IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:
	:
vs.	: **No's. CR-1302-2019**
	: **CR-1356-2019**
NOAH SAMUEL STROUP,	:
Defendant	: **Omnibus Pretrial Motion**

OPINION AND ORDER

Under Information 1302-2019, Defendant is charged with an open count of Homicide and related counts. These charges stem from the August 4, 2019 killing of Rhonda McPeak at the Uni-Mart store located on West Fourth Street in the Newberry section of Williamsport, Pa.

Under 1356-2019, Defendant is charged with Robbery and related counts. These charges stem from a July 28, 2019 robbery at the Nittany Minit-Mart on East Third Street in Williamsport, Pa.

On January 6, 2020, Defendant filed a comprehensive Omnibus Pretrial Motion which included, among other motions, a Motion to Suppress Statements, a Motion to Suppress Statements of September 12, 2019, and a Motion to Suppress Physical Evidence. On May 29, 2020, Defendant filed a Supplemental Omnibus Pretrial Motion, which included an additional Motion to Suppress. Hearings were held on May 20, 2020, May 26, 2020 and June 2, 2020. The parties subsequently submitted extensive briefs and an oral argument was held on October 29, 2020.

Defendant seeks the suppression of statements he made to law enforcement on August 15, 2019, as well as any evidence derived from said statements; statements he made

to law enforcement on September 12, 2019; law enforcement's observations made inside of the residence at 946 Memorial Avenue in Williamsport, Pa. on August 15, 2019; suppression of all evidence obtained from Defendant's phone; and evidence seized from 946 Memorial Avenue on August 15, 2019, pursuant to a search warrant.

As for the August 15, 2019 statements, Defendant asserts that the initial Miranda warnings were deficient; that his silence and/or declining to answer questions for 45 minutes was an assertion of his right to remain silent that was not scrupulously honored; that his statement that he wanted to speak with his Adult Probation Officer was an expression of his desire to speak with his attorney or remain silent; that he did not knowingly, intelligently, willingly or voluntarily waive his Miranda rights; that his Miranda rights were undermined by police conduct; that his statements were not voluntary; and that prior to being interrogated by Agent Brown of the Williamsport Bureau of Police, he should have been Mirandized again.

As for his September 12, 2019 statements, Defendant asserts that his right to counsel attached and that law enforcement was not permitted to interrogate him, as well as that no Miranda warnings were provided prior to his custodial interrogation.

As for the evidence observed by law enforcement and subsequently seized by law enforcement officers on August 15, 2019 at the Memorial Avenue address, Defendant asserts that his initial arrest was unlawful because he was arrested in a third-party home without a warrant; that the initial search of the home was without a search warrant; that the search of the home was broader in scope than required to apprehend Defendant; that the

search warrant affidavit failed to establish probable cause; that the search warrant was fatally overbroad; that the search warrant was insufficiently particularized; that the search warrant affidavit contained false and/or material facts, statements or omissions; that the search warrant was facially deficient because it failed to particularly describe the premises by failing to denote the specific apartment; and that the warrant for the search of Defendant's phone went beyond the authorization of the initial search warrant.

As indicated, testimony was taken and exhibits were admitted into evidence at the hearings on May 20, May 26 and June 2, 2020. The Commonwealth's Brief in Opposition to Defendant's Suppression Motions was filed on July 24, 2020. Defendant's Brief in Support of his Suppression Motions was filed on August 24, 2020. The court notes that the testimony and arguments were to address only the suppression portions of Defendant's Omnibus Motion. Oral argument was held on October 29, 2020.

The court apologizes to the defendant, the victims and counsel for not filing this Opinion and Order in a more timely manner but the court took ill with the COVID virus and was out of the courthouse for weeks. Upon its return, many hearings were scheduled in order to "catch up." Moreover, in an effort to be thorough, the court again viewed the audio-visual recording of the Defendant's interview on August 15, 2019 and re-read the transcripts of the hearings as well as the notes from oral argument.

Preliminarily, the parties agree that Defendant's statements to law enforcement, namely to Detective William Weber and Detective Arnold Duck, on September 13, 2019, should be suppressed because of the failure of the detectives to provide Miranda

warnings after Defendant's right to counsel had attached. Accordingly, an appropriate Order will be entered below.

The court will first address Defendant's statements to law enforcement on August 15, 2019. The interrogation was recorded and began at approximately 9:15 a.m. It occurred at the State Police Barracks in Montoursville, Pa. Defendant argues that from the inception, "law enforcement's overzealous conduct in obtaining a confession was fraught with significant constitutional violations that require suppression." (Defendant's Brief, p. 11).

The first issue concerns whether the Miranda warnings given to Defendant were constitutionally deficient. While Defendant concedes that Corporal Reeves "complied with the language requirements [of] Miranda", he argues that the conduct of Corporal Reeves "before and after" the reading "minimized those critical rights." (Defendant's Brief, p. 13). Defendant asserts that Corporal Reeves was an experienced and trained law enforcement officer who used various techniques to lower Defendant's anxiety level, to improve Defendant's opinion of the corporal, to build rapport, and to create a setting conducive to both a Miranda waiver and subsequent admissions. Defendant asserts, as well, that the perfunctory delivery of the warnings by Corporal Reeves was designed to deemphasize the warnings and to suggest to Defendant that the warnings were a mere formality and of little interest. (Defendant's Brief, p. 15).

Defendant, however, fails to cite any case in support of his argument. Instead, he cites different Law Review articles which comment on police tactics in administering

Miranda warnings. This court is not a policymaker. This court must follow the law regardless of the varied opinions regarding the law's weaknesses. Indeed, regardless of Corporal Reeves' motives or method of delivery, he followed the law. He read the Miranda warnings verbatim. He read them in a clear and straightforward manner even after Defendant stated "[a]nd this is just the Miranda rights…no, I get it, I'll sign." (Commonwealth's Exhibit C-11a).

In Miranda, the Supreme Court did not put an imprimatur on any one version of the warnings. *Commonwealth v. Singleton,* 266 A.2d 753, 754 (Pa. 1970). The court clearly indicated that deviation from the prescribed formation would be permissible only when the offered version was more likely to give a suspect a better understanding of his constitutional rights. *Id.* at 755. The recitation of Miranda by Corporal Reeves was clear, concise and fully advised Defendant of his rights and the consequences of foregoing those rights. Defendant, who was apparently somewhat aware of Miranda, became more acutely aware that he was involved in the adversary system, that he was not in the presence of an individual acting solely in his interest, and the he was not being offered an inducement to speak. Accordingly, Defendant's claim on this issue will be denied.

