IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	**:**	**CRIMINAL DIVISION**
	:	**NO. CR-1224-2023**
v.	**:**	
	:	
KENNETH MICHAELS,	**:**	**Omnibus Motion**
Defendant	**:**	

OPINION

This matter was before the Court on July 15, 2025, and September 12, 2025, for a hearing on the Omnibus Motion filed on behalf of Defendant, Kenneth Michaels, by and through counsel of record, Edward J. Rymsza, Esquire, and Michael Rudinski, Esquire. First Assistant District Attorney Martin Wade appeared on behalf of the Commonwealth.

Factual and Procedural Background

On August 31, 2023, the Defendant was charged with an open count of Criminal Homicide[1] and one count of Possessing Instruments of Crime[2]. The charges stem from an incident on August 17, 2023, in which the Defendant fired a single shot, fatally wounding his former business partner and brother-in-law, John Roskowski ("Decedent"), in the lobby of his business after opening a locked door to allow entry. The Defendant was arrested in New Jersey on September 1, 2023. He waived extradition and was returned to Pennsylvania on or about September 14, 2023.

A preliminary arraignment was held on September 14, 2023, before Magisterial District Judge William Solomon who declined to set bail. A preliminary hearing was held on September 22, 2023, before Magisterial District Justice Solomon and both charges were held for court. Again, bail was denied due to the nature of the open count of homicide and its possibility of a life sentence if convicted. Defendant filed a Motion to Set Reasonable Bail on

[1] 18 Pa.C.S. §2501(a).
[2] 18 Pa.C.S. §907(b).

October 23, 2023. An evidentiary hearing was held on November 8, 2023, and November 14, 2023, after which the Court, by Opinion and Order docketed February 13, 2024, denied Defendant's Motion to Set Reasonable Bail. Defendant filed a Petition for Review of the Order of February 13, 2024, on March 8, 2024, in the Superior Court of Pennsylvania. On August 27, 2024, the Superior Court of Pennsylvania issued its Opinion affirming the Order denying the Motion to Set Reasonable Bail.

After several unopposed Motions for Extension of Time to File, Defendant filed an Omnibus Pre-Trial Motion on March 29, 2024. Contained within the Omnibus is a Motion to Disqualify and Recuse the Lycoming County District Attorney's Office. By Order dated August 19, 2024, Defendant's Motion for Recusal of the Lycoming County District Attorney's Office was granted in part and denied in part. The Court granted the request for District Attorney Marino's recusal from the prosecution of this case. The Court denied the Defendant's request for the disqualification of the Lycoming County District Attorney's Office from prosecuting the case[3].

Also contained in the Omnibus Motion are the following:

1. Motion to Suppress Statements;
2. Motion to Suppress Physical Evidence;
3. Motion to Dismiss Information for the Commonwealth's Withholding and/or Destruction of *Brady* Information;
4. Motion to Exclude Video and Photographs;
5. Motion to Preclude Enhanced Security Measures Outside and Inside of the Courtroom;
6. Motion for Individual Voir Dire;
7. Motion to Suppress In-Court Identification;

[3] See: Opinion and Order, August 19, 2024, providing the rationale and parameters for the Court's disposition of the Motion for Recusal and Disqualification of the Lycoming County District Attorney's Office.

8. Motion to Compel Disclosure of Existence of and Substance of Promises of Immunity, Leniency, or Preferential Treatment and Criminal History;
9. Motion for Disclosure of Other Crimes, Wrongs, or Acts Pursuant to Pa.R.Evid. Rule 404(b);
10. Motion for Request of Timely Notice of Any Expert Testimony;
11. Motion for Discovery;
12. Motion to Reserve Right.

On June 9, 2025, without opposition from the Commonwealth, Defendant filed a Supplemental Omnibus Motion containing a Petition for Writ of Habeas Corpus to be heard with the Motion on July 15, 2025. Following the conclusion of the first day, a second day was scheduled for September 12, 2025.

