IN THE COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA

COMMOMWEALTH OF PENNSYLVANIA	**:**	**CR-936-2021**
	:	**CR-937-2021**
	:	
v.	**:**	
	:	
CORRIE COWLAY-SAUNDERS,	**:**	**OMNIBUS MOTION**
Defendant		

OPINION AND ORDER

On January 15th 2021, Corrie Cowlay-Saunders (Defendant) was charged under docket 937 of 2021 with two (2) counts of Criminal Homicide[1], a felony of the first degree, one (1) count of Attempt to Commit Criminal Homicide[2], a felony of the first degree, one (1) count of Aggravated Assault[3], a felony of the first degree, one (1) count of Aggravated Assault with a Deadly Weapon[4], a felony of the second degree, one (1) count of Reckless Endangering Another Person[5], a misdemeanor of the second degree, one (1) count of Possession of an Instrument of Crime[6], a misdemeanor of the first degree, one (1) count of Burglary[7], a felony of the second degree, one (1) count of Criminal Trespass[8], a felony of the second degree, and one (1) count of Unauthorized Use of an Automobile[9], a misdemeanor of the second degree. Less than a month later on February 4th, 2021, the Defendant was charged under docket number 936 of 2021 with Simple Assault[10], a misdemeanor of the second degree, along with two summary offences[11]. At

[1] 18 Pa.C.S. § 2502(a), (c).
[2] 18 Pa.C.S. § 901(a).
[3] 18 Pa.C.S. § 2702(a)(1).
[4] 18 Pa.C.S. § 2702(a)(4).
[5] 18 Pa.C.S. § 2705.
[6] 18 Pa.C.S. § 907(b).
[7] 18 Pa.C.S. § 3502(a)(1)(i).
[8] 18 Pa.C.S. § 3503(a)(1)(ii).
[9] 18 Pa.C.S. § 3928(a).
[10] 18 Pa.C.S. § 2701(a)(1).
[11] 18 Pa.C.S. § 2709(a)(1); 18 Pa.C.S. § 6501(a)(1).

the time Defendant appeared before Magisterial District Judge Aaron Biichle for her preliminary arraignment, she was denied bail due to the nature of the charges. Preliminary hearings on both cases were held on July 16th, 2021 at which time the Defendant was held on every charge. Defendant was scheduled for formal court arraignment on August 2nd, 2021, and entered a plea of not guilty to both sets of charges. Defendant filed this timely Omnibus Pretrial Motion on August 24th, 2021.

The Defendant raises several issues in her omnibus pretrial motion. First, Defendant submits a motion to compel discovery pursuant to Rule of Criminal Procedure 573. On this particular motion, the parties essentially agreed that the Commonwealth understands its obligation pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and made a representation on the record that they have discovered everything to the defense. The attorney for the Commonwealth assured defense counsel that, should he come upon any discovery that falls under Brady, he would provide it to defense counsel. The defense seemed to be satisfied with the Commonwealth's representation on this issue. The parties also discussed prior record information for witnesses. As defense counsel indicated during the hearing, they were not sure if there was going to be any prior record information materials and that they would continue to inquire of law enforcement periodically to see if they have anything to provide. The Commonwealth also notified the Court that they did provide the prior record score information for witnesses and directed defense counsel to where it is located in the discovery materials.

Defense counsel also asked about any social media information and any information as a result of a data extraction from an iPad or an iPhone. At the time of the hearing, the Commonwealth had sent those devices to the computer crime lab in Wilkes Barre, but they have not received any information yet. Additionally, counsel discussed whether or not the Defendant

might consider giving the password to the iPhone to the Commonwealth to enable them to expedite the dump. However, the Court is not aware whether this was done. The final issue on the motion for discovery involved the forensic pathologist, Dr. Starling-Roney. During the preliminary hearing, defense counsel alleged that Dr. Starling-Roney testified he had "certain materials available to him". N.T. 10/29/2021, at 7. Dr. Starling-Roney also testified that just prior to the hearing, the Commonwealth had sent him additional materials. Defense counsel requested a copy of the materials and cover letters provided to Dr. Starling-Roney. The Commonwealth agreed to a certain extent, but refused to provide defense counsel with any work product created by the attorney for the Commonwealth. Ultimately, the parties agreed with the offer of this Court that if there was still controversial information the Commonwealth was not willing to provide to Defendant, the Court would take the information into chambers, conduct a review, and make a decision.

Second, Defendant files a motion for notice in advance on Rule 404(b) evidence[12]. Third, Defendant asserts a motion for writ of habeas corpus on Counts 1 and 2: Criminal Homicide under docket number 937 of 2021. Fourth, Defendant includes a motion to suppress statements Defendant made at the hospital on January 14th and 15th to a member of the clergy in the emergency room. Lastly, Defendant submits a motion to sever offenses for trial. A hearing on the motion to suppress was initially scheduled for October 29th, 2021, at which time testimony of several witnesses was taken. An additional hearing needed to be scheduled on December 2nd, 2021. The parties also submitted briefs on various issues raised in Defendant's

[12] The Commonwealth agreed to provide this information no later than thirty (30) days prior to trial.