The next issue the court will address is whether Defendant appropriately waived his Miranda rights. In determining whether Defendant's waiver of his Miranda rights was valid, the court must consider the following factors:

(1) whether the waiver was voluntarily, in the sense that the waiver was not the result of government pressure; and

(2) whether the waiver was knowing and intelligent, in the sense that it was made with full comprehension of both the nature of the rights being abandoned and the consequences of that choice.

Commonwealth v. Patterson, 91 A.3d 55, 76 (Pa. 2014)(citing *Commonwealth v. Pruitt*, 951 A.2d 307, 318 (Pa. 2008)).

The Commonwealth bears the burden of establishing that a defendant knowingly and voluntarily waived his Miranda rights. *Commonwealth v. Smith*, 210 A.3d 1050, 1058 (Pa. Super. 2019).

Defendant's initial Miranda waiver was clearly voluntary and intelligent. It was not induced by pressure, threats, cajoling, deception, coercion or subterfuge. Contrary to what Defendant claims, he was not initially detained in a cage but on a bench in a patrol room. He was not taken to a windowless room but rather an office with a window and sat in a comfortable chair. Corporal Reeves was not armed at the time of the interview including when Defendant signed the waiver. While Corporal Reeves was preparing to read Defendant his rights, he specifically explained that even if Defendant agreed to talk at that moment, he could decide at any time later not to talk. Defendant responded "this is just Miranda rights, I get it, I'll sign" but Corporal Reeves insisted that the rights be read in full emphasizing that Defendant could assert his rights "at any time." While Corporal Reeves was reading the warnings, Defendant continually nodded his head in agreement.

Defendant also argues that his waiver was invalid because he was not advised that he was being investigated for his role in a homicide. Defendant's argument fails for two

reasons. First, it is factually misleading. Defendant was in fact advised that he was being questioned as a result of the robbery gone bad ("real bad") and for his role in it. Secondly, he was made aware "of the general nature" of the incident giving rise to the investigation. Because such knowledge was conveyed to him, it can be said that he understood the consequences of yielding the right to counsel and the right to remain silent. *Commonwealth v. Carter,* 234 A.3d 729, 733 (Pa. Super. 2020), citing *Commonwealth v. Dixon,* 379 A.2d 553 (Pa. 1977). Accordingly, Defendant's claim on this issue will be denied.

The next issue, however, is more nuanced and relates to the waiver after it was initially signed. Defendant argues that the conduct of the police post-Miranda and post-waiver invalidated the Miranda warnings and the waiver. In essence, Defendant argues that the analysis of the waiver issue does not end with Defendant's signing of the waiver form because the court must examine the totality of the circumstances surrounding the interrogation to determine whether Defendant's decision to waive his rights was made knowingly, intelligently and voluntarily.

Among the factors the court must consider in this analysis 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 facts which may serve to drain one's powers of resistance to suggestion and coercion. *Patterson,* 91 A.3d at 76 (citing *Commonwealth v. Perez,* 845 A.2d 779, 787 (Pa. 2004)).

A signed Miranda waiver form is "usually strong proof" that a suspect has

voluntarily waived his rights. *North Carolina v. Butler,* 99 S. Ct. 1755, 1757 (1979). However, only if the totality of the circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension, may a court properly conclude that Miranda rights have been waived. *Fare v. Michael C.,* 99 S. Ct. 2560, 2572 (1979).

In examining such circumstances, the court concludes that Defendant's waiver was not the product of deception and was made with the full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon them. The court notes as set forth above, that it reviewed in meticulous detail the audio-video recording of Defendant's interrogation.

The entire interrogation lasted approximately three and a half (3 ½) hours. During this time, there were a handful of breaks and interruptions. At Defendant's request, he spoke with his probation officer for approximately seven (7) minutes. Defendant was permitted numerous cigarette breaks including an initial five (5) minutes, another time twenty (20) minutes, and the last time three (3) minutes. Furthermore, there were breaks in the questioning associated with waiting to reach the probation officer, waiting for other officers to assist with Defendant's requests, waiting for Corporal Reeves to complete tasks outside of the room or to contact others, and waiting for Agent Brown to arrive. None of these "lapses" which resulted in Defendant sometimes waiting alone or with another law enforcement officer, were contrived or designed to put pressure on Defendant. Indeed, during one of the breaks, Defendant asked an unknown officer if he could come in from the hallway and just sit with him. The officer complied and sat silently with Defendant for several

minutes.

The means of interrogation, while not entirely benign, were on balance appropriate and did not result in undermining the voluntary, intelligent or knowing waiver of Defendant's Miranda rights. While Corporal Reeves certainly engaged in minimization techniques and even a "cascade of plaudits and reasons why [Defendant] should cooperate" (Brief, p. 19), Corporal Reeves did not trick, threaten, improperly pressure or cajole Defendant to the extent that it rendered Defendant's waiver involuntarily.

Defendant was initially escorted into an interview room where he sat uncuffed, facing Corporal Reeves and Trooper Rebecca Parker of the Pennsylvania State Police. Defendant was relaxed, talkative, smiling and engaged. While Corporal Reeves certainly wanted to establish a conducive environment for Defendant to confess, it was Defendant who decided to up the ante. The interrogation started with small talk, progressed to more pointed general questions and then, only eight (8) minutes in, Defendant started negotiating.

Being informed by Corporal Reeves that they were there to discuss what "I-Keem" (Co-defendant) had done (inferentially referencing the robbery turned bad into a murder), and that it was "not good", Defendant stated that "clearly you guys want something from me" and that if they couldn't help him with getting him out of jail, he couldn't help them. Defendant specifically told the officers that if he could get out of jail, he would give them what they wanted. Defendant was clearly aware of the nature of the investigation and engaged in technical maneuvering of his own to strengthen his negotiating position.

He confronted Corporal Reeves at one point about what he "really" knew versus what he said he knew. He noted that he knew that cops lie. He explained that he was a highly intelligent man and that no one could get the wool over his eyes. He repeatedly stressed not only his intellect but his familiarity and experience with the criminal justice system.

Much of the discussion prior to Defendant speaking with his Adult Probation Officer was back and forth. While Corporal Reeves gave numerous reasons why Defendant should talk including statements like Defendant was "at a crossroads", Defendant had "so much to offer", "jail is not for people like you", "you are not looking at what he's looking at", "If you don't talk, it will make you look no different than him", "based on my experience, it does make a difference…the attitude…the remorse"; "you've got to let that (human side) of you out", "you [don't want to be] lumped in with a killer", "you can mitigate some of this", "this can still be fixed", "you can get a head of this" and "that you need to think long term", Defendant was steadfast in insisting that he was not going to volunteer any information without assurances that he would not be incarcerated.