On July 15, 2025, the Commonwealth presented as witnesses Chief Christopher Kriner and Detective Stephen Sorage. On September 12, 2025, the Commonwealth presented Detective Justin Segura. Over the Course of the two hearing dates, the Commonwealth submitted, and without objection from Defendant, the following exhibits were admitted to the record:

Commonwealth No. 1.	Preliminary Hearing Transcript, 09/22/2023;
Commonwealth No. 2.	Bail Hearing Transcript, 11/14/2023;
Commonwealth No. 3.	Interview with Detective Segura, August 17, 2023;
Commonwealth No. 4.	Interview with Detective Segura Transcript, August 17, 2023;
Commonwealth No. 5.	Miranda Rights Form, 08/17/2023;
Commonwealth No. 6.	Consent to Search Form—Cellular Telephone Belonging to Defendant, 08/17/2023;
Commonwealth No. 7.	Interview with Detectives Segura and Sorage, August 25, 2023;

Commonwealth No. 8.	Interview with Detectives Segura and Sorage Transcript, August 25, 2023;
Commonwealth No. 9	Handwritten Consent to Search—Mace or Pepper Spray; and
Commonwealth No. 10	Handwritten Consent to Search—Ammunition and 9mm Firearm turned over by Defendant.

At the conclusion of the two-day hearing, the Court ordered briefs. Both parties timely filed briefs, and Defendant was provided an additional seven (7) days to submit a response brief, which was timely filed.

I. Defendant's Petition for Writ of Habeas Corpus

Defendant contended that the Commonwealth has not submitted sufficient admissible evidence to establish a *prima facie* case for the open count of homicide, specifically the intent and malice elements required for an open charge of first-degree murder. (Defendant's Brief at 30-31). Defendant also argued that the Commonwealth did not present sufficient evidence to support the charge for third-degree homicide because there is no evidence that Defendant was in the "act of engaging in the perpetration of the specific enumerated felonies that would be required to support the charge of second-degree murder." (Id at 31). Moreover, Defendant argued that the Commonwealth did not present sufficient evidence at the preliminary hearing to establish that this homicide was carried out with malice or specific intent. (Id at 32-33). Defendant asserted that there was ample evidence negating the necessary elements, and asserted that Defendant was in fear for his life in the presence of Decedent. (Id).

In evaluating a petition for writ of habeas corpus, the court must examine the evidence in a light most favorable to the Commonwealth. *Commonwealth v. Starry*, 196 A.3d 649, 656 (Pa. Super. 2018). The Commonwealth bears the burden of establishing a *prima*

facie case "that a crime has been committed and that the accused is probably the one who committed it." *Id*.; Pa.R.Crim.P. 141(d). "To demonstrate that a *prima facie* case exists, the Commonwealth must produce evidence of every material element of the charged offense(s) as well as the defendant's complicity therein," *id*, and may do so by utilizing evidence presented at the preliminary hearing as well as submitting additional proof. *Id*. Weight and credibility of the evidence are not factors for the Court to consider. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001); *see also Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003) (holding that "[t]he evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury"). "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. Owen*, 580 A.2d 412, 414 (Pa. Super. 1990).

In its brief, the Commonwealth asserted that the Opinion and Order issued on February 13, 2024, determined the Commonwealth proved it was substantially more likely than not that the Defendant committed a first-degree murder. (Commonwealth's Brief at 15). As discussed, *supra*, this decision was appealed and affirmed by the Pennsylvania Superior Court on August 19, 2024. (Id). The Commonwealth further argued that its burden of proof on that motion was higher than the burden assigned in a *prima facie* challenge. (Id). Accordingly, the Commonwealth asserted that the Petition for Writ of Habeas Corpus be denied on the grounds that this Court previously determined the Commonwealth's evidence established that it is more likely than not that the Defendant committed first-degree murder, and it would be contrary to the Coordinate Jurisdiction Rule for the Court to now decide otherwise. (Id at 16). Moreover, Defendant did not proffer any new evidence that could alter the Court's prior determination. (Id at 15). Regarding the Defendant's *prima facie* challenge

to the felony murder charge, the Commonwealth asserted that it has not in the history of this case nor does it plan to prosecute Defendant for felony murder. (Id at 18). Moreover, the Commonwealth asserted that the jury will only be instructed on first-degree murder and third-degree murder. (Id).

