

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

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| COMMONWEALTH OF PENNSYLVANIA | : | |
| | : | |
| | : | CR-241-2022 |
| vs. | : | |
| | : | CRIMINAL DIVISION |
| TALLIA CHARLEBOIS, | : | |
| Defendant | : | |

OPINION

This matter is before the Court on Defendant’s Omnibus Pretrial Motion filed August 15, 2022. For the reasons set forth below, the Motion is Granted in part and Denied in part.

Factual and Procedural Background

On January 26, 2022, Tallia Charlebois (“Defendant”) was charged with one count each of Voluntary Manslaughter, Endangering the Welfare of Children, Possession of Drug Paraphernalia, and Possession of a Controlled Substance. These charges stem from an incident on the same day where Pennsylvania State Police were dispatched first to conduct a welfare check on the three month old infant son of the Defendant, later that day, for an infant in cardiac arrest. The Defendant allegedly advised EMS to use Narcan on the victim, who was taken to the hospital via ambulance and later declared deceased.

A preliminary hearing was held on February 18, 2022, at which time all charges were held for court. On July 19, 2022, based on the agreement of the parties, Count 1 of the Information, Voluntary Manslaughter, was dismissed. On August 15, 2022, the Defendant filed her Omnibus Pretrial Motion. Argument was held on January 3, 2023, and February 7, 2023, after which the Commonwealth and counsel for the Defendant requested the

opportunity to submit briefs in support of their positions. After several extensions by agreement of counsel and Order of Court, the Defendant's Brief in Support of the Omnibus Motion was filed on May 5, 2023, and the Commonwealth's Brief in Opposition to the Omnibus Motion was filed on May 19, 2023.

Discussion

The Court will discuss each of the above Motions separately.

I. MOTION TO SUPPRESS STATEMENTS

On January 26, 2022, police and EMS responded to a 911 call for an infant in cardiac arrest. When EMS arrived the Defendant advised them to use Narcan on the child. After the child was transported via ambulance to the hospital, police sought to interview the Defendant. Officer Jeff Houseknecht testified at the Omnibus hearing that he walked the Defendant the short distance from outside her apartment to the Montgomery Police Department at the request of the EMTs to ascertain why she was telling them to administer Narcan on the child. After a brief time at the police station, Officer Houseknecht asked the Defendant to return to the apartment and testified that his purpose for the request was to determine if there was anything obvious that the child would have ingested that would have led to cardiac arrest. Pennsylvania State Police Trooper Kevin Bencsics was with Officer Houseknecht at the time he asked the Defendant to go back to the residence. Both Officer Houseknecht and Trooper Bencsics testified that the Defendant gave permission for them to enter the apartment. Although Officer Houseknecht testified that he did not inform the Defendant that she did not have to allow them into her apartment, he stated that she was not in handcuffs as they walked from the police station to the apartment and he did nothing to

keep her from leaving the scene.

PSP Cpl. Tyler Morse and Trooper Josiah Reiner testified at the preliminary hearing and Omnibus hearing, respectively. Cpl. Morse was in dress clothes when he first encountered the Defendant, who was outside the apartment on a very cold day without a coat. He further testified that he asked if “they could go inside the apartment and talk because it was cold” and she agreed and led him into the apartment. He completed an audio recording of the interview and testified that prior to recording he asked for permission to record, which the Defendant granted but that a few minutes later she forgot she had given permission.

At no time on January 26, 2022, was the Defendant read warnings pursuant to Miranda v. Arizona, 384 U.S. 436 (1966). As a result, Defendant argues that all the statements she provided to the various law enforcement officers on that date were obtained in violation of her Fifth, Sixth, and Fourteenth Amendment rights of the United States Constitution and Article I, Sections Eight and Nine of the Pennsylvania Constitution and must be suppressed.¹ Miranda applies only to “custodial interrogation,” which generates “inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he does not otherwise do freely.” Id. at 467. Custodial interrogation does not require a formal arrest, but rather triggers Miranda “after a person has been taken into custody or otherwise deprived of his freedom of action in any significant

¹ Defendant’s Omnibus Motion also alleged that Officer Houseknecht utilized a body camera when he entered her apartment and asked questions of her to which she provided answers but was never advised that she was being recorded in violation of her state and federal rights to be free from illegal searches under the Fourth Amendment, as well as the Pennsylvania Wiretap Act, 18 Pa.C.S.A. §5704 et seq. However, in his brief, counsel for the Defendant indicated that the Defendant is withdrawing her challenge to the statements made in the non-consensual body camera footage.

way.” Id. at 444. Here, Defendant argues that the totality of the circumstances, including the involuntary detention, the location of the interrogation, the number of armed officers present, the isolation, her physical and mental state, and the failure of law enforcement to notify her that she did not have to speak to them, points to the occurrence of a custodial interrogation that should have been preceded by Miranda warnings.