The questions posed by Corporal Reeves became more direct and pointed and obviously Corporal Reeves used his years of training and experience in an attempt to get Defendant to talk. But despite those attempts, Defendant did not flinch. Corporal Reeves explained to Defendant that he knew that there was a part of Defendant that didn't want this to happen and that Defendant "hurt inside."

Corporal Reeves explained to Defendant that this was "about the rest of

[Defendant's] life." Corporal Reeves explained that "once the ball starts rolling, you'll get caught up in it; you'll never have the opportunity to tell your side; you'll end up getting charged…and get the same as he gets."

In response to this, Defendant retorted rather forcefully saying "Listen!, I get what you're saying, I'm clearly not opposed, but I can only help you if you help me."

Defendant even attempted to use his own techniques apparently gained through past experiences and honed through his intelligence. He tried to gain sympathy from Corporal Reeves in order to negotiate a release. Among other things, Defendant referenced past college experience, basketball, his race, his family and his new job. He too engaged the police in small talk.

Despite neither side budging, approximately 25 minutes in, Corporal Reeves told Defendant in no uncertain terms that if Defendant didn't say anything, Defendant would go to state prison for the rest of his life after which Defendant asked to speak with his probation officer.

Overall, the interrogation was relatively relaxed, cordial and calm. Defendant was not handcuffed, uncomfortable or displaying any anxiety or nervousness. He asked for a cigarette break only 27 minutes into the interrogation and returned after the break with a large Gatorade-type drink. He was alert and aware. During this time, nothing deprived him of his continuing decision to negotiate his release. He even asked to speak with his probation officer. When asked why, he responded that he "just wanted to ask him what I should do?"

Nearing the time that Defendant actually spoke with his probation officer,

approximately 44 minutes in, Defendant was told by Corporal Reeves that "this could still be fixed." He added that "you can cross your arms and say prove it, then you could get lumped in with I-Keem and spend the better part of your life in jail" or "you could talk with us today, you get on the rehabilitation track [arguing] that you were desperate for money, you didn't think anyone could get hurt and that you are not a killer." Then Corporal Reeves said "they'll look at that much differently."

Clearly, some of the statements by Corporal Reeves to Defendant were incompatible with the Miranda warnings and support Defendant's argument that the prior Miranda warnings were invalidated. Telling Defendant that if he didn't say anything he would go to state prison for life, that if he didn't say anything he would be lumped in with I-Keem, and that if he didn't talk then he'd never have the opportunity to tell his side of the store, were all statements that essentially told Defendant that talking would help him and not hurt him, directly contradicting the Miranda warnings that talking could indeed hurt him and be used against him.

Yet, it is a totality of the circumstances test. Defendant was never told that talking would not have any detrimental consequences. Corporal Reeves was clear that Defendant would be going to jail regardless and that he had no control over that decision. Moreover, none of what Corporal Reeves said to Defendant caused Defendant to change his position. Defendant was self-admittedly intelligent, experienced in the criminal justice system, knew what was at stake and wasn't going to talk unless he was going to be assured of the benefit he desired i.e. being released. The parties were at an impasse. Neither could

give anymore and the negotiations stalled. Defendant, however, attempted another tactic ostensibly designed to see if his adult probation officer could help him with being released.

While the details regarding Defendant's request to speak with his adult probation officer will be discussed later in this Opinion, approximately 44 minutes into the interrogation, Corporal Reeves got in contact with Defendant's adult probation officer, Erick Fortin, and told Agent Fortin that he had "Noah here" and that "he wants to talk with you." Corporal Reeves then gave the phone to Defendant who could be heard telling Agent Fortin that he needs some advice. He asked what he should do but soon started pleading that he would do anything and let them know anything they wanted to know but he couldn't do anything from jail.

After getting off of the call, Defendant resumed the negotiations by telling Corporal Reeves that he cannot go to jail if he talked with them. He then asked directly "how will you all help me?" Corporal Reeves was clear in his answer. He could not help Defendant that day about staying out of jail but that he was giving him an opportunity to differentiate himself from "I-Keem" and that he would tell the District Attorney and Judge if need be, that Defendant was cooperative, helpful and remorseful. While Corporal Reeves was still talking, Defendant interrupted him stating "Let's just get this over with." This statement by Defendant was 56 minutes into the interrogation.

For the next approximate hour, Defendant discussed the specifics of the two incidents involving he and his co-defendant, I-Keem Fogan. The questioning methods and tone were conversational and direct. Defendant answered the questions as asked even

volunteering additional information. He even answered many questions before Corporal Reeves finished asking them.

Defendant clearly knew what he was doing and was under no coercion or intimidation whatsoever. He continued to attempt to garner sympathy by claiming past racial oppression, distancing his relationship with I-Keem, claiming ignorance as to what was supposed to happen and eliciting favorable statements from Corporal Reeves such as Reeves acknowledging that he didn't see Defendant as a "stone cold killer."

The questions continued to be asked in a non-threatening and non-coercive manner and tone. Defendant answered the questions in detail and without hesitation. Defendant clearly knew that he didn't have to answer all of the questions and exercised his right not to. Corporal Reeves on more than one occasion explained to Defendant that he didn't have to answer certain questions and "its up to you." Defendant volunteered information about his conduct before and after the incidents.

In response to Defendant's concern that police twist words, Corporal Reeves gave Defendant the opportunity to write his statement down but Defendant declined. In response to Defendant's concern about the victim and the family, Corporal Reeves allowed Defendant to speak to "them" by making a statement on camera. Defendant, in fact, did so in an articulate and seemingly heartfelt manner. Corporal Reeves continued to assure Defendant that his cooperation would help.

In connection with his argument regarding the totality of the circumstances undermining Defendant's Miranda rights, Defendant argues that the questions by Agent

Brown should have been proceeded by Miranda. Defendant asserts that “shortly after returning to the interrogation room after a smoke break, Agent Jeremy Brown of the Williamsport Bureau of Police, who was armed, arrived at the barracks and conducted an interrogation but that no new Miranda warnings were provided.” (Defendant’s Brief, p. 8).

In fact, Agent Brown did not arrive until 20 minutes after Defendant returned from his smoke break. He was dressed in civilian clothes and was unarmed. Corporal Reeves shut the door and both he and Agent Brown sat down with Defendant. Corporal Reeves indicated to Agent Brown that Defendant was previously Mirandized and specifically told Defendant that those rights were “still in play.” He followed up with Defendant asking him “Right?” to which Defendant nodded yes.