In contrast, Defendant asserted that the coordinate jurisdiction rule does not apply here because it only applies to rulings by different judges, citing to *Zane v. Friends Hospital*, 836 A.2d 25, 29 (Pa. 2003). (Defendant's Reply Brief at 11). Defendant further asserted that the record is "replete with evidence that [Defendant] indeed acted in self-defense…." (Id at 11). Moreover, Defendant argued the Commonwealth disregarded the authoritative and compelling case law establishing that malice and intent can be negated by other evidence, including evidence of self-defense. (Id at 10).

Here, the Court finds that, while the coordinate jurisdiction rule is not on-point, it is logical that the Court would not overturn its own decision that was subsequently affirmed by the higher court. The coordinate jurisdiction rule discourages judges from other jurisdictions from altering the resolution of a legal question previously decided by a different judge. *Commonwealth v. Starr*, 541 Pa. 564, 664 A.2d 1326, 1331 (1995). "[T]he coordinate jurisdiction rule is 'based on a policy of fostering the finality of pre-trial applications in an effort to maintain judicial economy and efficiency.'" *Zane v. Friends Hospital*, 836 A.2d 25, 29 (Pa. 2003). The rule, consistent with the law of the case doctrine, further "serves to protect the expectations of the parties, to insure uniformity of decisions, to maintain consistency in proceedings, to effectuate the administration of justice, and to bring finality to the litigation." *Id*.

Defendant's Petition asserted that the Commonwealth has not proffered sufficient evidence to establish the elements of specific intent and malice for the offense of homicide.

To refute Defendant's Motion for Reasonable Bail, the Commonwealth was required to offer "evident" proof or establish a "great" presumption that the accused: (1) committed a capital offense, (2) committed an offense that carries a maximum sentence of life imprisonment, or (3) presents a danger to any person and the community, which cannot be abated using any available bail conditions. *Commonwealth v. Talley*, 265 A.3d 485, 513 (Pa. 2021). Accordingly, in the resulting Opinion, this Court explained that the Commonwealth was required to convince the Court that it is *substantially* more likely than not that (1) John Roskowski is dead; (2) the Defendant killed him; and (3) the Defendant did so with the specific intent to kill and with malice. Whereas, to establish a *prima facie* case of guilt simply requires probable cause to warrant the belief that the accused committed the offense. *Commonwealth v. Karetny*, 880 A.2d 505, 513-14 (Pa. 2005).

In the Motion for Bail, as here, the first two elements are not in dispute. The Court previously and comprehensively analyzed whether the Commonwealth established that it is substantially more likely than not that the Defendant murdered the victim with the specific intent to kill and with malice. Not only did the Court determine that the Commonwealth presented sufficient evidence to establish specific intent to kill and with malice, the determination was affirmed by the Superior Court. Thus, in line with the principles of the coordinate jurisdiction rule and the law of the case doctrine, the Court finds that it is in the interests of judicial economy and efficiency to deny the Petition for Writ of Habeas Corpus. Defendant has not alleged any new facts or evidence to negate the evidence establishing sufficient proof of specific intent and malice submitted by the Commonwealth at the preliminary hearing, the bail hearing, or the omnibus hearing for this matter not to go to trial on the offense of an open count of homicide as charged. The issues raised in Defendant's petition are duplicative of the findings and conclusions of law that have already been

ascertained and determined. To the extent the Defendant asserted self-defense, the Court finds this to be a question of fact appropriately determined by a jury. Accordingly, the Defendant's Petition for Writ of Habeas Corpus is denied.

