headquarters to answer questions. Saiers arrived at Police Headquarters, not by police cruiser, but by her mother's vehicle. Once there, Agent Sorage told Saiers that she was not under arrest and was free to leave at anytime.

Second, once Saiers was at Police Headquarters she was not coercively restrained. Agent Sorage conducted the interview of Saiers in the interview room of Police Headquarters. The interview room is windowless and could create a feeling of isolation. However, that feeling of isolation must be tempered by the knowledge that the interview room is only a few feet away from the main hallway of Police Headquarters and the fact that the door was not locked. Saiers was able to observe Agent Sorage on several occasions leave the interview room by exerting only enough energy and force to turn the knob and push the door open to free himself from the confines of the room.

While she was in the interview room, Saiers was not subject to physical restraints of any kind. She was not handcuffed, shackled, or even told to remain in the seat. No force was used against Saiers nor was she threatened. In fact, the opposite was true. Although accusatory, Agent Sorage's tone was very soft and understanding. In no way could his manner during the July 9, 2005 interview be characterized as aggressive or overbearing.

The freedom Saiers had and the accommodating manner displayed by Agent Sorage may be seen in Saiers's request to use the restroom. When Saiers asked if the Police Headquarters had any restrooms, Agent Sorage immediately stopped the interview. He then led Saiers out of the room and into the main hallway. Then, he pointed out the restroom for Saiers. Saiers then went down the hall to the restroom. Saiers did this unescorted. No guards were posted outside to ensure she

returned to the interview room and no one went to check on her and escort her back to the interview room. Instead, Saiers returned to the interview room of her own volition.

Accordingly, Saiers was not in custody during the July 9, 2005 interview thereby requiring Agent Sorage to advise her of her *Miranda* rights prior to questioning her. As such, the statements she gave to Agent Sorage during the July 9, 2005 interview were not obtained in violation of her right against self-incrimination.

b. Saiers's Statements were Voluntarily Made

The statements Saiers gave police during the July 9, 2005 interview were voluntarily made. The totality of the circumstances surrounding the July 9, 2005 interview fail to establish that it was so manipulative or coercive so as to deprive Saiers of the ability to make a free and unconstrained decision to make the statements she did. The totality of the circumstances surrounding the July 9, 2005 interview fails to establish that Saiers was drained of her ability to withstand suggestion and coercion.

The interrogation room itself was not unduly coercive. The room was dry, well-lit, and quiet. It was cold inside, but Saiers refused Agent Sorage's offer of a jacket. In this instance, any effect the cold had on Saiers's decision to speak was self-inflicted.

Agent Sorage's conduct was not coercive. Agent Sorage made no promises to Saiers. He also did not threaten Saiers. Agent Sorage displayed no aggressive behavior toward Saiers. To the contrary, Agent Sorage used a soft tone and displayed an understanding, almost sympathetic, manner toward Saiers. While Saiers argued that this was an attempt to manipulate her in that

Agent Sorage's understanding manner and use of the various stressors in her life as an explanation as to why she harmed Alexandria, Saiers did not give in to this manipulation.

Throughout the interview, Saiers denied hurting Alexandria. She repeatedly told Agent Sorage that she took Alexandria out of her stroller, rocked her to sleep, then placed her on the couch on her back, and waited until Alexandria went to sleep. Saiers stuck with this basic story despite being confronted by Agent Sorage's assertion that the evidence did not support it. Saiers was not worn down by Agent Sorage's question and maintained her will to advance her story. Further, Saiers used her cognitive ability to assess the situation and make decisions accordingly. This was evidenced by her actions when she was asked a question she did not want to answer. When this occurred, Saiers would remain silent and avoid making eye contact with Agent Sorage by looking down at the ground. Saiers explained to her mother that employed this tactic as a choice she made in order to avoid answering questions she chose not to answer. Saiers retained her ability to control what she wanted to say and when.

Accordingly, the totality of the circumstances demonstrates that Saiers's statements to police during the July 9, 2005 interview were voluntarily made. Agent Sorage's interview of Saiers did not wear down her ability to withstand suggestion and coercion. To the contrary, Saiers's actions demonstrate that she was able to withstand any perceived suggestion or coercion.