Whether a person is in custody for Miranda purposes depends on whether the person is physically denied of [his] freedom of action in any significant way or is placed in a situation in which [he] reasonably believes that [his] freedom of action or movement is restricted by the interrogation. Moreover, the test for custodial interrogation does not depend upon the subjective intent of the law enforcement officer interrogator. Rather, the test focuses on whether the individual being interrogated reasonably believes [his] freedom of action is being restricted. See Commonwealth v. Mannion, 725 A.2d 196, 202 (Pa. Super. 1999) (en banc). Said another way, police detentions become custodial when, under the totality of the circumstances, the conditions and/or duration of the detention become so coercive as to constitute the functional equivalent of arrest. Id. at 200.

With regard to the statements made to Officer Houseknecht, the Defendant voluntarily walked with him to the police station. They were in the station for approximately three minutes before they walked back to the Defendant’s apartment and she consented to his entry. At no time was she handcuffed and her freedom of movement was not restricted in any way. With regard to the statements made to the PSP Troopers, they moved the interview indoors not to conduct a search of the apartment but because the Defendant was barely dressed on a very cold January day. Trooper Reiner testified that during the interview, only

himself and Cpl. Morse were inside the apartment with the Defendant. At no time was the Defendant placed into handcuffs, taken into custody, or told that she could not leave. In fact, the Defendant freely walked around during the interview while Cpl. Morse and Tpr. Reiner remained in the living room. Further, Cpl. Morse testified that they tried to look for a ride to the hospital for the Defendant. Tpr. Reiner testified that they were in the apartment interviewing the Defendant for a maximum of 15 minutes.

The Court finds that neither the interactions of Officer Houseknecht nor those of Cpl. Morse and Tpr. Reiner with the Defendant rose to the level of a functional equivalent of a formal arrest. As such, they were not custodial interrogations and Miranda warnings were not required. Accordingly, the Defendant's Motion to Suppress Statements is **DENIED**.

II. MOTION TO SUPPRESS PHYSICAL EVIDENCE

As discussed above, multiple law enforcement officers entered the Defendant's apartment on the date of the incident. The Defendant argues that her Fourth and Fourteenth Amendment rights under the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution were violated as the police entered her apartment without a valid search warrant and without her voluntary consent. The Defendant alleges that the warrantless entry and search of the residence was unlawful and, as a result, the subsequent search warrant was unlawful. The Defendant requests that all evidence seized in violation of the illegal search and seizure be suppressed.

"Absent consent or exigent circumstances, private homes may not be constitutionally entered to conduct a search or effectuate an arrest without a warrant, even where probable cause exists." Commonwealth v. Santiago, 736 A.2d 624 (Pa. Super. 1999). The Defendant

argues that because the child, the subject of the emergency 911 call, was already in the ambulance by the time police arrived on the scene, there were no exigent circumstances which would justify the warrantless search. The Defendant further argues that there were no safety issues inside the residence that required their immediate presence and there was no reason to believe that evidence would be destroyed prior to them obtaining a warrant.

While this Court agrees with Defendant that exigent circumstances did not exist at the time the police entered the Defendant's residence, a warrant is not necessary if a consent is given. Defendant addresses the issue of consent only briefly in a footnote in her brief, and only with respect to Officer Houseknecht. "The following factors are pertinent to a determination of whether consent to search is voluntarily given: 1) the presence or absence of police excesses; 2) whether there was physical contact; 3) whether police directed the citizen's movements; 4) police demeanor and manner of expression; 5) the location of the interdiction; 6) the content of the questions and statements; 7) the existence and character of the initial investigative detention, including its degree of coerciveness; 8) whether the person has been told that he is free to leave; and 9) whether the citizen has been informed that he is not required to consent to the search." Commonwealth v. Hawkins, 257 A.3d 1, 10 (Pa. Super. 2020). With regard to consent, "voluntariness" is a question of fact to be determined from the totality of the circumstances. Commonwealth v. Fredrick, 230 A.3d 1263, 1267 (Pa. Super. 2020).

A review of the record as a whole points to the Defendant voluntarily consenting to the entry of the officers into her apartment. As the Commonwealth points out in its brief, the Defendant only interacted with two officers in both instances (Officer Houseknecht and

Trooper Bencsics initially, and Cpl. Morse and Trooper Reiner later). She was not handcuffed or otherwise physically restrained. In each incident, at least one of the officers asked, and was granted, permission to enter the residence. The officers' demeanor was calm and polite as evidenced by the bodycam footage and audio recordings. The Court finds that the Defendant's Fourth and Fourteenth Amendment rights under the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution were not violated as the police entered her apartment with her voluntary consent.