Corporal Reeves briefed Agent Brown as to what occurred up to that point which was approximately two hours and thirty-three minutes from the beginning of the interrogation including breaks. He also asked Defendant to correct him if he didn’t say or repeat anything correctly. In fact, Defendant did clarify some of the information provided by Corporal Reeves to Agent Brown.

Agent Brown identified himself indicating that he was investigating the homicide and wanted to get Defendant’s “version of the story.” He explained that he knew Defendant was not the shooter but rather the lookout. He asked Defendant if he was okay with that and Defendant indicated yes and then Defendant asked if Agent Brown knew what was going to happen to him. Agent Brown told Defendant that he was under arrest for a Pennsylvania State Police warrant and will be arrested on the other robbery at the Uni-Mart.

Then he asked Defendant if Defendant was okay with talking to him and Defendant indicated yes.

The questioning began and Defendant started answering the questions in detail. As previously with Corporal Reeves, Defendant volunteered additional information in response to many of the questions. He even ventured to guess at certain answers. Defendant was very forthcoming with all of the details of the incident. He even volunteered information related to other robberies and what he "knew" about them. No threats, pressure, coercion, cajoling, promises or improper conduct were committed by Agent Brown. The questioning was conversational in content, delivery and tone. In fact, Agent Brown said nothing whatsoever which could even remotely be interpreted as undermining Defendant's prior knowing, intelligent and voluntary waiver of Miranda. Although Agent Brown asked a significant majority of the questions, Corporal Reeves also asked some as well.

When the portion of the interrogation with Agent Brown was to end, Defendant asked him what was going to happen to him. Agent Brown said that he would be committed to jail. Agent Brown indicated that all he could recommend was that Defendant was cooperative. He said Defendant was doing the right thing by talking about it and being remorseful and then continued with a few other questions.

Including some moments when no questions were asked or Defendant was not responding, the interrogation by Agent Brown lasted approximately 40 minutes. In ending, Agent Brown asked Defendant if he wanted to say or add anything. He did note to Defendant that anything he could come up with in the future might help him. Agent Brown

explained to Defendant the process with respect to filing the criminal complaint and being preliminarily arraigned before a magistrate.

A discussion ensued about bail with Defendant asking if Agent Brown could recommend bail to the MDJ. Agent Brown indicated that he could not nor would he recommend an ankle monitor. Agent Brown informed Defendant that he could plead his case to the MDJ but that it was the MDJ who made the decision.

Toward the end of the interrogation after a break, Defendant discussed with Corporal Reeves some final matters. Corporal Reeves asked Defendant if he would prefer to be detained in Snyder County. At another point, Agent Brown came in and had a conversation with Defendant about the number of phones and phone numbers that Defendant used.

Throughout the entire interrogation, Defendant was treated courteously, respectfully and with attention to any of Defendant's needs. On numerous occasions, Defendant was asked not only by Corporal Reeves and Trooper Parker but by other officers who might have been walking the hall outside of the room whether he needed anything. As previously indicated, Defendant asked an officer to come and sit with him which the officer did for about five minutes. While waiting, Defendant showed no signs of distress, anxiety or concern. Indeed, Defendant appeared to be relieved. While sitting there, he seemed to doze off for a few minutes.

Moreover, Defendant was acutely aware of his right to remain silent at any time with respect to any matter. He clearly exercised his right to silence with respect to some

questions relating to other robberies. He noted for example, that he was "not talking about it." He would not "confirm" certain things. Significantly, Corporal Reeves told Defendant that Corporal Reeves would not be offended if Defendant decided not to talk or provide information about prior robberies. Defendant decided not to. Further, when told that the Williamsport Bureau of Police wanted to talk with him, Corporal Reeves reiterated to Defendant that talking to them was entirely up to Defendant. As previously indicated while waiting, and at Defendant's request, they left for another cigarette break.

Upon returning after approximately twenty minutes while still waiting for Agent Brown, Corporal Reeves followed up with more questions. It was not a long list of questions and many of them were unconnected with lapses between them. Defendant specifically refused to answer some questions such as disclosing admissions by Mr. Fogan. With respect to other questions, he answered them sometimes in great detail.

Following the entire interrogation and while certainly self-serving on the part of Corporal Reeves, Corporal Reeves confirmed with Defendant that Defendant was told not to guess or make up things, that Defendant understood everything that they talked about, that Defendant was not promised anything and that Defendant was not threatened or mistreated in any way. Before ending the interrogation, another officer at Defendant's request agreed to let Defendant speak by telephone with his girlfriend. Immediately prior to the interrogation ending, either Agent Brown or Corporal Reeves agreed to take Defendant out for a final cigarette break.

Defendant next argues that his statements to Corporal Reeves, Trooper

Parker and Agent Brown were involuntary. Defendant submits that in considering the "salient factors", the court should find that the confession on August 15, 2019 was "involuntary in its entirety." Defendant argues that because the alleged police conduct post-Miranda warnings undermined and invalidated the Miranda warnings, Defendant's confession must also be deemed involuntary. The question the court must address is whether the interrogation was so coercive or manipulative that it deprived the defendant of his ability to make a free and non-constrained decision to confess. *Commonwealth v. Nestor,* 709 A.2d 879, 882 (Pa. 1998).

For the many reasons set forth above, and in considering the totality of the circumstances, Defendant's statements clearly reflected a deliberateness of choice and of a free and unconstrained will. His confession was not obtained by force, coercion or intimidation. Rather, it was freely given after a period of negotiation prompted by Defendant and Defendant's decision that to speak was clearly in his best interest.

Defendant was eager to give his version, self-confident in his decision to talk, steadfast in his version of the events, unflinching in his desire to portray himself as a largely innocent bystander and confident in knowing what he was willing to talk about and not talk about. He was not browbeaten, bullied, threatened, strong-armed or even "hustled." Any pressure or influence on him by law enforcement was largely appropriate. Finally, Defendant's decision to speak was motivated by his self-interest and was undoubtedly an open choice on his part.

Accordingly, Defendant's Motion to Suppress on these grounds shall be

denied.

Defendant next argues that he invoked his right to remain silent and that the police did not scrupulously honor it. Defendant argues that his desire to remain silent was clear and manifested by his statements and conduct.