Omnibus Motion. On December 23rd, 2021, this Court entered an order ruling on separate issues involving the crime scene and the forensic pathologist.[13]

Preliminary Hearing Testimony

At the preliminary hearing, Brian Mullins (Mullins), a paramedic for Susquehanna Regional EMS, testified on behalf of the Commonwealth. Mullins testified that he was working the night of January 14, 2021 from 7 p.m. to 7 a.m. N.T. 7/16/2021, at 61. The ambulance Mullins was assigned to that evening was dispatched to 344 Adams Street in the city of Williamsport. Id. at 62. Mullins indicated that they left from UMPC Williamsport and arrived on scene at approximately 10:26 p.m. Id. When he arrived, State Police, City Police, and the fire department were already present. Id. Mullins stated that the reason for the dispatch was "an unresponsive." Id. at 63. When entering the scene, the State Police informed Mullins what they already knew and the fire department advised after exiting the residence that they had not initiated resuscitation efforts based on protocol for a person who does not meet the requirements. Id. Mullins entered the home and went upstairs where he encountered one (1) child laying on a bed on the second floor. Id. at 63-64.

At that point, Mullins assessed the child to determine if medical attention was required. Id. at 64. Mullins further testified that to do this assessment, he checks for "absence or presence of pulse, breathing, signs of life. We apply a cardiac monitor and we assess the body head to toe

[13] Defense counsel raised a concern that another small child had recently died in the same residence where Defendant's daughter was found deceased. Defense counsel filed a motion for special relief in which counsel requested to examine and test various household appliances, the air flow in the residence, and the quality of the house overall. A hearing on this motion was scheduled for December 16, 2021. However, the landlord of 344 Adams Street failed to appear at this hearing. Nevertheless, this Court found that the landlord was properly served with notice of the hearing. The Court heard testimony on the motion and ultimately issued an order on December 23, 2021 ordering Defense counsel to be provided with additional funds to obtain the autopsy report of the other deceased child and granted counsel's request for access to the Adams Street property. This order also directed the Coroner of Lycoming County to inquire into the feasibility of having a test performed on the other child's blood sample to determine if an elevated level of carbon monoxide in the home contributed to that child's untimely death which had apparently not initially been done.

for any injuries or any abnormalities." Id. Mullins stated that he found the child "laying supine on the bed" and he "noted no pulse, no breathing, absence of electrical activity on the cardiac monitor. There was significant signs of obvious death, some rigor, lividity beyond resuscitative efforts." Id. After assessing the child, Mullins believed that resuscitative efforts on the infant would not have been "medical best practice to attempt resuscitation with obvious signs of death." Id. at 65. Mullins was convinced that the baby was dead and beyond medical help. Id. Mullins also noted that the home and bedroom alike were cluttered and in mild disrepair. Id. at 66.

Dr. Rameen Starling-Roney (Starling-Roney), a forensic pathologist employed by Forensic Pathology Associates, also testified at the preliminary hearing on behalf of the Commonwealth. Starling-Roney was qualified as an expert for the purposes of the preliminary hearing in the area of forensic pathology. Id. at 67. On January 16, 2021, Starling-Roney conducted an autopsy for Cailani Faltz, the Defendant's 5-month-old infant child. Id. at 68. During the autopsy, Starling-Roney did not note any signs of blunt trauma, either externally or internally. Id. Starling-Roney did not observe signs indicating that the child choked to death nor were there toxicology results that pointed to a cause of death. Id. The child did not have medical history or conditions that explained her death. Id. Additionally, Starling-Roney further testified that there was no indication that the child died of natural causes. Id. When asked if the autopsy results were consistent or inconsistent with death by asphyxia by smothering, Starling-Roney responded

> based on the information that I was given I called the case undetermined based on information I found…and the findings that I had…If information was given to me that the decedent was smothered…that kind of autopsy would – could be consistent with that mainly because death of asphyxia by smothering does not have to have any findings at all.

Id. at 69. When asked to elaborate further, Starling-Roney stated that although the autopsy for the decedent in this case was considered a "negative autopsy", or one in which no physical findings of natural disease, congenital disease, or trauma, etcetera could explain the cause of death, suffocation or smothering is a "diagnosis that could occur with a negative autopsy or no findings at autopsy." Id. Starling-Roney noted that it was possible that the infant died as a result of criminal conduct. Id. at 72. He also testified that it was similarly possible that the child died from natural causes. Id. at 71. However, Starling-Roney informed the Court that autopsies do not occur "in a vacuum" and he had been given background information regarding this case. Id. at 72. The information given to Starling-Roney prior to conducting the autopsy on the child was

> Baby Faltz…was found in her mother's residence, reportedly the mother – decedent's mother went to a neighbor…earlier in the evening and was out for approximately 40 minutes without the decedent. Then the mother went to the decedent's father's house. There was an altercation. The mother…stabbed the father in the midst of that altercation. She then left the house…in a vehicle and crashed that vehicle. She stated in – that…my baby – at that point my baby is dead and she purportedly stated per investigative findings that she was overheard saying statements that she had made that she may have killed or injured the decedent…

Id. at 72-73. Starling-Roney reiterated that he could not determine at that particular time whether the child's death resulted from natural, accidental, or homicidal causes. Id. at 75. Nevertheless, Starling-Roney also stated in his report that asphyxia death "could not be excluded." Id. Starling-Roney did not feel compelled to issue an amended report due to the suspicious circumstances of the case, but expressed willingness to provide one if needed. Id. at 77.

At the preliminary hearing, Officer Erica Heath (Heath) of the Williamsport Police Department also testified on behalf of the Commonwealth. Heath testified that on the night of January 14, 2021, she was dispatched to 1014 Franklin Street in the city of Williamsport. Id. at

77. She initially made contact with a man named Brian Saunders (Saunders). Id. at 78. Saunders conveyed his belief that his daughter “did this." Id. at 79. Heath spoke with Officer Geno Caschera (Caschera) who was located on the porch with a victim who suffered from a wound to the neck. Id. Caschera informed her that other officers were already in the home so she returned to continue speaking with Saunders. Id. Saunders informed her that his daughter, the Defendant, and the victim had domestic disputes since the previous evening. Id. Saunders offered to show Heath where Defendant resided. Id. As they left on foot to see Defendant’s home, Heath and Officer Badger saw a vehicle matching the victim’s description traveling on Penn Street. Id. at 79-80.

