



seized and blood was taken from Defendant. Defendant's blood was tested and showed that Defendant had methamphetamines, amphetamines, and marijuana in her system on the day L. B. passed. The search warrant for Defendant's phone showed Facebook Messenger communications from April 17, 2020 where Defendant indicated she was high. Miller testified that Defendant's neighbor said there was constant foot traffic to Defendant's address. Miller noted this is consistent with drug trafficking. However, Miller also admitted on cross-examination that Defendant's extended family lives nearby.

The Commonwealth presented video footage of the interview conducted between Miller and Defendant on June 8, 2020, marked as Commonwealth's Exhibit 3. This video establishes the following. Defendant is in an interrogation room at PSP Montoursville with her hands handcuffed behind her back. Miller enters the room, introduces himself, and asks Defendant if she is willing to speak with him. Miller repeatedly advises her that it is her right to be interviewed or not be interviewed, whatever she chooses. Defendant is uncertain why she is being charged and asks Miller for clarification. Miller says he cannot explain the details of the case to her unless she agrees to talk to him. However, Miller reminds her that she has to be the one to make the decision whether to speak with him or not. Defendant eventually consents to be interviewed. Defendant then states that she believes she has a lawyer but is not certain. She also expresses her unfamiliarity with the process because she has never been in this type of trouble before. After Defendant consents to the interview, Miller reads Defendant her *Miranda* rights. Defendant says that she understands these rights.

Miller asks her again if she would like to be interviewed and Defendant consents once more to the interview. Defendant asks Miller if her lawyer should be present. Miller responds that the decision is up to her but she has to decide to talk to him. They have a conversation

about whether Defendant has retained an attorney in which Defendant says she did not hire one but was under the impression that someone was in contact with an attorney on her behalf.

Miller states, “You either have to look at me and say I want an attorney present or I want to talk to you without one. You have to make that determination.” Defendant replies, “I mean, I don’t have a problem talking without one.” Miller follows up by asking, “Do you want to talk to me, yes or no?” Defendant says, “Yea.” Miller continues, “Without an attorney present, yes or no?” Defendant’s answers, “Yea that’s fine.”

At this point, Miller begins to question Defendant primarily about her drug usage on the day of L.B.’s death and a couple of days prior. At one point, Defendant becomes visibly upset and asks to call a family member to help her calm down. Miller informs Defendant she would not be able to call anyone until their interview concluded. Defendant responds that she does not want to have the interview anymore. Miller asks, “Do you want to stop talking to me?” Defendant says, “Yea” and Miller immediately stops questioning her and terminates the interview.

## **Discussion**

### *Search Warrants*

Defendant challenges the issuance of the search warrants for Defendant’s phone and blood, claiming that the evidence seized pursuant to those warrants should be suppressed because the affidavits of probable cause in both warrant applications did not allege sufficient facts to establish probable cause and were overbroad. When evaluating the probable cause of a search warrant this Court’s determination is whether there was “substantial evidence in the record supporting the decision to issue a warrant” by giving deference to the issuing magistrate’s probable cause determination and “view[ing] the information offered to establish

probable cause in a common-sense, non-technical manner.” Commonwealth v. Jones, 988 A.2d 649, 655 (Pa. 2010). Probable cause is established by a “totality of the circumstances.” Commonwealth v. Gray, 503 A.2d 921, 925 (Pa. 1985) (adopting U.S. v. Gates, 462 U.S. 213 (1983)). The Court “must limit [its] inquiry to the information within the four corners of the affidavit submitted in support of probable cause when determining whether the warrant was issued upon probable cause.” Commonwealth v. Arthur, 62 A.3d 424, 432 (Pa. Super. 2013). It is “not require[d] that the information in a warrant affidavit establish with absolute certainty that the object of the search will be found at the stated location, nor does it demand that the affidavit information preclude all possibility that the sought after article is not secreted in another location.” Commonwealth v. Forster, 385 A.2d 416, 437-38 (Pa. Super. 1978). A magistrate must simply find that “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Commonwealth v. Manuel, 194 A.3 1076, 1081 (Pa. Super. 2018).