Specifically, Defendant notes that during the interview, he stated the following: “I need to be free, so if you can’t help me with that, I can’t help you guys with anything”, “if you can’t help me out, I can’t help nobody”, “like, I can’t help nobody unless they help me”, “and I need my assurance…that needs to be established before I go any further”, and “look, I just want to go home…I don’t know what else you want me…listen…I can only help you if you can help me.” (Defendant’s Brief, pp. 30-31).

Moreover, Defendant argues that he hesitated in answering questions, pausing for periods of time and expressed reluctance by conveying statements about his family, children and job. (Defendant’s Brief, p. 31).

If an individual indicates in any manner, any time during questioning, that he wishes to remain silent, the interrogation must cease. *Commonwealth v. Frein,* 206 A.3d 1049, 1064 (Pa. 2019)(citing *Miranda v. Arizona,* 86 S.Ct. 1602 (1966). It is through the exercise of this option that an individual can counteract the inherent coercive pressures of custodial interrogation. *Frein,* 206 A.3d at 1064-1065.

When invoking one’s right to remain silent, a suspect must do so unambiguously. *Berghuis v. Thompkins,* 130 S.Ct. 2250, 2259 (2010). In this case, Defendant did not unambiguously assert such right. He did not state at any time that he did not wish to

talk about any crimes or that he was not willing to answer any questions. See *Frein*, *Id.* at 1066. He did not state "I am done talking. I don't have anything to talk about", see *Commonwealth v. Lukach,* 195 A.3d 176, 183 (Pa. 2018). Defendant's statements and conduct were far more representative of Defendant negotiating and wanting to talk in order to get a benefit, rather than unequivocally exercising his right to remain silent. Moreover, during different portions of the interrogation, Defendant did pick and choose what he would talk about. He clearly indicated what topics he was not willing to talk about and those requests were honored.

Accordingly, Defendant's Motion to Suppress on these grounds will be denied.

Defendant argues in his next issue that his request to speak with his probation officer should have reasonably been construed as asserting his right to speak to counsel and/or remain silent. In support of this argument, Defendant notes that after "almost an hour of getting nowhere" he requested to speak with his Adult Probation officer because he needed some advice. (Defendant's Brief, p. 33).

Defendant's assertions in part are factually incorrect. At exactly 25:26 minutes into the interview, Defendant stated that he needed to "talk to his PO." Corporal Reeves responded that they could arrange "that." Then Defendant asked if they could put him on speaker phone and call him. In response to a question by Corporal Reeves, Defendant indicated that his PO was Erick Fortin. Corporal Reeves asked Defendant what Corporal Reeves should tell him that Defendant wanted to talk about. Defendant briefly hesitated and

said to tell Agent Fortin that he needed "some advice."

At Defendant's request, he was taken outside for a cigarette. Corporal Reeves indicated to Trooper Parker that he was taking Defendant out for a cigarette and asked her to see if she could get a hold of Agent Fortin. Corporal Reeves and Defendant returned approximately 7 ½ minutes later. Defendant sat down, Trooper Parker then left the room with the door open. While waiting, Defendant drank a Gatorade-type drink that had been provided to him and after a few minutes asked Corporal Reeves if he "alerted" Defendant's PO about this. Corporal Reeves responded that he thought that they were doing that "right now." He then asked Defendant if he got along with his PO "pretty good" to which Defendant nodded no. Corporal Reeves then asked why he wanted to talk with him if they didn't get along and Defendant responded by shrugging his shoulders and said that he wanted to ask him what to do though [he] didn't get along with him.

Shortly thereafter, Trooper Parker returned with her cell phone in hand. Corporal Reeves told Defendant that his attitude and remorsefulness would make a difference and started expounding on such. Defendant explained that he knew how "it goes" and expressed a concern that things would get flipped around. Corporal Reeves attempted to assure Defendant that things would not get flipped around because the interrogation was being audio-recorded. He also stressed to Defendant the importance of confessing to what he knew that he did but that regardless, he was going to be arrested for it that day.

Defendant acknowledged that he was going to be arrested. They then engaged in back and forth about if either party knew what it was like for the other. Defendant

asked what's going happen, Corporal Reeves explained his version noting the difference between cooperating and not cooperating ("lumped in with I-Keem") or ("get on rehabilitation track.") Defendant remarked that he was not being given a guarantee to which Corporal Reeves acknowledged. Corporal Reeves specifically stated that he was not allowed to promise things. At 43:37 minutes in, Defendant then asked Trooper Parker if she called "him." Trooper Parker explained that Mr. Fortin said he would talk. Corporal Reeves then placed the call at 44:05 minutes.

Defendant spoke with Agent Fortin for six minutes, from 44:47 minutes to 50:47 minutes. He asked what he should do and explained that he needed some advice. He noted that he didn't want any problems and didn't know what to do. He explained that it was hard for him to report or deal with the specific conditions of supervision like getting a job. He stressed that he didn't want any problems. He indicated that he would do anything they wanted him to do but that he just wanted to go home. He said he would tell them anything they wanted to know but explained that he couldn't do anything sitting in jail. He asked about his outstanding warrants and what he should do. He also inquired of Agent Fortin whether he was feeding him a bunch of "bullshit." Toward the end of the conversation, he appeared to be listening to Agent Fortin saying the word "alright" a few or more times.

While testifying, Corporal Reeves admitted that he was expecting Mr. Fortin to tell Defendant not to talk although he didn't know what was going to happen during the call. Corporal Reeves further admitted that when Defendant asked to speak with his PO that he didn't suggest that he speak with an attorney. Further, Corporal Reeves indicated that he

did not know Agent Fortin and couldn't even pick him out of a two-person lineup. Contrary to what Defendant asserted, they were hardly "fellow law enforcement brother(s)" nor was Corporal Reeves "actually aware that Mr. Fortin would not tell Mr. Stroup not to speak to the police."

Defendant argues that his request to seek advice from Mr. Fortin was a request to secure protection from the coercive aspects of custodial questioning and that Mr. Fortin, as Defendant's probation officer, had a professional obligation to be responsible for Defendant's welfare. In light of all of the circumstances, Defendant claims that his request should have reasonably been construed as a request for counsel or to remain silent and that said request was not honored. As a result, Defendant argues that anything he said afterwards should be suppressed.

Defendant's argument is without merit. Not only has Defendant embellished the facts in his favor and ignored some more pertinent facts, but Defendant has also ignored clear legal precedent.

As noted previously, while Corporal Reeves suspected what Mr. Fortin would say, he was not sure. Further, Corporal Reeves did not know Mr. Fortin. As well, Defendant first asked for the conversation to be on speaker phone. Finally, the request to speak with Agent Fortin was made approximately 25 minutes in and not "after almost an hour."