After hearing what she believed to be a vehicle crash, Heath ran to catch up with the vehicle. Id. at 80. Heath observed a blue SUV on Germania Street with damage to the front and rear. Id. The driver was exiting the car and Heath instructed them to stop. Id. At that point, the driver got back inside the vehicle and took off at a high rate of speed. Id. The car eventually ran into the fence on the far side of the park on Railway Street. Id. at 80-81. Heath was able to place the driver, identified as Defendant, under arrest. Id. at 81. As Defendant was being put into handcuffs, Heath testified that Defendant asked her if Pennsylvania had the death penalty. Id. EMS arrived on scene and Heath escorted Defendant to the ambulance. Id. at 86. Heath stated that Defendant was crying and rambling incoherently. Id. While EMS was attending to Defendant, Heath was in conversation with a family member and informed them that Saunders was at Defendant’s home checking on the baby. Id. at 87. Defendant overheard Heath and then said to the family member “something to the effect that I killed my baby.” Id. Heath let additional officers know to go to Defendant’s residence to prevent Saunders from being the one to discover the child. Id.

Heath remained with Defendant in the ambulance and rode with her to the hospital. Id. Once in the trauma bay, Heath testified that Defendant spoke with a nurse and a clergy member about killing her daughter. Id. at 88. Heath included verbatim quotes in her report. Id. Heath heard Defendant say to the nurse, "I killed my baby because I loved a man." Id. at 88-89. Defendant also told the clergy member, "You don't want to listen to me, do you? I killed my daughter." Id. at 89. Heath further testified that Defendant stated, "I didn't want to live and I didn't want her to live without me." Id. Defendant also mentioned that she tried performing CPR. Id. Later in the evening, Heath took Defendant to the bathroom and Defendant said that "her plan originally was to go to Cordell's house and kill him in his sleep and then she stated I should have done that." Id. Heath said that Defendant never stated how she killed her baby and Heath never asked her for clarification. Id. Heath said that Defendant had been advised of her *Miranda* rights in the emergency room, but Defendant refused to speak to police. Id. at 90.

Officer Geno Caschera (Caschera) of the Williamsport City of Police testified on behalf of the Commonwealth at the preliminary hearing. On January 15, 2021, Caschera was one of the officers dispatched to the scene of a stabbing incident. Id. Caschera was the officer who rode with Cordell Faltz, the victim of the stabbing, to the hospital. Id. at 93. Caschera remained at the hospital in trauma bay one and was in that trauma bay when Defendant was brought into trauma bay two. Id. The ambulance crew relayed to Caschera that Defendant had made statements about her daughter so Caschera went into the room to accompany medical staff while they attended to her. Id. Caschera did not question Defendant, but testified that she could clearly see him standing near her in full uniform. Id. Caschera took notes of what Defendant was saying while he was present in the room. Id. In Caschera's police report, Caschera had notated that Defendant had initially told the clergy to stay away from her, but did not want them to leave

because she "wanted to make some statements." Id. at 95. Caschera believed the woman to be part of the clergy because she was wearing a headdress. Id. at 96. Caschera wrote that Defendant's

> initial statements she said was I killed my baby. She stated some things about her relationship and then said I decided I wanted to go. I decided it was euthanasia. She might be gone. I didn't want to live and I didn't want her to live without me and I thought we both could go to heaven. I'm so sorry. I tried to do CPR because it was…breaking me to see it. I didn't call the ambulance. I said to myself…he is the one that deserves to die so I went to his house to kill him.

Id. at 95. Caschera testified that she made these statements in quick succession and repeated herself many times. Id. Caschera reiterated that the police said nothing to her at that time. Id. Defendant was then taken to the CT scan room and started screaming for a nurse. Id.

Following the CT scan, Defendant screamed for Sydney, presumably also a nurse, and Caschera accompanied Sydney into Defendant's room for Sydney's protection. Id. Caschera heard Defendant say to Sydney, "it looked like blood was coming from her." Id. Caschera said that Defendant stated repeatedly that she had killed her daughter and asked those in the hospital room to tell her if she was dead but Defendant already thought she was. Id. at 96. Caschera could not remember if Defendant was handcuffed to the hospital bed. Id. at 97. Caschera also wrote in his report that Defendant was upset and crying. Id. Caschera stated that Defendant never explained how or when she killed her daughter. Id. at 97-98.

Background and Testimony

At the hearing on this motion held on October 29, 2021, Jerald Ross, Sr. (Ross), Chief Deputy Coroner for Lycoming County, testified on behalf of the Commonwealth. Ross testified to his significant experience in the field of emergency medical services. N.T. 10/29/2021, at 31. Ross informed the Court of the general responsibilities of the deputy coroner when summoned

to a scene, namely that his first responsibility is to determine "cause and manner of death and to set the time of death and then to secure said property for release to next of kin." Id. at 31-32. Ross also stated that he takes photographs and secures evidence independent from law enforcement's investigation to aid in his process in determining cause of death. Id. at 32. On the evening of January 14, 2021, Ross was summoned to 344 Adams Street in the city of Williamsport to investigate a death. Id. Ross responded to the call from his home and arrived at 344 Adams Street at approximately 11:40 p.m. Id. After signing the Pennsylvania State Police (PSP) scene log, Ross was initially asked not to enter the residence until a search warrant could be obtained by PSP. Id. at 33. Ross "insisted on seeing the body" and was directed by a trooper directly to the body. Id. In this particular instance, the decedent was an infant child. Id. Ross took photographs of "crucial things" to help his determination of cause of death. Id.