Even assuming *arguendo*, that the Defendant's consent to the PSP Troopers request to enter the apartment was not voluntary, Trooper Reiner did not conduct a search while inside the apartment. At the Omnibus hearing, he introduced the search warrant for the apartment. No observations from any law enforcement officers inside the apartment were included in the affidavit. Rather the Defendant's admission to having fentanyl inside the residence was incorporated into the search warrant affidavit.

The Defendant's Motion to Suppress Physical Evidence is **DENIED**.

III. MOTION TO SUPPRESS PRISON CALLS/VIDEO CALLS

Defendant's Omnibus Motion indicated that the Commonwealth obtained numerous recorded phone calls made by the Defendant to friends while she was incarcerated at the Lycoming County Prison. The Defendant argues that she had a reasonable expectation of privacy and, while the prison does provide notice to the inmates that the phone calls are subject to electronic recording and/or monitoring pursuant to prison policy, there is no notice that the recordings can or will be provided to the District Attorney or that they will be used in any court proceedings against the inmate. The Defendant further argues that the

Commonwealth's unfettered access to her prison calls impairs her ability to prepare an unhampered defense which "skews the fairness of the entire system." Barker v. Wingo, 407 U.S. 514, 532 (1972). The Defendant, in her Omnibus Motion, requests that the Court suppress any prison calls and preclude the introduction of the statements and any evidence derived from it at trial and preclude any further disclosure of any future prison calls to the District Attorney.

Brad Shoemaker, Warden at the Lycoming County Prison, testified at the Omnibus hearing regarding the instructions for utilizing the prison phone system that all inmates are provided during the booking process. The Defendant signed a document indicating that she understood that all calls are subject to recording, monitoring, and may be reviewed and divulged.

Counsel for the Defendant did not advance any further argument on this matter in his brief, and it is unknown to the Court whether he is abandoning this issue or resting on the argument set forth in the motion. To the extent the Defendant intends to proceed based upon what was set forth in the motion, the Motion to Suppress Prison Phone Calls is **DENIED**. The Court finds that the recorded warnings played prior to each phone call is sufficient to place the Defendant on notice that her calls are subject to recording and, further, that there is no reasonable expectation of privacy in a prison setting.

IV. MOTION TO DISCLOSE EXISTENCE OF AND SUBSTANCE OF PROMISES OF IMMUNITY, LENIENCY OR PREFERENTIAL TREATMENT AND COMPLETE CRIMINAL HISTORY FROM THE NATIONAL CRIME INFORMATION CENTER ("NCIC") AND/OR THE PENNSYLVANIA JUSTICE NETWORK ("JNET")

Defendant's Motion requests that she be provided with the names and addresses of and substance of all persons who have been offered immunity, favorable consideration,

leniency, or favorable treatment, if any, in this case. Further, Defendant seeks the criminal history of Commonwealth witnesses from NCIC and/or JNET. The Defendant avers that disclosure of any such preferential treatment of any kind, as well as the criminal history of Commonwealth witnesses, is essential to his defense and to effective cross-examination to establish motive or bias of the Commonwealth witness(es).

At the time of the hearing on the Omnibus Motion, counsel for the Defendant and the Commonwealth indicated this motion is not in dispute. Therefore, the Motion is **GRANTED**. To the extent the Commonwealth intends to call any witnesses who have been offered any favorable treatment of any type in exchange for their testimony, the Commonwealth shall provide Defendant's counsel with the names and addresses of said witnesses and shall provide the criminal history of each witness from either NCIC or JNET at least thirty (30) days prior to trial.

V. MOTION FOR DISCLOSURE OF OTHER CRIMES, WRONGS, OR ACTS PURSUANT TO PR.R.E. 404(b)

The Defendant's Omnibus Pretrial Motion requests that the Court issue an order requiring the Commonwealth to disclose to her any evidence which may be admissible at trial pursuant to Pa.R.E. 404(b). At the time of the hearing on the motion, the Commonwealth and counsel for the Defendant indicated that this motion was not in dispute. The Court takes judicial notice that the Commonwealth has not yet filed notice of intent to introduce any 404(b) evidence. Pa.R.E. §404(b) requires only "reasonable notice in advance of the trial." This Court finds that twenty (20) days is more than "reasonable" for providing advance notice of the intent to introduce other crimes, wrongs, or acts, and would provide sufficient time for the Court to address any motions in limine filed by the Defendant in

response thereto. Accordingly, the Defendant's Motion is **GRANTED** to the extent that the Commonwealth shall disclose any evidence which has not been disclosed to the defendant which may be admissible at trial pursuant to Pa.R.E. §404(b), and to provide a notice of intent to introduce any such evidence at trial at least twenty (20) days prior to trial.