Determinatively though, a probation officer is not in a position to offer the type of legal assistance necessary to protect the Fifth Amendment rights of an accused

undergoing custodial interrogation. *Fare,* 99 S.Ct. at 2568-2570. An individual's request to speak with his probation officer does not constitute a per se request to remain silent nor is it tantamount to a request for an attorney. *Id.* at 2571.

Defendant's request under the circumstances of this case did not constitute a request to remain silent or to speak with an attorney. Defendant clearly knew that he was entitled to speak with an attorney or to remain silent at any time. He noted on more than one occasion that he understood his rights, was highly intelligent and was previously involved in the criminal justice system. Indeed, Defendant exercised his right to remain at least partially silent by not answering certain questions and noting that he would not answer said questions. Further and as indicated previously in this Opinion, Defendant used his rights as a negotiating tool in order to bargain for his requested relief. It appears clear to the court that Defendant's request to speak with his probation officer was yet another attempt to strengthen his negotiating position or to garner Mr. Fortin's support with respect to being released that day at the very least on some type of supervised bail.

Accordingly, Defendant's Motion to Suppress on these grounds will be denied.

Defendant next argues that the entry into 946 Memorial Avenue was unlawful because they failed to obtain a search warrant to enter the residence. Alternatively, Defendant argues that to the extent the Commonwealth submits that law enforcement obtained valid consent to enter the residence, said alleged consent was merely acquiescence to a claim of authority.

On August 15, 2019, Trooper Daniel Denucci of the Pennsylvania State Police and a team of law enforcement officers went to the first floor apartment at 946 Memorial Avenue to serve an active bench warrant on Defendant. Through prior investigation and research, Trooper Denuuci had determined that Defendant was likely at the residence on that date. Approximately six law enforcement officers established a perimeter around the residence and two, including Trooper Denucci, approached the side door, knocked on it and announced their presence. An adult female, the purported tenant, La'shay Bryant-Carter answered the door. Trooper Denucci advised her that he had a warrant for Defendant. Ms. Carter denied his presence and denied knowing Defendant. Trooper Denucci advised her that he had reason to believe that Defendant was there and that she might not be being truthful with him. She then inquired as to what "the man did." Trooper Denucci advised that he had a warrant "with an underlying charge of strangulation as a result of domestic violence."

At that point, she said "he's downstairs." Trooper Denucci responded "he's present here?" She said "yep, he's downstairs." She then moved out of the way by moving to the side of the door and gestured them inside by making a sweeping motion with her arm. Upon being granted entry, Trooper Denucci asked where "the basement door was." Ms. Carter pointed to the basement door.

As the Commonwealth notes, a warrantless search is valid when based on the consent of a third party that possesses common authority over the premises. *U.S. v. Matlock,* 415 U.S. 164, 170 (1974); *Commonwealth v. McCullum,* 602 A.2d 313, 321 (Pa. 1992).

Ms. Carter clearly had the authority to consent to the entry by police of her apartment. Defendant argues however that her actions did not constitute consent because her gesture was not in any response to enter her residence and could have been interpreted “in more than one way” thus causing it to be ambiguous at best.

Nonverbal clues are sufficient to constitute consent. *Commonwealth v. Daniels,* 421 A.2d 721, 722 (Pa. Super. 1980). Consent may be express or implied. *Commonwealth v. Fredrick,* 230 A.3d 1263 (2020). Voluntariness is a question of fact to be determined from the totality of the circumstances. *Id.* at 1267. The standard for measuring the scope of consent is one of objective reasonableness. *Id.* (citing *Commonwealth v. Reid,* 811 A.2d 530, 549 (Pa. 2002)). In other words, the issue is what a reasonable person would have understood by the exchange between the officer and the person who allegedly gave the consent. *Id.*

In this particular case, there were no police excesses, no one made physical contact with Ms. Carter, the police did not direct her movements in any way, and the discussion at the side door was not excessive or abnormal in its manner, content or tone. Ms. Carter was not placed in custody or detained. Ms. Carter apparently possessed clear mental faculties and a stable emotional state and assisted the police in actually locating the defendant by directing them to the basement door. She was not unsophisticated with respect to the criminal justice system, she was not threatened, coerced or intimidated by the police. She did not object to them entering the premises.

Undoubtedly, a reasonable person would have understood that Ms. Carter

consented for the police to enter her residence to arrest Defendant. Her consent was voluntary. It was not the product of duress or coercion, express or implied. While Defendant argues that Ms. Carter's consent was a simple acquiescence to a claim of authority, the Commonwealth's evidence supports a conclusion otherwise. The mere presence of police does not constitution coercion. *Commonwealth v. Gillespie,* 821 A.2d 1221, 1225 (Pa. 2003). Moreover and as indicated above, Ms. Carter's choice was voluntary.

Accordingly, Defendant's Motion to Suppress on the grounds of an alleged unlawful entry without consent, shall be denied.

Defendant next argues that the prolonged entry and continuing presence in the residence by law enforcement without a search warrant requires suppression. Defendant contends among other things that an arrest warrant is not a substitute for a search warrant, that after Defendant was arrested, law enforcement officers "kept coming and going inside the residence and mulling about inside..[with] no justification" and that the Commonwealth's justification of a protective sweep "is unavailing." (Defendant's Brief, pp. 39-40). Defendant argues that the protective sweep was not narrowly confined and went beyond the cursory visual inspection of those places in which a person may be hiding. Defendant concludes his argument asserting that the police lacked reasonable articulable suspicion that the apartment harbored individuals that would pose a danger to police officers.

Defendant's argument, however, is belied by the facts of record. The observations made by the police were not made pursuant to a protective sweep.

On the morning of August 15, 2019, Trooper William Reynolds was a

member of the team that was serving the arrest warrant on Defendant at 946 Memorial Avenue. His role was to assist with the warrant service in locating Defendant.

After entering the residence and locating Defendant, he was placed under arrest and detained in the main living room of the residence. Prior to detaining and securing Defendant in the living room, Ms. Carter and her minor son were directed to locate themselves in a side room. The purpose of directing her and her child to a side room, and not in the living room during the initial approach to arrest Defendant, was for their safety. There were active warrants out of multiple counties and Defendant was a suspect in two pending investigations one of which was a robbery and the other in which an individual was murdered.

Typically when someone gets detained or arrested, the police separate those who are involved to make sure that they are safe during the arrest and in order to assure police safety.

Upon securing the defendant, Trooper Reynolds went into the side room to keep an eye on Ms. Carter and the juvenile for officer safety reasons. While in the room, he was obtaining demographic information from Ms. Carter. He was also trying to calm her down. She was "still distraught."