2. Saiers's July 15, 2005 Statements

a. Saiers's Waiver of her *Miranda* Rights was Valid

Saiers waiver of her *Miranda* rights prior to taking the polygraph exam on July 15, 2005 was knowing, intelligent, and voluntary. Court Exhibit 3A indicates that Trooper Davis told Saiers

that there was a form he wanted to review with her before the polygraph exam. It also indicates that Trooper Davis read Saiers the form. Trooper Davis testified at the evidentiary hearing that the form contained a *Miranda* rights waiver. He also testified that he had Saiers read and review it. Court Exhibit 3A indicates that Trooper Davis then asked Saiers if she had any question, and she indicated that she did not. Trooper Davis testified that Saiers signed the form and waived her *Miranda* rights.

Although Saiers has an IQ of 74, she still has the cognitive ability and can to make reasoned decisions. That is, Saiers has the ability to process information, evaluate it, and make a decision based upon that information. With regard to deciding whether to speak with police, Saiers has demonstrated this ability. During the July 9, 2005 interview, Saiers remained silent and evaded answering Agent Sorage's questions when she did not want to answer them. Now, just because Saiers may have made the wrong decision does not establish that she does not have the ability to make the decision.

The totality of the circumstances establishes that the waiver was voluntary. The waiver was signed shortly after Saiers arrived at Police Headquarters. Any coercive effect the Police Headquarters had on Saiers was mitigated by her minimal exposure at that point. Trooper Davis did not promise or threaten Saiers in exchange for her signature. While Trooper Davis told Saiers that she had to sign it or they could not talk, this was not a threat. Saiers was not required to take the polygraph exam and could have just got up and walked out at that point. However, Saiers chose to stay and waive her rights. This is additional evidence of Saiers's ability to process information, evaluate that information, and make a decision.

Accordingly, the *Miranda* rights waiver was valid. However, the waiver does not insulate all of Saiers's July 15, 2005 statements from inadmissibility.

b. Saiers's Post Polygraph Statements were Obtained in Violation of her Right Against Self-incrimination

The statements Saiers gave to police during the July 15, 2005 interview following the polygraph exam, specifically after line 17, page 43, Volume I of the interview transcript, must be suppressed as having been obtained in violation of Saiers's right against self incrimination. At that point, Saiers was in custody and subject to custodial interrogation. Consequently, when Saiers requested to speak with an attorney before continuing the interrogation Trooper Davis was required to stop all questions until an attorney was present. Trooper Davis did not stop the questioning; therefore, the statements Saiers made after her request for counsel must be suppressed.

Saiers was in custody following the polygraph exam because a reasonable person in that position would not feel free to leave. Saiers had been to Police Headquarters on two prior occasions. On both occasions, it was made clear to her that the police believed she was responsible for the death of Alexandria. During the July 9, 2005 interview, Agent Sorage told Saiers that the evidence did not support her story that she placed Alexandria in the middle of the cushion on the couch. Agent Sorage told Saiers that, according to developmental experts, a four month old Down Syndrome baby could not roll from her back to her stomach so there was no way Alexandria could have rolled over on to her stomach and crawled to the space between the cushion and the back of the couch. Agent Sorage told Saiers that, even if Alexandria had rolled onto her stomach and crawled to the space, she was not physically able to move the cushion and create enough space for her to wedge herself down between the cushion and the back of the couch. Agent Sorage told

Saiers that Alexandria did not get between the back of the couch and the cushion unless someone put her there. Agent Sorage also told Saiers that the autopsy was going to confirm what he already knew – that Alexandria had been suffocated. Agent Sorage made it clear to Saiers that he knew that Alexandria had been killed, but he did not know why.

The July 12, 2005 interview focused on the placement of the pillow. Saiers told Ungard that she had removed the pillow from where she had laid Alexandria down on the couch and moved it to the other end of the couch. Saiers told Ungard that there would have been no way that the pillow could have fallen on Alexandria from where she had positioned it. Ungard then had Saiers view a video of a statement that Harris had given to police. In that statement, he told police that when he discovered Alexandria the next morning she was covered by the pillow. Harris's statement directly contradicted Saiers's statement as to the placement of the pillow.

Saiers's version of events was being contradicted at every turn. But, despite the mounting evidence and suspicions of the police, Saiers was offered a ray of hope. Agent Sorage offered her the possibility of taking a polygraph exam and told her that "... a polygraph could clear a lot of things up, either yes or no." Court Exhibit 1A, 74.