VI. PETITION FOR WRIT OF HABEAS CORPUS

The Defendant argues that the Commonwealth's evidence at the preliminary hearing(s) was insufficient as a matter of law to establish a *prima facie* case for Endangering the Welfare of a Child pursuant to 18 Pa.C.S. §4304(a)(1). Where a defendant seeks to challenge the sufficiency of the evidence presented by the Commonwealth, he may do so by the filing of a writ of *habeas corpus*. Commonwealth v. Landis, 48 A.3d 432, 444 (Pa. Super. 2012) (en banc).

The definition of *prima facie* is not precise or without difficulty. On the one hand, it has been described as evidence, read in a light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime. Commonwealth v. Packard, 767 A.2d 1068, 1070 (Pa. Super. 2001), *abrogated on other grounds by* Commonwealth v. Dantzler, 135 A.3d 1109, 1112 n.5 (Pa. Super. 2016). On the other hand, it has been defined as evidence, which if accepted as true, would warrant submission of the case to a jury. Packard, *id.*; Commonwealth v. Karetny, 880 A.2d 505, 514 (Pa. 2005); Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2001). The weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person has committed the offense. Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2011).

The evidence must be read in a light most favorable to the Commonwealth and inferences reasonably drawn from the evidence of record which would support a verdict of guilty, must be given effect. Id.

The Defendant argues that the gravamen of the Commonwealth's evidence at the time of the preliminary hearing to support the charge was the Defendant's sleeping with the child and purported use and possession of fentanyl around the child. When the autopsy results were returned, it verified that the child died of natural causes, specifically COVID-19, and as a result the Commonwealth dismissed the count for Involuntary Manslaughter. The Defendant Petition for Writ of Habeas Corpus indicates that the Commonwealth's evidence at the preliminary hearing was insufficient as a matter of law to establish a *prima facie* case of the Endangering the Welfare of a Child statute as charged, since there was not only no course of conduct, but also that her alleged drug usage did not contribute to the child's death or cause serious bodily injury. Defendant argues that the Commonwealth's position would equate any drug use by a parent, regardless of the drug and regardless of whether it is merely in the parent's possession, with Endangering the Welfare of Children. She argues that mere alcohol or drug usage that may constitute ineffectual parenting is not synonymous with endangering the welfare of a child and requests that the charge be dismissed.

"A parent, guardian, or other person supervising the welfare of a child under 18 years of age . . . commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection, or support." 18 Pa.C.S. §4304(a)(1). The Superior Court has previously determined "evidence is sufficient to prove the intent element of the offense

of endangering the welfare of a child, 18 Pa.C.S.A. § 4304, when the accused is aware of his or her duty to protect the child; is aware that the child is in circumstances that threaten the child's physical or psychological welfare; and has either failed to act or has taken actions so lame or meager that such actions cannot reasonably be expected to be effective to protect the child's physical or psychological welfare.” Commonwealth v. Cardwell, 515 A.2d 311, 315 (Pa. Super. 1996). As the charged offense was graded as a second degree felony, the Commonwealth would also have to prove that the Defendant’s conduct created a substantial risk of death or serious bodily injury and was part of a course of conduct.

The Defendant appears to argue that because the autopsy results indicated that her alleged drug use was not the underlying cause of the child’s death, there is insufficient evidence to sustain the charge of Endangering the Welfare of Children. This Court disagrees. The Commonwealth’s brief outlines specific testimony elicited at the preliminary and Omnibus hearings which supports the particular actions of the Defendant as they apply to the elements of the crime. First, the Defendant was the sole caregiver for the three month old child and was clearly aware of her duty to protect the child. Next, the Defendant was aware that the child was in circumstances that threatened his physical or psychological welfare. The Defendant admitted to being a drug addict who utilized fentanyl in the apartment she shared with the child. The Defendant, as the sole caregiver for the child, cared for him while under the influence of methamphetamines and/or fentanyl. She had both drugs in the room where the child slept, syringes of meth under the baby swing, and a pillow in the baby’s crib which tested positive for heroin particles. Both the Defendant and the child had methamphetamines in their systems. The Defendant asked the EMTs to administer Narcan to

the child, evidencing a knowledge that she was aware that her conduct put the child in danger of injury. Finally, the Defendant refused the help of a friend who expressed concerns about her ability to care for the child while under the influence of drugs and continued to use drugs while attempting to care for him, as evidenced by the plethora of drugs found in her system at the time of the child's death. These actions were so lame or meager that they cannot reasonably be expected to be effective to protect the child's physical or psychological welfare.