The search warrant for Defendant’s blood, entered as Commonwealth’s Exhibit 1, was obtained by Miller on April 19, 2020. The affidavit of probable cause is several pages in length and describes the circumstances of L.B.’s death. The pertinent portion of the search warrant outlining the events leading up to the application of the search warrant states:

On 4/19/20, at 1600 hours, Holly Jean CAREY was interviewed at PSP Montoursville. CAREY is the maternal grandmother of the victim...While talking about LONG’s history, CAREY related that LONG had been using methamphetamine prior to her pregnancy. Once LONG learned that she was pregnant, she stopped using drugs. CAREY stted that on 4/17/20, Tyler WAGNER, was with LONG at the trailer...CAREY related that WAGNER also has a history of drug use...On 4/17/20 at approximately 1050 hours, PSP...responded to 181B Old Glade Run Road...for a wanted person that was involved in a domestic disturbance with a firearm. That wanted person was alleged to be hiding inside the residence. When Troopers knocked on the door, they met with Demsey Mae LONG. When Tpr. Nathan BIRTH spoke with LONG, she was obviously under the influence of a controlled

substance. When Tpr. BIRTH looked at LONG, her eye lids were droopy, and her pupils were constricted. When speaking with LONG, it appeared that LONG had a difficult time staying awake and was 'on the nod'. On 4/19/20 LONG admitted to Tpr. Matthew MILLER and Tpr. Joel FOLLMER that she was previously a marijuana and methamphetamine user...Due to the suspicious circumstances of which the Victim died, the necessity to preserve the crime scene is crucial to this investigation...The suspected presence of meth is a dangerous narcotic that needs prompt attention.

Id. at 3, 5.

Defendant asserts the search warrant does not contain enough information to demonstrate a fair probability that evidence of crime would be found in Defendant's blood. Specifically, Defendant argues that the affidavit of probable cause fails to show that there is reason to suspect that there would be evidence of controlled substances in her system. She argues that Trooper Birth's testimony is the only part of the affidavit that discusses his suspicion Defendant was high on April 17<sup>th</sup>. However, Defendant asserts that L.B. was not in her care on that day and it was two (2) days prior to L.B.'s passing. No evidence was presented in the affidavit indicating that Defendant exhibited signs of methamphetamine usage on April 19<sup>th</sup>, the actual date of L.B.'s death. Therefore, the searches pursuant to the warrants were in violation of Defendant's constitutional rights. Alternatively, the Commonwealth argues that the circumstances surrounding L.B.'s death are suspicious and a failure to check Defendant's blood for the influence of drugs would have been irresponsible on the part of the police. The Commonwealth believes Defendant made false statements about her drug usage to her family and police. Law enforcement officers said that they had seen her under the influence of drugs less than forty-eight (48) hours prior to the death of L.B. Using a common sense approach as required, this Court agrees with the Commonwealth on this issue for the reasons stated. Furthermore, additional individuals present at the residence a few days before L.B.'s death

were also known to use drugs and Defendant admitted to her own usage of methamphetamine prior to her pregnancy. These facts, taken together with the troubling circumstances of L.B.'s sudden death create sufficient probable cause to search Defendant's blood for illegal drugs on the day L.B. passed.

The search warrant for Defendant's cell phone, entered as Commonwealth's Exhibit 2, was obtained by Miller on April 19, 2020. The affidavit of probable cause is the same as the one included in the warrant application for Defendant's blood. The pertinent portion of the search warrant outlining the events leading up to the application of the search warrant states:

On 4/19/20, at approximately 1100 hours, CAREY and her mother, Deborah Ann PARKS, arrived at 181 Old Glade Run Road, Muncy Creek Township...with plans to take CAREY's three-year-old grandson with her for the afternoon. While CAREY was packing items in the vehicle, she heard LONG scream from the porch...On 4/19/20, at approximately 1730 hours Tpr. MILLER interviewed LONG at PSP-Montoursville barracks...LONG initially related she woke up around 0930 hours, did not call or text anyone and had a gut feeling the Victim suffocated. She went back to the bedroom and saw the Victim with blue lips and a corner of the pink blanket over the Victim's face. She related she attempted to startle her or shake her to wake her up. She then went out to the front door and began to cry and her mother, Holly, ran into the house to retrieve the Victim...On 4/19/20 at approximately 1830 hours, Jade LONG, sister of Demsey advised she was contacted via phone from Demsey at 1102 hours this day. Demsey advised she had just woken up and the baby was still sleeping. Demsey was going to get the baby and come over for a visit. Approximately 10 minutes later Demsey came outside screaming. A screen shot of a phone call was obtained and verified through Jade that a call took place with her sister. LONG's cell phone is described as an Apple 8+ I-phone, rose/pink in color.

Id. at 2.