Ross explained the phenomenon of rigor mortis, which is when the muscles become rigid and the movement of extremities is very limited following death. Id. at 34. Ross testified that rigor mortis starts at the time of death but does not become observable until roughly two (2) to four (4) hours after death if the body is in a controlled atmosphere. Id. Ross stated that the infant decedent in this case was in a controlled environment and Ross observed, "rigor noted in the distal extremities" which lead him to the conclusion that the child had been deceased for a minimum of two (2) to three (3) hours. Id. at 35. Ross believed that rigor was not fully set on this child at the time he was on scene. Id. When asked if there were physical conditions of the child's body that he took note of, Ross answered, "[o]n first approach I noticed a handprint—what I believed to be a handprint—across the interior surface of the throat/neck…." Id. Ross further testified that it also appeared that, "a hand was held over the nose and mouth" of the child. Id. The Commonwealth presented the photograph Ross took of the handprint, marked as

Commonwealth's Exhibit 3. In explaining the picture, Ross said, "there is a very distinguishable faded what's known as a compression mark on the face here on the right side and it kind of to me right away stood out…." Id. at 37.

Ross conceded that he did not determine cause of death when he arrived on scene. Id. at 40. Ross testified that he personally called Dr. Starling-Roney, the doctor who was to perform the autopsy, and notified him of his observations and his assumption that the child had been suffocated based on what he saw on the day of the child's death. Id. at 40, 41. However, Ross stated that Dr. Starling-Roney was not shown the photographs Ross took on the evening in question until after the autopsy report had already been concluded. Id. at 41. To the best of his knowledge, Ross was not aware of a supplemental or amended autopsy report issued by Dr. Starling-Roney. Id. Nevertheless, Ross testified that "changes in body occur from the time of death…I knew that coloration was going to change and there is so little force required in this child's personal defense being able to fight off that I thought it important that I tell him what I saw." Id. at 43.

Following Ross' testimony, the Commonwealth offered a proffer of various evidence. First, that Sergeant Hofford of the Williamsport Police Department, if called to testify, would offer Commonwealth's Exhibits 4 and 5, which are photographs of the vehicle Defendant was driving at the time she was taken into custody. Id. at 49. Specifically, Commonwealth's Exhibit 4 is a picture of the vehicle into a telephone pole and Commonwealth's Exhibit 5 is a photograph of the damage to the front-end of the vehicle. Id. Second, the Commonwealth offered what was marked as Commonwealth's Exhibit 6, which is Sergeant Hofford's supplemental report dated January 15, 2021, 12:37 a.m., detailing the dispatch to 1014 Franklin

Street, his response to Germania Street and Menne Alley. Id. at 50. Commonwealth's Exhibit 6 was,

> offered as a proffer to the anticipated testimony of Sergeant Hofford that while positioned at the intersection of Germania Street and Menne Alley, he observed the vehicle reported stolen from the residence at Cordell Faltz. He exited his vehicle, drew his duty weapon. At that time the vehicle continued east around a chain-link fence and through the grass at Young's Woods Park. Based on the severity of the crime he turned his vehicle around to begin pursuit. Would have observed the vehicle crash into a telephone pole at Menne Alley and Tucker Street….

Id. Commonwealth's Exhibit 7 is offered to show that, if called to testify, Sergeant Hofford would testify that

> when he arrived on scene at 344 Adams Street, PSP and EMS had already entered the residence, located them on the second floor of the residence in the southeast bedroom. On the bed was a deceased female, approximately five months old. While observing the infant he noted what appeared to be light bruising or lividity around the right side of the neck and throat area. Hofford would testify that this did not match the clearly defined lividity that was present on the back of the arms and body.

Id. at 51. The Commonwealth also introduced Commonwealth's Exhibit 8 as a proffer for the anticipated testimony of the lead investigator, Officer Laura Kitko, which was a disc containing the 911 phone calls and radio transmissions from the evening of January 14, 2021 into the early morning hours of January 15th[14]. Id. at 51-52. The Commonwealth asserted that this proffer was made,

> to show that the 911 call from Cordell Faltz was placed at approximately 2138 hours. Second, to establish that the police radioed in real time that they were chasing the vehicle on Germania Street at 2158 hours. And third, to establish that Williamsport Police went on the radio at 2159 hours to report that the vehicle had crashed at Young's Woods Park.

[14] To satisfy the objection of defense counsel, the attorney for the Commonwealth agreed to remove content on the disc that pertained to the charges under docket 936 of 2021.

Id. at 52.

At the hearing in front of this Court on December 2, 2021, Sister Gabrielle Nguyen (Sister Nguyen), a chaplain at UPMC in the city of Williamsport, testified on behalf of the Commonwealth. Sister Nguyen testified that she is a member of Sisters of Divine Charity and is part of the laity in a Catholic sense. Her job at UMPC is to provide spiritual support for trauma patients. On January 14, 2021, Sister Nguyen was called to the trauma bay twice that evening, once for a male patient and later for a female patient. Sister Nguyen created a pastoral care log report of her interaction with the female patient, which she usually does after attending to any trauma patient. The Commonwealth presented the pastoral care log for the female patient, identified as Defendant, and marked as Commonwealth's Exhibit 9. Sister Nguyen also wrote chaplaincy notes for the female patient, which the Commonwealth presented to this Court, marked as Commonwealth's Exhibit 10. In her chaplaincy notes regarding Defendant, Sister Nguyen quoted Defendant's statement, writing, "He did not deserve me and my baby." Commonwealth's Exhibit 10. These chaplaincy notes became part of Defendant's medical file and the nurses and doctors have access to this file. The Commonwealth also showed the chaplaincy notes for the male patient that Sister Nguyen met with, marked as Commonwealth's Exhibit 11.