But, when Trooper Davis told Saiers that she failed the polygraph exam and was not being one hundred percent honest regarding the death of Alexandria the ever tightening snare had closed and all hope was dashed. The evidence did not support her story. The only other person in the house at the time of Alexandria's death told police that he found the pillow on top of Alexandria and not where Saiers said she placed it. The polygraph exam told the police that she was not being

honest. There was nothing else Saiers could do to get the police to believe her story – that she did not kill Alexandria – since all of the evidence pointed to her.

A reasonable person believes that it is the job of the police to arrest criminals. This would be especially true of an individual the police believed killed another person. As such, a reasonable person would not believe that the police would release an individual they believed had killed her child, especially when all of the evidence pointed to her as the culprit. This would have been the belief that Saiers had at the moment Trooper Davis told her that she had failed the polygraph examination. At that moment, she would not have reasonably believed that she was free to leave.

This belief was reinforced by the circumstances surrounding the post-polygraph interrogation. The polygraph exam and post-polygraph examination were conducted in a room deep inside Police Headquarters, as compared to the interrogations conducted in the interview room. To get to the room where the exam was conducted one had to go down the main hallway, down the side hallway, enter the homicide office, turn left, walk a few feet, and then enter the room. There were more barriers to escape from this room as compared to the interview room.

Trooper Davis' conduct also reinforced the belief that she was not free to leave. Trooper Davis had placed himself in a physically controlling position prior to telling Saiers the results of the polygraph examination. He had positioned the chairs so that he and Saiers would be face to face and in close proximity to each other. Also, the chairs were such that Saiers would be seated in the middle of the room while he would be between her and the exit. Trooper Davis then repeated the phrase "we need to" at least four times within the initial few minutes of the post-polygraph interview. This was a distinct change from the preceding interview process which expressed an

attitude of “we can discuss this if you want to.” The physical placement used by Trooper Davis and his words would convey to a reasonable person in that situation that she was not going anywhere until she told him what had happened to Alexandria. As such, Saiers was in custody following the polygraph exam.

Since Saiers was in custody and subject to interrogation, she had the right to have counsel present during that interrogation. Saiers exercised that right, but it was not honored. About twenty minutes into Trooper Davis’ post-polygraph exam interrogation of Saiers, she said, “Well, I need a lawyer before I say that I actually set there and did whatever.”

Not every utterance of the word “lawyer” automatically invokes the *Edwards* rule. *Commonwealth v. Zook*, 553 A.2d 920, 923 (Pa. 1989), *cert. denied*, 493 U.S. (1989). But “[w]here nothing about the request for counsel or the circumstances leading up to the request would render it unambiguous, all questioning must cease.” *Commonwealth v. Hubble*, 504 A.2d 168, 173 (Pa. 1986), *cert. denied*, 477 U.S. 904 (1986) (quoting *Smith*, 469 U.S. at 98). Further, “an accused’s post request responses to further interrogation may not be used to cast doubt on the clarity of his initial request for counsel.” *Smith*, 469 U.S. at 91.

Saiers unambiguously requested to have counsel present when she said, “Well I need a lawyer before I say that I actually set there and did whatever.” The clear import of that statement was that Saiers did not intend to answer anymore questions until she had an attorney present. As such, Trooper Davis should have ceased all questioning of Saiers until an attorney had been provided to Saiers.

Following her request to speak to an attorney, Saiers did not initiate further discussions with the police. Saiers said:

Well I need a lawyer before I say that I actually set there and did whatever. I don't know what I did. I am trying to get a lawyer now but I am not making out very well. I don't know, I mean didn't - - I didn't purposefully kill her I know.

Court Exhibit 3A, 54. The next statements in the interrogation were made by Trooper Davis. Trooper Davis prodded Saiers to respond to questioning by asking her, "What did you do then?" Id. at 55. Trooper Davis's question was calculated to elicit a response from Saiers. Accordingly, Saiers did not revoke her request for counsel to have counsel present during interrogation by initiating further discussions with the police.

Accordingly, Saiers's request to have counsel present during her custodial interrogation on July 15, 2005 required that Trooper Davis stop all questioning until an attorney could be provided. Trooper Davis failed to do so; therefore, all statements Saiers made on July 15, 2005 following her post-polygraph exam request for counsel must be suppressed.