Defendant believes this affidavit is also insufficient to establish probable cause to support the search of her messages from April 17<sup>th</sup> to April 19<sup>th</sup>, 2020. Defendant argues that her phone is mentioned only a few times throughout the affidavit and believes that the police wanted to search her phone following Trooper Birth's observance of the Defendant on April

17<sup>th</sup> when he believed that she was under the influence of drugs. The Commonwealth contends that the search warrant was not overbroad because Miller limited his request to the messages on Defendant's phone to the day of L.B.'s death and the two (2) days beforehand. The Commonwealth also argues that the search warrant for the phone was supported by probable cause because, once again, the conditions surrounding L.B.'s death are questionable. The Commonwealth asserts that the ability of law enforcement to determine what time L.B. was discovered unresponsive on April 19<sup>th</sup> is crucial to ascertain what happened. The inconsistency in the testimony of Defendant, Defendant's mother, and Defendant's sister regarding the time that Defendant exited the trailer screaming and crying after finding L.B. is concerning. The Commonwealth believes that information on Defendant's phone would undoubtedly help law enforcement in their investigation into what actually took place. For these reasons, this Court agrees with the Commonwealth on this issue as well. Even though Defendant's phone was only mentioned a few times in the affidavit, it is concerning that Defendant's testimony of the time she discovered L.B. and Defendant's mother's testimony differ by a full two (2) hours. The facts presented in the affidavits of the search warrants demonstrate sufficient evidence to establish probable cause to search Defendant's blood and phone. Therefore, Defendant's argument fails and the four corners of the affidavit of the search warrants establish sufficient probable cause.

***Waiver of Right to Counsel***

Defendant challenges her waiver of the presence of counsel at the interview on June 8, 2020 as the result of government pressure and claims it was not a knowing or voluntary waiver. “[A]n individual held for interrogation “must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during the interrogation....” Miranda v. Arizona,

384 U.S. 436, 471 (1966). If someone requests counsel during an interview, the questioning must stop immediately until an attorney is present. Edwards v. Arizona, 451 U.S. 477, 482 (1981). “Invocation of the *Miranda* right to counsel ‘requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.’” Davis v. United States, 512 U.S. 452, 459 (1994) (citing McNeil v. Wisconsin, 501 U.S. 171, 178 (1991)). However, “if a reference is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel,” the officer is not required to cease questioning that individual. Id. at 452. Any waiver of the presence of counsel “must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege....” Id. at 482. To determine if a waiver of the right to counsel is valid, the court must look to each specific case at the “particular facts and circumstance surrounding that case, including the background, experience, and conduct of the accused.” Johnson v. Zerbst, 304 U.S. 458, 464 (1938). “A valid waiver of that right cannot be established by showing only that he responded to police-initiated interrogation after being again advised of his rights.” Edwards, 451 U.S. at 477. An individual who has invoked their right to counsel “is not subject to further interrogation until counsel has been made available to him, unless the accused has himself initiated further communication, exchanges, or conversations with the police.” Id.

Defendant claims that the video recording clearly shows that she was distressed and confused at the time of the interview. Defendant also believes that her inexperience with the legal system was apparent when, during the interview, she states multiple times that she is not sure what to do and that she does not know if her attorney should be present. Defendant avers that Miller urged her to decide in favor of speaking with him despite not knowing the

magnitude of the rights she gave up in order to do so. Defendant contends that she was not aware of the nature of the choice she made by giving up her *Miranda* rights. She believes her behavior and statements during the interview show a lack of understanding of the nature of her choice to talk to Miller without an attorney present. Defendant cites to two (2) cases to support her position. See Commonwealth v. DiStefano, 782 A.2d 574, 581, n.2 (Pa. Super. 2001); Commonwealth v. Bland, 115 A.3d 854, 855 (Pa. 2015). In DiStefano, the defendant was interrogated for eleven (11) hours straight, beginning at 7 p.m. one day and ending at 6 a.m. the next. DiStefano, 782 A.2d at 578. The defendant in that case was in the exclusive company of law enforcement. Id. After police had the defendant hypothesize about how the victim had been murdered and promised to get him treatment, the defendant confessed to the killing of his former high-school girlfriend. Id. at 579. He was not advised of his *Miranda* rights until after he confessed and had been formally arrested. Id. at 578. The Pennsylvania Superior Court found that, after examining the totality of the circumstances, the defendant's confession was not voluntary and that the interrogation was "clearly manipulative and resulted in a confession which was not made freely or by unconstrained decision." Id. at 582.