While in the side room, he observed an item arguably connected to the prior robberies and homicide. After observing the item, he informed Trooper Denucci.

He was in the room with Ms. Carter and her child approximately 10 minutes or so. Williamsport Detectives then showed up. He put Defendant in the back of his patrol

vehicle. Shortly afterwards, Defendant was transported to the Montoursville Barracks.

Trooper Reynolds' observations were not made pursuant to a search or protective sweep. In fact, the record supports the conclusion that despite numerous officers subsequently entering the residence, no searches were conducted and it was being secured pending a search warrant. The police may secure a residence pending a search warrant. *Gillespie,* 821 A.2d at 1225. Moreover, the observations by Trooper Reynolds and subsequently by Trooper Denucci were lawful pursuant to the plain view doctrine which is an exception to the warrant requirement. *Commonwealth v. McCree,* 924 A.2d 621, 627 (2007). They were at a lawful vantage point, the incriminating character of the object was immediately apparent (distinctive fleur-de-lis insignia on item of clothing), and they had a lawful right of access to it. *Commonwealth v. Bumbarger*, 231 A.3d 10, 20 (Pa. Super. 2020).

Alternatively, even if the item was observed pursuant to a protective sweep, said observations were lawful. A protective sweep is a quick and limited search of the premises, incident to an arrest and conducted to protect the safety of police officers and others. *Commonwealth v. Witman,* 750 A.2d 327, 336 (Pa. Super. 2000), appeal denied, 764 A.2d 1053 (Pa. 2000), cert. denied. 122 S Ct. 42 (2001).

Such a protective sweep is lawful if there are articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene. *Witman, Id.* This scope of search is "for attackers further away from the place of arrest, provided that the officer that conducted the sweep can articulate specific facts

to justify a reasonable fear for the safety of himself or others." *Commonwealth v. Potts,* 73 A.3d 1275, 1282 (Pa. Super. 2013).

In this case, the court finds that there were several reasons why the officers, Trooper Reynolds and Trooper Denucci, acted reasonably when they did a brief protective sweep of the premises including the side room. The articulable facts, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept potentially harbored an individual posing a danger to those on the arrest scene.

As a matter of course, police separate third parties from the person being arrested. It was reasonable to do that in this case because Defendant was hiding in the basement, Ms. Carter first lied to the police about knowing Defendant and him not being there, Defendant was a suspect in two armed robberies one of which resulted in the shooting and murder of a bystander, and a juvenile was present. The "sweep" of the side room, if it can be characterized as such, was very brief and intended to ensure that Ms. Carter would not be a danger to the police given her distraught state and previous deception, and to prevent her from possibly interfering in the apprehension and arrest of Defendant. Likewise, it protected Ms. Carter and her child from potential danger created by Defendant.

Accordingly, Defendant's Motion to Suppress on these grounds shall be denied. There was no illegal entry, nor did the police illegally remain in the premises.

Defendant next argues that for numerous reasons, the search warrant obtained for the premises was fatally defective and requires suppression of the evidence

seized from the search. First, Defendant argues that the warrant was not valid because it did not specify the correct address. Specifically, it specified 946 Memorial Avenue and not 946 Memorial Avenue, First Floor.

Agent Jeremy Brown of the Williamsport Bureau of Police filed the criminal charges against Defendant for the robbery and shooting that occurred at the Uni-Mart on August 4, 2019. He drafted the application and affidavit for the search warrant at issue. It was drafted and approved on August 15, 2019.

With respect to the address, he was advised that the actual address was 946 Memorial Avenue and that Defendant was removed from the first floor. He "pulled" some information and "observed" that 946 and 944 were "half-double single occupancy residences." When he applied for the search warrant, he included as an attachment a photograph of the building which depicted the 946 and 944 addresses. He did not include an apartment number because he "didn't realize there was an apartment, it just says first floor." The information presented to him by officers on scene was that "946 [was] where Mr. Stroup was staying, where he was removed from and…the description of the actual building itself." He did acknowledge, however, in looking at a photograph, there is a 2nd floor and that there is a mailbox on the front porch that says 946 Memorial Avenue.

Citing *Commonwealth v. Muscheck,* 334 A.2d 248 (Pa. 1975), Defendant argues that in a multi-apartment dwelling, a specific apartment must be denoted. *Muscheck*, however, fails to support Defendant's argument. In that case, the factual averments of the application for the warrant did not refer to *Muscheck's* apartment, but rather a different

apartment occupied by a different individual.

The cases cited by the Commonwealth do support denying Defendant's claim. The mere fact that a search warrant application does not include the specific apartment to be searched does not render the subsequent search to be illegal. *Commonwealth v. Kiessling,* 552 A.2d 270 (Pa. Super. 1988); *Commonwealth v. Kaplan,* 339 A.2d 86 (Pa. Super. 1988); *Commonwealth v. Fiorini,* 195 A.2d 119 (Pa. Super. 1963).

Defendant's constitutional protections were not violated because the error in the warrant was minimal and was based on information that Agent Brown reasonably believed to be accurate following a reasonable investigation. Agent Brown's conduct was consistent with a reasonable effort to ascertain and identify the place to be searched. Moreover and perhaps determinatively, the police ascertained the correct apartment to be searched and did not search any other apartments.

Accordingly, Defendant's Motion to Suppress on this ground shall be denied.

Finally,[1] Defendant argues that Agent Brown intentionally and/or recklessly misrepresented material facts, or simply omitted them in his search warrant affidavit. Defendant submits that Agent Brown omitted the fact that the Facebook entry information contained the name Samuel Robinson, and not Defendant's name. Agent Brown withheld the fact that the "Facebook identification reference never contained the name of Noah Stroup." (Defendant's Brief, p. 45). Defendant submits that Agent Brown falsified information regarding the fluer-de-lis garment. He noted in the Affidavit that Trooper Denucci observed

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[1] **Defendant has withdrawn his assertion that suppression is required because of the search warrant affidavit not establishing probable cause, being overbroad and not sufficiently particularized. Further, the court notes that defendant is deemed to have waived any other arguments not addressed in**

the same black in color jacket or shirt, when both Trooper Denucci and Trooper Reynolds could not identify the garment as a jacket or shirt because much of the garment was hidden under clothing and a duffel bag and they could only see a very small portion of it. The troopers acknowledged that it could have been a pair of shorts or pants.

Defendant submits that it was false to assert that there was a valid arrest warrant for Defendant and entry “was gained…in the Carter residence in that fashion.