Sister Nguyen testified that she arrived in the trauma bay at 10:22 p.m., made contact with a male at 10:31 p.m., and then made contact with a female patient, Defendant, at 10:46 p.m. Defendant was in the bay as a trauma patient treated by medical staff. Sister Nguyen stated that she could speak with Defendant and was standing next to the gurney at the time of their conversation. Sister Nguyen indicated that Defendant made statements about her daughter while approximately five (5) other people were present in the room. Sister Nguyen believed that the

nurse could hear Defendant because the nurse was also next to the gurney. Sister Nguyen said that she assumed that Defendant was speaking to her and the nurse. She did not recall ever being alone with Defendant.

Sister Nguyen explained that she does not work for the church or for the diocese, but is employed by UPMC as a chaplain, not as a sister. She articulated that being a sister is a vocation, or way of life, and she is not a clergy member. Sister Nguyen clarified that she is not permitted to perform last rights, cannot hear confession, perform marriage ceremonies or most sacraments. Sister Nguyen wears a habit and wore one on the evening of January 14th in the presence of Defendant. Sister Nguyen introduced herself as Sister Gabrielle Nguyen to Defendant prior to Defendant's statements. Sister Nguyen stated that she typically stands to the side when offering chaplain services so that immediate medical needs can be addressed. She approaches the patient once there is a pause in care. After Sister Nguyen approached Defendant, Defendant told her to get back, so Sister Nguyen took a step backwards. Defendant initially appeared to be hesitant to speak with Sister Nguyen, but agreed when Sister Nguyen invited her to speak. Sister Nguyen wrote in her pastoral log for Defendant that she provided care to Defendant, namely for crisis, spiritual, emotional, and prayer. Defendant came into the trauma bag agitated, angry, confused, and crying. However, Sister Nguyen believed that Defendant was oriented to person and place at that time.

When Sister Nguyen asked Defendant if she wanted prayer, Defendant said yes and stated that she was a member of a Baptist church and that she was open to spiritual support. Sister Nguyen's pastoral log indicates that the emotional care she provided to Defendant was to listen and comfort. Sister Nguyen indicated on her chaplaincy notes that she believed Defendant to be grieving and feeling guilty. She testified that she saw in Defendant's body language that

she wanted comfort. Sister Nguyen further testified that Defendant shared a range of emotions, expressing anger at her ex-boyfriend, worry and concern over her daughter, and guilt over wondering if she had killed her child. Defendant repeatedly asked if her baby was alive. Sister Nguyen did not ask Defendant for a confession because it was her role to listen to Defendant and offer emotional support. Defendant told Sister Nguyen that she did something wrong, that she put her hand over her baby's mouth. Sister Nguyen further testified that Defendant did not ask her for forgiveness. On March 1, 2021, Sister Nguyen was interviewed at the police station about the statements Defendant made. The Commonwealth presented Sister Nguyen's interview, marked as Commonwealth's Exhibit 12.

Trooper Oliver Barber (Barber) of the Pennsylvania State Police also testified on behalf of the Commonwealth. On January 14, 2021, Barber was on duty and dispatched to assist the Williamsport Police Department with a stabbing. While en route, Barber observed Williamsport Police units on Franklin Street, so he stopped to talk to them. The Williamsport Police were securing a crime scene where someone had fled. After leaving Franklin Street, Barber found a man named Brian Saunders (Saunders) who expressed concern over an infant. Barber then responded to a car accident and the driver was subsequently arrested. At that time, Barber was made aware of the possibility of a dead infant related to this incident. Barber arrived at 344 Adams Street where Saunders and a couple said they were afraid for a baby and that the child was in danger. When he entered the home, the child was the only person inside. Barber found the child in an upstairs bedroom and believed the baby appeared to be deceased. Barber notified Emergency Medical Services and other first responders.

Sergeant Richard Hoffard (Hoffard) of the Williamsport Bureau of Police also testified on behalf of the Commonwealth. Hoffard was dispatched to 1014 Franklin Street to respond to a

stabbing. Once on scene, Hoffard made contact with the stabbing victim who reported his vehicle, a blue Nissan Rogue, had been stolen. Soon afterwards, other officers reported that they may have found the stolen Nissan on Germania Street. Hoffard attempted to use spike strips to deter the vehicle's escape, but none were available. Hoffard then tried to stop the car at gunpoint, but the driver noticed him and quickly drove away. When Hoffard entered his police vehicle to begin a chase, he noticed the driver had crashed into a fence. The Commonwealth presented photographs of the Nissan in the fence, marked as Commonwealth's Exhibit 4 and 5. Sergeant McGee informed Hoffard there was an infant in danger or possibly deceased at 344 Adams Street. After relocating to Adams Street, Hoffard entered the home and went up the stairs after he heard voices in that direction. Pennsylvania State Police and EMS were in the bedroom. Hoffard maintained his position at the threshold of the doorway, approximately six (6) feet from the infant located on the bed. Hoffard testified that he noticed lividity, or post-mortem blood pooling, on the child's right shoulder and a bruise on the right side of the baby's chin and neck area. Hoffard relayed this information to the on-duty commander.