Defense counsel cites in particular to footnote two (2) in which the Superior Court states that the defendant did not knowingly waive his *Miranda* rights because he had experience as a security guard and had told police that he knew his rights about halfway through the interview. Id. at 581, n.2. The footnote goes on to explain the test for determining if a waiver is knowing and voluntary, namely that the court must ascertain "whether the waiver was the result of an intentional choice that was not subjected to undue governmental pressure." Id. It also states that the focus must be on defendant's "cognitive processes", such as whether or not the defendant was aware of the nature of the choice to relinquish *Miranda* rights. Id. The

footnote cites to Commonwealth v. Cephas, a case where a mentally ill defendant was interviewed by police following the rape of a woman in Philadelphia. Commonwealth v. Cephas, 522 A.2d 63 (Pa. Super. 1987). The defendant was interrogated twice by a detective who knew that he suffered from schizophrenia. Id. at 64. During the interviews, defendant was acting childishly, refusing to sit down unless rewarded with cigarettes or soda and cookies. Id. During his second interview, defendant's *Miranda* warnings were read to him despite his continued childlike behavior and he eventually made incriminating statements. Id. The Superior Court upheld the ruling of the suppression court that defendant's schizophrenia diagnosis prevented him from understanding the *Miranda* warnings and defendant was incapable of making a knowing and intelligent waiver of his privilege against self-incrimination. Id. at 65.

In the Bland case, the defendant, a seventeen-year-old, allegedly shot and killed a Philadelphia man and then fled to his mother's house in Florida. Commonwealth v. Bland, 115 A.3d 854, 855 (Pa. 2015). Police became aware of defendant's location in Florida and he was arrested by federal authorities. Id. at 856. Following his arrest, defendant's father contacted an attorney and informed him of the defendant's situation. Id. The lawyer sent a form for defendant to sign and return. Id. The form included an invocation of the *Miranda* right to counsel. Id. Once the defendant was returned to Philadelphia, a police officer gave him his *Miranda* warnings six (6) days later and then began to question him. Id. The defendant ultimately confessed and after consulting with his father, provided a written confession as well. Id. Defendant later attempted to get his confession suppressed, arguing that by signing the form sent by counsel that included the invocation of counsel, defendant was entitled to counsel at the time he was interviewed by police six (6) days later. Id. at 857. The Pennsylvania Supreme Court disagreed with the defendant and held that "valid invocations of this *Miranda* right

should be made in close temporal proximity to the circumstances giving rise to the relevant concern.” Id. at 861. The Court further stated that, “to require a suspension of questioning by law enforcement officials on pain of an exclusionary remedy, an invocation of the *Miranda*-based right to counsel must be made upon or after actual or imminent commencement of in-custody interrogation.” Id. at 863.

Nevertheless, following a careful review of the video footage from June 8<sup>th</sup> and the relevant case law, this Court disagrees with Defendant on this issue. The footage shows Miller unequivocally informing Defendant repeatedly of what her options are. Miller states that he cannot make this decision for Defendant and advises her of her *Miranda* rights, which Defendant admits that she understood those rights. Though Defendant may have been unsure of how to proceed, nevertheless, she consents multiple times to have an interview with law enforcement. Miller makes himself perfectly clear in the tape by first confirming that Defendant wants to speak with him and then separately confirms that Defendant wishes to do so without an attorney present. Defendant agrees and proceeds with the interview. Defendant’s musings about whether an attorney should be present and her uncertainty regarding whether counsel has been retained for her do not amount to the invocation for the right to counsel. For example, the United States Supreme Court has held that, “maybe I should talk to a lawyer” is not a valid request for the presence of counsel at an interview with police. Davis v. United States, 512 U.S. 452, 453 (1994). Defendant’s words in this case are even less concrete than those held to be insufficient in Davis.

Once Defendant becomes upset and tells Miller that she does not want to talk to him anymore, he confirms this and then immediately ends the interview. Defendant was not subjected to further questions regarding L.B., Defendant’s drug use, or any other circumstances

surrounding the case. When Defendant invokes her right to stop the conversation, Miller complies. The circumstances of this interview are not comparable to DiStefano because Defendant's interview with Miller lasted approximately twenty (20) minutes in total. This Court finds that Defendant was not coerced into consenting to the interview and her rights were preserved when the interview ceased after she informed Miller she was no longer willing to speak with him. The Supreme Court has held that officers are not required to clarify if an individual actually wants an attorney. Davis at 461. Therefore, the Defendant's statements in the interview on June 8, 2020 shall not be suppressed.

### **Conclusion**

The Court finds that the affidavits of probable cause in the search warrants for Defendant's blood and cellular phone provided sufficient evidence to establish probable cause for law enforcement to search. As a result, Defendant's Motion to Suppress the evidence seized pursuant to the search warrants is denied. The Court also finds that Defendant properly waived her right to counsel for the interview conducted on June 8, 2020 and did not invoke her right to counsel. Therefore, her statements at the interview shall not be suppressed since her rights were not violated.

**ORDER**

**AND NOW**, this 5th day of August, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Motion to Suppress Evidence is **DENIED**. Defendant's Motion to Suppress her statements is also **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)  
PD (MW)  
Law Clerk (JMH)