Defendant submits that it was false to assert that while executing the warrant he “ran” to the basement and at the time of entry police were “aware that he was already in the basement.” (Defendant’s Brief, p. 46).

A defendant may challenge admissions or misstatements in an affidavit. *Commonwealth v. James,* 69 A.3d 180, 189 (Pa. 2013). If a search warrant is based on an affidavit containing deliberate or knowing misstatements of material fact, the search warrant is invalid, unless the affidavit’s remaining content is sufficient to establish probable cause. *Commonwealth v. Burno,* 154 A.3d 764, 782 (Pa. 2017).

As the Commonwealth notes in its brief (Cmwlth. Brief, p. 35), where omissions are the basis for a challenge to an affidavit of probable cause in a search warrant affidavit, the court employs the following test:

> (1) whether the officer withheld a highly relevant fact within his knowledge, or where any reasonable person would have known that this kind of thing the judge would wish to know; and
> (2) whether the affidavit would have provided probable cause if it had contained the omitted information.

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this opinion and order by failing to brief said arguments; these issues include, but are not limited to, the alleged illegal search of defendant’s phone.

Commonwealth v. Taylor, 850 A.2d 684, 689 (Pa. Super. 2004).

Addressing the Facebook issue, Agent Brown discovered the Facebook page with a different name listed as the site owner. On the page, there were several photographs of Defendant. In one of the photographs, Defendant was wearing a black jacket with white symbols very similar, if not identical, to the one worn by an individual who participated in the robbery. Information obtained on the Facebook page also referenced a telephone number that was identified as Defendant's in text messages on Co-defendant I-Keem Fogan's phone.

Agent Brown identified the Facebook page by the photographs and telephone number and assumed that the name "Samuel Robinson" was a pseudonym. It was common in his opinion for people to use different names than their actual names listed on Facebook.

The court cannot conclude that excluding Mr. Robinson's name would have been relevant let alone highly relevant in determining probable cause. The issue was not in whose name the Facebook was registered but rather the pictures of Defendant wearing the Fleur-de-lis black jacket and posting a telephone number that was identified through other sources as Defendant's. Moreover, and as argued by the Commonwealth, if Agent Brown had included this information, it would likely would have bolstered probable cause by inferring consciousness of guilt on the part of Defendant through the use of a pseudonym. The court can clearly conclude that if the information was contained in the affidavit, probable cause would still have been established.

With respect to the Fleur-de-lis issue, the affidavit described the actor from one robbery as wearing the "same distinct clothing" with Fleur-de-lis markings on the

sleeves and a light-colored marking on the front. The search warrant affidavit described the look-out man from the Uni-Mart robbery as wearing the black jacket and/or shirt with several markings down both sleeves.

With respect to the observations of Trooper Denucci, Agent Brown wrote in the affidavit that Trooper Denucci observed in plain view the same black in color jacket and/or shirt with the Fleur-de-lis logo on the sleeves. Trooper Denucci testified that he saw in plain view a black article of clothing with a white Fleur-de-lis logo. The photograph of what Trooper Denucci observed depicts a black garment with parts of at least four different white Fleurs-de-lis symbols in a row and thin white lines alongside the white symbols.

When Trooper Denucci spoke with Agent Brown, he told Agent Brown that he saw in plain view "a shirt that was similar in markings, color and size as the one that was associated with [the one] robbery." Trooper Denucci identified the garment he saw inside 946 Memorial Avenue as the one he had seen in pictures previously.

The court cannot conclude that what Agent Brown put in the affidavit was a factual misrepresentation. Indeed, what Agent Brown put in the affidavit was exactly what Trooper Denucci told him. Moreover, if the language in the affidavit had been replaced with "a black garment with white lines and Fleurs-de-lis symbols that looks the same as the white lines and symbols on the black jacket worn during both robberies", this would not have negated probable cause or influenced the magistrate's probable cause determination. As the Commonwealth cogently argues, both statements convey the same information.

To the extent that Defendant claims that this is a misrepresentation, the court

concludes that Agent Brown did not make a false statement knowingly and intentionally or with reckless disregard for the truth. Moreover, and as indicated above, even if the statement was changed to reflect the fact that it was a Fleur-de-lis garment, it would not have changed the finding of probable cause. To the extent, Defendant argues it is an omission, the court cannot conclude that Agent Brown withheld a highly relevant fact within his knowledge where any reasonable person would have known that this is the kind of thing the judge would wish to know, or that the affidavit would not have provided probable cause if it had contained the omitted information.

As to Defendant's claim that it was false to assert that there was a valid arrest warrant for Defendant and that entry "was gained…in that fashion", the court concludes that this was not a misstatement of fact. As set forth previously, entry was gained via consent. Moreover, even if it can be concluded that this statement was somehow false, it was not made knowingly, or intentionally, or with reckless disregard for the truth. Finally, it clearly was not necessary to the finding of probable cause.

Lastly, Defendant submits that it was false to assert that while executing the warrant, he "ran" to the basement when at the time of entry, the police were aware that he was "already in the basement." Neither the Commonwealth nor Defendant developed their respective arguments with respect to this issue.

Clearly, there was no record testimony that anyone observed Defendant running down the basement stairs. It likely can be inferred that once the police knocked on the door and identified themselves, Defendant went downstairs. Ms. Carter lied about him

being in the premises and lied about her relationship with him. Moreover, when the police gained entry and directed Defendant to ascend from the basement to the first floor, he did not do so. He was found in the basement in the dark.

Agent Brown noting in the Affidavit of Probable Cause that Defendant ran downstairs was at least an error. No one observed Defendant running nor was there any circumstantial evidence that Defendant ran. It clearly implied that Defendant was attempting to escape and was conscious of guilt.

Nonetheless, the court cannot conclude that the statement that he ran was necessary to the finding of probable cause. Indeed, had the statement been replaced with what the court noted above, probable cause would have been established. It did not and does not matter whether Defendant ran or walked or was already in the basement. He was found in the basement after not complying with police directives, in the dark.

Accordingly, Defendant's claims that the search warrant is invalid because of material misstatements of fact or omissions shall be denied.

ORDER

AND NOW, this 17th day of February 2021, following hearings, the submission of briefs and arguments, the parties agree that Defendant's statements made to Detective Weber and Detective Duck on September 13, 2019 shall be suppressed due to the failure to provide Miranda warnings after Defendant's right to counsel attached. In all other respects, the court **DENIES** Defendant's Motions to Suppress.

By The Court,

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Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Edward J. Rymsza, Esquire
CR-1356-2019
Work File
Gary Weber, Esquire