Analysis

Motion for Habeas Corpus

The first issue presented is whether the Commonwealth established the *prima facie* burden on two (2) charges of homicide against Defendant. At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather must merely put forth sufficient evidence to establish a *prima facie* case of guilt. Commonwealth v. McBride, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed

the offense. Id. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. Commonwealth v. Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016). "The Commonwealth may sustain its burden of proving every element of the crime…by means of wholly circumstantial evidence." Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001); *see also* Commonwealth v. Jones, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. Commonwealth v. Wojdak, 466 A.2d 991, 997 (Pa. 1983); *see also* Commonwealth v. Kohlie, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, "inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case." Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003).

Defendant challenges the sufficiency of the evidence on two (2) charges brought against her. Defendant argues that the Commonwealth failed to establish the *prima facie* burden on Counts 1 and 2: Criminal Homicide. An individual commits this offense when they "intentionally, knowingly, recklessly or negligently cause[s] the death of another human being." 18 Pa.C.S. § 2501(A). Defendant's primary contention is that the Commonwealth has failed to establish a corpus delicti for the contested charges. "Corpus delicti means the body of the crime or the fact that a crime has been committed." Commonwealth v. Brusky, 280 A.2d 826, 827 (Pa. Super. 1971). In particular, corpus delicti in a homicide case consists of proof "that the person for whose death the prosecution was instituted is in fact dead and that the death occurred under

circumstances indicating that it was criminally caused by someone." Commonwealth v. Davis, 454 A.2d 92, 97 (Pa. Super. 1982) (*quoting* Commonwealth v. Turza, 16 A.2d 401, 404 (Pa. 1941)). As a result, the Commonwealth is required to establish that "the death occurred under circumstances which were *more consistent* with criminality than with natural causes or accident." Commonwealth v. Fried, 475 A.2d 773, 775 (Pa. Super. 1984). "Once the Commonwealth has sustained this initial and preliminary burden of proof, which is admittedly slight, the admissions of the accused become admissible." Id.

Defendant relies on Commonwealth v. Meder, 611 A.2d 213 (Pa. Super. 1992) to support the assertion that the Commonwealth has failed to prove that the death of Defendant's daughter was the result of criminal conduct and not an accident. Specifically, the newborn child at issue in Meder was discovered by the defendant's mother in a basin on the floor with the umbilical cord wrapped around the infant's neck. Id. at 215. Testimony from the defendant's mother revealed that after she found the child, she placed the baby in a freezer and then ultimately chose to burn the decedent's body in a wood stove. Id. Defendant argues that Meder shows clear *prima facie* evidence that the infant's death was more consistent with crime than an accident.

Defendant also cites to a case in which a baby's body was found in a trash compactor and evidence was presented that a medical examiner found tightly wadded tissue paper lodged in the child's throat. Commonwealth v. Dupre, 866 A.2d 1089 (Pa. Super. 2005). Defendant contends that there was neither evidence here shown depicting an object constricted around Defendant's daughter's neck nor evidence of anything lodged in the child's throat to prevent breathing. As such, Defendant believes that corpus delicti has not been established and the introduction of her statements at the hospital as additional evidence is in violation of corpus

delicti. Defendant also takes issue with the fact that Starling-Roney's autopsy report does not state that the autopsy was "consistent with asphyxia", and argues that his testimony merely stated that asphyxia could have been one out of many possible causes of death. Defendant contends that since the autopsy reported no cause of death, the Commonwealth has failed to establish that the child's death was the result of criminal activity. In addition, Defendant attempts to discredit the additional evidence the Commonwealth presented at the hearing on the omnibus motion. Defendant asserts that the "suspicious circumstances" of the baby's death is not supported by any evidence apart from the statements made by Defendant at the hospital that Defendant believes cannot yet be introduced. Specifically, the testimony of the coroner also did not establish a cause of death and the testimony of various members of law enforcement and the coroner noting marks on the infant's face and neck indicating strangulation is of no significance because Starling-Roney knew this information and still determined in the autopsy that a cause of death could not be determined.

The Commonwealth believes that *prima facie* has been established. The Commonwealth noted in their briefs that Defendant's conduct does not align with what a grieving mother would be expected to do following the tragic death of her infant child. Testimony revealed that the child was estimated to have passed away between eight (8) and nine (9) p.m. and instead of calling for medical attention, Defendant left the home and attempted to kill the child's father. The Commonwealth believes testimony also shows that Defendant was angry and depressed over the deteriorating situation between herself and the infant's father. The Commonwealth also notes that Defendant's suicidal intent earlier that day is evidence of a guilty conscience and can be considered in a corpus delicti analysis. *See* Commonwealth v. Homeyer, 94 A.2d 743, 746 (Pa. 1953). The child's father testified that the baby did not suffer from any medical conditions

or illnesses and was healthy, so it is unlikely she died of natural causes. The Commonwealth reiterates that Starling-Roney's autopsy report could not eliminate the possibility of asphyxiation. The Commonwealth also asserts that Defendant's argument that no evidence of an object wrapped around the baby's throat to prevent breathing is refuted by the multiple people who testified to seeing markings on the child's throat consistent with smothering or choking by an adult caretaker.