“In determining whether a parent or guardian's conduct is sufficient to support a conviction under Section 4304(a)(1), courts must consider whether the conduct at issue offends the “common sense of the community” and the “sense of decency, propriety and the morality which most people entertain.” Commonwealth v. Howard, 257 A.3d 1217, 1228 (Pa. 2021). At this stage of the proceeding, the Commonwealth need only establish a *prima facie* case. This Court finds that Commonwealth has met this burden when viewing the evidence in the light most favorable to the Commonwealth and the inferences reasonably drawn therefrom. It will be a matter for the fact finder at the time of trial to determine if the evidence proves beyond a reasonable doubt that the Defendant's alleged behavior rose to the level of Endangering the Welfare of Children, with the grading enhancements as charged by the Commonwealth.

Accordingly, the Petition for Writ of Habeas Corpus is **DENIED**.

VII. MOTION TO DISCLOSE ANY CYS RECORDS

Defendant's Motion avers that upon information and belief, all the complainants have met with representatives of Lycoming County Children & Youth Services (“CYS”).

Defendant requested copies of any and all reports and information contained in CYS's files relative to any allegation of abuse. In her motion, Defendant requested the Court conduct an *in camera* review of all pertinent CYS records and, if exculpatory material is found, that it be released to her.

At the time of the hearing on the Omnibus Motion, Counsel for the Defendant indicated that he believed that the Defendant may only have been receiving Outreach Services and not had an open Assessment with the Agency. Pursuant to 23 Pa.C.S. §6340(b), upon a written request, a subject of a report may receive a copy of all information, except that which would identify the person who made a report of suspected child abuse or who cooperated in a subsequent investigation. Accordingly, the Defendant's motion is **GRANTED**. Defendant's counsel shall provide a written request to the Agency for copies of any and all reports and information contained in CYS's files relative to any allegation of abuse, along with a copy of this Order. Should the Agency object to the Defendant's counsel's request, the Court shall be notified immediately and a conference will be scheduled.

VIII. MOTION FOR REQUEST OF TIMELY NOTICE OF ANY EXPERT TESTIMONY

At the conclusion of the hearing on the Defendant's Omnibus Pretrial Motion, counsel for the Defendant and the Commonwealth indicated that this item was not in dispute. The Commonwealth indicated that they had not identified any expert witness they intended to call at the time of trial, but would share all the information requested in Defendant's Motion as soon as one was acquired. Accordingly, the Defendant's Motion is **GRANTED**. If the Commonwealth intends to rely on any expert testimony at trial, it must

timely disclose to the Defendant's counsel the identity of the proposed expert and all information requested in the Defendant's motion that is discoverable pursuant to Pa.R.Crim.P. 573(B).

IX. MOTION TO RESERVE RIGHT

Defendant requests the right to make any additional pre-trial motions pursuant to Pa.R.Crim.P. 579, as there may be additional discovery that has not been received. This motion is **GRANTED**, to the limited extent that any motion is based on information or discovery provided by the Commonwealth after February 7, 2023, the date of the last hearing on Defendant's Omnibus Pretrial Motion.

ORDER

AND NOW, this 3rd day of **January, 2024**, upon consideration of Defendant's Omnibus Pre-Trial Motions, the argument of counsel on January 3, 2023, and February 7, 2023, the briefs submitted by each counsel, and for the reasons set forth above, the following motions are **GRANTED** subject to the limitations set forth above:

1. Motion to Disclose Existence of and Substance of Promises of Immunity, Leniency or Preferential Treatment and Complete Criminal History from the National Crime Information Center ("NCIC") And/Or The Pennsylvania Justice Network ("JNET");
2. Motion for Disclosure of Other Crimes, Wrongs, or Acts Pursuant to Pa.R.E. 404(b);
3. Motion to Disclose Any CYS Records;
4. Motion for Request of Timely Notice of Any Expert Testimony; and
5. Motion to Reserve Right

The following motions are **DENIED**:

1. Motion to Suppress Statements;
2. Motion to Suppress Physical Evidence;
3. Motion to Suppress Prison Calls/Video Calls; and
4. Petition for Writ of Habeas Corpus

By the Court,

Ryan M. Tira, Judge

RMT/jel

CC: DA
Edward J. Rymsza, Esq.
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