II. Defendant's Motion to Suppress Statements made by the Defendant to Law Enforcement on August 17, 2023, and August 25, 2023

Defendant asserted that the statements provided by Defendant to law enforcement officers on August 17, 2023, and August 25, 2023, should be denied on the basis of Defendant's Fifth, Sixth, and Fourteenth Amendment violations and various *Miranda* Rights violations. Defendant alleged that the *Miranda* warnings read to him on August 17, 2023, were deficient, Detective Segura's administration of the *Miranda* warnings was designed to minimize the effect of the rights an interviewee is waiving, and the Defendant did not knowingly and intelligently waive his rights under *Miranda* and the Constitution such that his statements were of his own free will. (Defendant's Brief at 6, 10, and 14). Regarding the August 25, 2023, statement, Defendant contended that his statements must be suppressed because the police contacted him despite having knowledge that (1) Defendant had an attorney and (2) with knowledge that his attorney did not want Defendant to talk to the police they proceeded to contact Defendant and request a second interview. (Id at 22-24).

The Commonwealth asserted that the statements made on August 17, 2023, were not the result of deficient *Miranda* warning contents nor administration, and Defendant's waiver was voluntarily and intelligently entered such that the statements made were of Defendant's own free will. (Commonwealth's Brief at 1). With respect to the statements made to law enforcement on August 25, 2023, the Commonwealth asserted that the interaction on that date was not a custodial interrogation and no charges were filed at the time, therefore rendering Defendant with no constitutional right to counsel before or during the interview. (Id at 10).

a. Factual Background for the Statements made by Defendant on August 17, 2023

On August 17, 2023, Chief Kriner responded to 2113 Maydale Avenue in Old Lycoming Township for a shooting incident. (Omnibus Hearing Transcript, 07/16/2025, at 8). Upon his arrival, Chief Kriner made contact with Kenneth Michaels, Defendant, because the responding law enforcement officers were notified that Defendant was involved in the shooting. (Id). The dispatch call communicated that there was an intruder at the dispatch location ("Cable Services") and the intruder was shot. (Id at 13). Chief Kriner directed Defendant to come to him with his hands in the air, and Defendant did as he was instructed. (Id at 14-15). Chief Kriner asked Defendant if he had a firearm on him, and he answered in the affirmative advising Chief Kriner the firearm was in his right pants pocket. (Id at 16). After the firearm was secured, Defendant was placed in the back of a police cruiser. (Id). Chief Kriner testified that, without being asked, Defendant stated "something to the effect that he shot [Decedent], that he went ballistic, that he rang the front door, tried to get in…Defendant pulled his gun, he came at him." (Id at 17). Chief Kriner testified that he was aware of prior incidents between Defendant and Decedent, (Id at 17), and that he stated in his report he believed Decedent was not permitted to be on the premises of Cable Services. (Id at 27). Defendant was not restrained, (Id at 16), nor was he Mirandized at the scene. (Id at 8). Chief Kriner testified that he did not ask Defendant any questions aside from "are you okay," (Id at 17), and if Defendant had a firearm on him. (Id at 16). Chief Kriner further testified that he did not tell Defendant he did not have to go to the station nor did he tell him he did not have to speak with police. (Id at 20-21).

Detective Segura was also dispatched to Cable Services for a shooting, (Omnibus Hearing Transcript, 09/12/2025, at 10), and spoke with Chief Kriner. (Id). Detective Segura was only aware that someone entered Cable Services, one person was shot, and one person,

identified by name as Kenneth Michaels, was involved in the shooting. (Id). Detective Segura observed Defendant in the back of the police vehicle. (Id at 11). Defendant was then instructed to exit that vehicle and enter another police vehicle. (Id at 12). Defendant was transported to Lycoming County Regional Police Department located approximately one to two miles from Cable Services. (Id). Detective Segura testified that it was his understanding the purpose of taking Defendant to the station was to interview him about the shooting. (Id). Defendant was taken into the police station through a back door to which the public does not have access. (Id at 14). Defendant was guided into the interview room equipped with audio and visual recording that runs constantly. (Id at 16). Detective Segura was aware that the only suspect in the shooting was Defendant. (Id). Detective Segura was dressed in plain clothes with a hip-holstered handgun. (Commonwealth Exhibit No. 3, Interview with Detective Segura, 08/17/2023). Defendant kept possession of his cellular telephone, he was not handcuffed, and he was offered food and water. (Commonwealth Exhibit No. 4, Interview with Detective Segura Transcript, 08/17/2023 at 5).