The Commonwealth believes that these marks alone give the proper foundation for the Court to consider Defendant's statements in determining *prima facie*. Alternatively, the Commonwealth asserts that the Defendant has waived any challenge to the admission of Defendant's statements as part of the *prima facie* consideration since defense counsel elicited these remarks during cross-examination of Starling-Roney. N.T. 7/16/2021, at 73-73. The Commonwealth cites to Commonwealth v. Farquharson, stating "[w]here evidence, incompetent as hearsay, is admitted without objection it may be given its natural probative effect as if it was in law admissible." Commonwealth v. Farquharson, 354 A.2d 545, 552 (Pa. 1976); *See also* Commonwealth v. Chambliss, 847 A.2d 115, 120 (Pa. Super. 2004).

Following the careful review of all evidence presented on this issue in the light most favorable to the Commonwealth as required, the Court holds that the Commonwealth has met their *prima facie* burden for Counts 1 and 2. To begin, this Court does not agree with Defendant's interpretation of the evidence and the disregard for the testimony and photographs presented at the hearing on this motion. Defendant's argument is contingent on the fact that corpus delicti must be proven and clearly articulated in an autopsy report. However, this notion does not align with the precedent established on the issue of corpus delicti. The Pennsylvania Supreme Court has written,

> The first element that a human being is in fact dead, rarely presents difficulty. But proof of the second element—that death 'occurred through a criminal agency,'—frequently is disputed. Often the circumstances of death are such that homicide cannot be established absent the statements of the accused as the cause of death to the exclusion of the accident or suicide. Accordingly, we have held that the corroboration policy is satisfied if the independent evidence 'points to an unlawful killing, although it may indicate as well accident or suicide,' or 'where the circumstances attending the death are consistent with crime, though they may also be consistent with accident…or suicide.'

Commonwealth v. Ware, 329 A.2d, 258, 274-275 (Pa. 1974). Although Defendant may wish for a concrete determination of death by criminal act in the autopsy report, this is not required and the Commonwealth is not mandated to irrefutably exclude the idea of accident or suicide in their presentation of a *prima facie* homicide case. In fact, as previously stated, the case law determined that the evidence may also indicate an accident at this stage of the proceedings.

Nevertheless, the evidence in this case certainly meets the *prima facie* threshold. Despite the negative autopsy conducted by Starling-Roney, the report and his testimony both indicate that he could not exclude the possibility of asphyxia death and that the case "still carries a level of suspicion." Even though Starling-Roney conceded in his testimony at the preliminary hearing that it was possible that the child died from natural causes, he also stated that it was similarly possible that the child died as a result of criminal conduct. Starling-Roney further indicated that death of asphyxia by smothering does not require any findings at all in an autopsy, so the fact that the autopsy report had no definitive findings of a criminal cause of death does not eliminate the possibility of homicide. This fact is particularly compelling when considered with the testimony of Deputy Ross, who noted that the amount of pressure needed to suffocate a child of this size is significantly minimal. Deputy Ross also testified to seeing a handprint across the

interior surface of the child's throat and neck as well as a mark from a hand being held over the nose and mouth of the infant. Additional testimony from Hoffard also noted these marks from a vantage point of at least six (6) feet away and thought it significant enough to convey this information to the commander on duty that evening. Deputy Ross also testified that the coloration of the child's skin would undergo changes prior to the conduction of the autopsy and notified Starling-Roney of the marks he could see on the child's face immediately upon viewing the baby's body. This Court was able to review the photograph Ross took of the decedent upon responding to the scene and discoloration around the child's mouth and throat are evidently visible.

Defendant's behavior on the night in question is concerning and, as the Commonwealth argues, can be considered as consciousness of guilt, particularly when Defendant attempted to self-harm by running the stolen vehicle into a telephone pole. Testimony demonstrates that Defendant was angry, desperate, and upset that she was no longer romantically involved with the infant's father. The timeline of events shows that the child was dead before Defendant broke into Cordell's home and attacked him with a knife. The fact that Defendant did not call for medical attention for her child and instead chose to commit further violent acts does not point to a death of natural causes. Lastly, this Court believes Defendant has waived her challenge of the statements she made as articulated in the Commonwealth's brief. However, even if she had not waived that challenge, this Court finds that sufficient evidence of corpus delicti has been established for the Court to consider them as additional *prima facie* evidence. At least two (2) police officers testified nearly verbatim to what Defendant uttered at the hospital and en route to the emergency room. This testimony shows that Defendant repeatedly stated that she killed her daughter, that she wanted to kill herself but did not want her child to live without her, and

decided "it was euthanasia." Furthermore, Heath testified that after crashing the stolen vehicle, purportedly after her daughter was already deceased, Defendant asked her if Pennsylvania utilized the death penalty. Sister Nguyen also testified to Defendant making statements about taking her own child's life by placing her hand over the baby's mouth and noted that she believed from Defendant's body language while in the trauma bay that Defendant was feeling guilty. Therefore, based on the totality of the circumstances, this Court finds that the Commonwealth has undoubtedly established corpus delicti on the contested charges and met their *prima facie* burden. As a result, Defendant's argument is without merit and Counts 1 and 2 shall not be dismissed.

Motion to Suppress Statements

Defendant argues for the suppression of the statements she made to Sister Nguyen while at UPMC, asserting that these statements fall under the privilege articulated in 42 Pa.C.S. § 5943. Section 5943 states

> [n]o clergyman, priest, rabbi or minister of the gospel of any regularly established church or religious organization…who while in the course of his duties has acquired information from any person secretly and in confidence shall be compelled, or allowed without consent of such person, to disclose that information in any legal proceeding, trial or investigation before any government unit.