The court believes that Trooper Davis's failure to honor Saiers's request for counsel was an intentional tactic. Trooper Davis, as well as, Agent Sorage, continued this tactic throughout the post-polygraph interrogation on July 15, 2005. A few minutes after her initial request for counsel, Saiers said, "Do I have to answer these questions right now or can I - - ." Court Exhibit 3A, 55. Trooper Davis interrupted Saiers and stated, "You don't have to answer anything you don't want to answer Chris. I am trying to put this to rest now alright because you're here now. You know what you did and didn't do." Ibid. Trooper Davis, through this uncharacteristic interruption of

Saiers's statement, effectively thwarted either another request for counsel that Saiers was about to make or a request to end the interrogation. Either way Trooper Davis certainly recognized her desire to end the questioning, but it ignored it.

A few more minutes later, Trooper Davis asked Saiers why she could not answer his questions as to what she did to cause Alexandria's death. Court Exhibit 3A, 55. Saiers said, "Because my mother told me not to talk unless I have a lawyer with me." Ibid. Trooper Davis again made no physical response, but said, "That's your choice." Ibid. Saiers, in reply, further said to Trooper Davis that, "...I couldn't get a lawyer right now today to meet with me at this time. Because my mom said not to give no information out unless I have a lawyer with me." Ibid. Instead of honoring Saiers's clear desire to have an attorney present during questioning, Trooper Davis again failed to make the proper response and terminate the interrogation. Trooper Davis, instead, told Saiers that he was going to go out and check with Agent Sorage to see if he had any questions for Saiers. Id. at 56.

Agent Sorage did have a few questions, and continued the interrogation of Saiers. After Agent Sorage posited the theory to Saiers that she might have accidentally suffocated Alexandria when she was rocking her back to sleep and then placed her between the couch cushions and placed one of the pillows over her, Saiers said, "My mother said I wasn't supposed to talk without a lawyer here." Court Exhibit 4A, 15. In turn, Agent Sorage said, "It's up to you if you want to talk to us or not, but I think it's important for you to resolve this." Id. at 16. Instead of facilitating her request for counsel, Agent Sorage then began to question Saiers to elicit from her why she killed Alexandria.

Then, at one point, Agent Sorage summarized what he believed happened. He told Saiers that he thought she suffocated Alexandria while she was holding Alexandria in her arms and that in a moment of panic placed her down between the cushions of the couch and placed the pillow over her to make it look like an accident. Court Exhibit 4A, 38, 39. Agent Sorage then asked Saiers point blank, “Now, is that what happened? You suffocated the baby. You panicked and put her down like that?” Id. at 40. Saiers responded by asking if she could wait to get a lawyer before answering. Court Exhibit 3B; see also, Court Exhibit 4A, 40. Agent Sorage said, “You don’t have to talk to me at all, but if this was a horrible accident and you panicked you should tell us that now.” Court Exhibit 4A, 40. Saiers told Agent Sorage that she was nervous and scared. Ibid. Agent Sorage acknowledged this. Saiers then stated, “I didn’t mean to hurt my baby. I didn’t mean to kill her.” Ibid. Saiers said, “I guess I panicked and I did that. I mean I don’t remember everything cause of the alcohol and my mind was all things – everything that was going on it lasted two weeks and it’s running through my mind.” Ibid.

Each and every one of Saiers’s attempts to assert her right to have counsel present during the custodial interrogation was ignored or mitigated by Trooper Davis and Agent Sorage. Each time they did this they violated her rights. Therefore, Saiers’s post-polygraph exam statements must be suppressed.

c. Voluntariness of Statements

Having determined that the statements Saiers made after her request for counsel must be suppressed, the court need not determine whether those statements were made voluntarily. With regards to her statement before the request, the court finds that they were made voluntarily. The

evidence does not support a conclusion that the circumstances surrounding her statements were so coercive as to overpower her will to resist making them. As such, they will not be suppressed.

IV. CONCLUSION

Defendant Christine Saiers Motion to Suppress was denied in part and granted in part by this court's December 18, 2006 order.

BY THE COURT,

William S. Kieser, Judge

cc: Michael Dinges, Esquire
Kenneth Osokow, Esquire
William Miele, Esquire
Nicole Spring, Esquire
Judges
Gary L. Weber, Esquire (Lycoming Reporter)
Christian J. Kalas, Esquire