Id. The Pennsylvania Superior Court held that the "legislature did not intend a *per se* privilege for any communication to a clergymen based on his status." Commonwealth v. Patterson, 572 A.2d 1258, 1264 (Pa. Super. 1990). This privilege "is limited to information told in confidence to a religious confessor or counselor." Id. The Court is to examine the totality of circumstances to determine whether the statements "were made in secrecy and confidence to a clergyman in the course of his duties." Id. at 1265. To support her argument in favor of suppression,

Defendant relies heavily on the officer identification of Sister Nguyen as clergy in the reports and statements of officers present during Defendant's statements in the trauma bay. Defendant also argues that she was speaking directly to Sister Nguyen and not to anyone else in the room. Defendant relies on three (3) factors articulated in Patterson[15] and discusses an unpublished case in support of her assertion that the situation in question aligns with the Patterson factors and therefore requires suppression.

However, although Defendant mentions that the Commonwealth does not dispute that Sister Nguyen was acting in her official capacity as a chaplain at the time, Defendant does not offer an explanation or argument as to how Sister Nguyen could be considered clergy despite plain testimony from Sister Nguyen herself that she is not. As the Commonwealth argued in its brief, for the clergy privilege to apply, the recipient of the statements at issue must be a clergyman, priest, rabbi, or minister of the gospel. Sister Nguyen's testimony at the hearing on December 2, 2021 clearly and repeatedly articulated that she is not a member of either of the enumerated religious leaders for which the privilege applies. Sister Nguyen specifically stated that she is not permitted to perform last rights, cannot hear confession, perform marriage ceremonies or most sacraments as many priests, or members of the clergy, are allowed to do. Sister Nguyen also testified to the fact that UPMC employs her as a chaplain, which is separate and removed from her vocation, or way of life, as a sister. Sister Nguyen made it apparent that she is not given the authority to conduct many religious services that the clergy are required to do as leaders of the church and that she herself does not consider herself part of the clergy, but rather belongs to the laity. Law enforcement's identification of Sister Nguyen as clergy in their

[15] (1) Was the clergy acting in the course of official duties; (2) Did the defendant seek out the clergy in a confessional role; (3) Were the defendant's statements made to the clergy through a religious motivation or to seek forgiveness. Commonwealth v. Patterson, 572 A.2d 1258 (Pa. Super. 1990); Defendant's Brief, at 3.

reports and testimony do not alter the reality that she does not perform any of the traditional priest services associated with clergymen and was employed on the night in question as a chaplain. All of the factors Defendant cites requires a clergy member and since Sister Nguyen is not part of the clergy, this privilege does not apply to the statements Defendant made at the hospital.

Moreover, it is further evident that this privilege does not apply to the situation before this Court because the statements were not made in confidence as precedent requires. Sister Nguyen testified that at least five (5) additional people were in the room with her and Defendant at the time she made the statements in question. Officer Caschera testified that he was standing in the trauma bay in full uniform where Defendant could see him. Officer Heath was present as well and both officers heard Defendant making these statements regarding her daughter's death. Sister Nguyen indicated that nurses and medical staff were constantly in and out of the room attending to Defendant's medical care. She also stated that she does not recall ever being alone with Defendant in the trauma bay. Additionally, as the Commonwealth argues, Defendant's statements became a part of her medical records that doctors and nurses have access to read this information. Regardless of whether Defendant admitted to killing her daughter and wished to confess, Sister Nguyen does not have the authority to accept confession, is not a member of the clergy, and was not alone with Defendant at the time the statements were made. Therefore, the Defendant's statements at UPMC shall not be suppressed.

Motion to Sever Cases for Trial

In her Omnibus motion, Defendant sought to sever Counts 1, 2 and 4 in docket 937 of 2021 from the remaining charges pursuant to Pennsylvania Rules of Criminal Procedure 582 and 583 and Pennsylvania Rule of Evidence 404(b). In the Commonwealth's brief, they concede

that the charges associated with Defendant's purported attack of Shauniece Bolden should be severed, but argued that the charges involving injuries to Cordell Faltz and Defendant's daughter are properly consolidated. Defendant agreed with the Commonwealth's argument and subsequently withdrew the motion to sever related to the charges associated with the death of Defendant's daughter and the stabbing of Cordell Faltz. In addition, the Commonwealth asserted a detailed argument regarding the admissibility of the evidence pertaining to Shauniece Bolden in the consolidated case for the charges regarding Cordell Faltz and Cailani Faltz. However, this Court agrees with Defendant that the consideration of the admissibility of that evidence at this time is premature.

Conclusion

The Court finds that the Commonwealth did establish their *prima facie* burden at the preliminary hearing and the charges brought against Defendant will not be dismissed. The Court also finds that the statements Defendant uttered to Sister Nguyen do not fall under the protection of 42 Pa.C.S. § 5943 and therefore shall not be suppressed. Upon agreement of the parties, this Court finds that the charges related to the assault of Shauniece Bolden under docket 936 of 2021 shall be severed. Since the Defendant has withdrawn the Motion to Sever as it applies to the counts charged for Defendant's alleged conduct concerning her deceased infant child and Cordell Faltz, the Court finds that this motion shall be dismissed as moot.

ORDER

AND NOW, this 26th day of April, 2022, based upon the foregoing Opinion, it is **ORDERED** and **DIRECTED** that Defendant's Motion for Habeas Corpus is **DENIED**. The Defendant's Motion to Suppress Statements is also **DENIED**. Based on the agreement of the parties, Defendant's Motion to Sever docket 936 of 2021 from docket 937 of 2021 for trial is **GRANTED**. Any use of evidence from the case at docket 936-2021 will have to be determined either closer to or at the time of trial.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
Donald Martino, Esq.
PD (NS)
Law Clerk (JMH)