Detective Segura testified that he did not know the Defendant, but he was aware that Chief Kriner was familiar with the Defendant through the business and prior incidents between the Defendant and the Decedent. (ID, 09/12/2025, at 13). Detective Segura informed Defendant that Chief Kriner familiarized him with some of the history between Defendant and Decedent. (Commonwealth Exhibit No. 4, Interview with Detective Segura Transcript, 08/17/2023 at 4). In concluding his introductory statement, Detective Segura advised Defendant he was going to read Defendant his *Miranda* Rights. (Id). Detective Segura asked Defendant if he knew what the rights are, and Defendant nodded his head affirming his knowledge of the rights. (Id). Detective Segura then read directly from the "Miranda Rights

Warnings form," (Commonwealth Exhibit No. 5), provided by the Lycoming Regional Police Department:

Detective Segura:	So, I'm just going to read this to you. If you have any questions for me whatsoever during—during it just ask, okay. I'm going to do my best to answer any questions that I can for you, all right. So I'm Detective Segura with the Lycoming Regional Police Department and I wish to advise of you the following. You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to have an attorney present before, during, or after any question if you so desire. If you cannot afford to hire an attorney, one will be appointed to represent you without charge if you so desire. If you desire to answer any questions or make any statements, you may stop at any time you wish. Do you understand your rights?
The Defendant:	(nods head)
Detective Segura:	You do? Okay. Do you have any questions?
The Defendant:	(shakes head)
Detective Segura:	No? Okay. So I just need to put that you understand, okay. And then the other one is with these rights in mind do you wish to speak to me without an attorney present?
The Defendant:	(sighs)
Detective Segura:	You're probably confused on how you want to answer that, correct? So, this is what I know is that—and I'll tell you what I know and what we can do is you can try to fill in my blanks. All right. So I know that there is a history between you and John. John has assaulted you in the past, okay. John was asked to not show up to the property and it sounds like John showed up to the property today. I don't know what happened between the two of you when he arrived and to when the shooting happened, okay. I don't know if a fight had happened, if he, you know, assaulted you or tried to or anything like that. So I need to know what happened between that moment he entered a door to the moment that we got there. Okay. And you can fill in those blanks. I know the basis of it. I know that, you know. I know that you had shot him and I know that he was asked not to be there. Okay. And, again, with your rights in mind and all this stuff, if there's something that I ask you and you don't want to answer it, you do not have to answer that. Okay. And this is more or less just a, you know, I need to find out the little

details about what happened today and what led up to it. Again, if I ask you something and you don't want to answer it you don't have to. Okay. So, I just need you to write—write down, yes, you understand and if you are willing to talk to me without an attorney. I'm sorry, I'm holding two pens at you. Which one am I going to grab.

The Defendant: (inaudible)

Detective Segura: Do you want a water or anything? Would that help you?
The Defendant: (inaudible)

Detective Segura: Are you thirsty at all?

The Defendant: (shakes head)

Detective Segura: No? And then just sign the bottom right there. What is your last name?

….
(Commonwealth Exhibit No. 4, Transcript of Audio/Video Interview, 08/17/2023 at pages 3-5).

b. Defendant's assertion that the *Miranda* Warnings from August 17, 2023 were deficient in their contents is without merit.

Preliminarily, the parties do not dispute that Defendant was the subject of a custodial interrogation on August 17, 2023. Thus, under the Fifth Amendment and *Miranda*, Defendant first takes issue with the contents of the warnings provided to Defendant on August 17, 2023. (Defendant's Brief at 6). Defendant argued that he was not advised of his complete *Miranda* warnings. (Id at 9). Specifically, Defendant was not advised that his words could and *would* be used against him in court. (Id). Defendant asserted that this omission is critical because Defendant was a complete legal novice, who merely thought he was acting as a good citizen by cooperating with law enforcement. (Id). As such, Defendant was subjected to a "significant and irreparable deprivation of [Defendant's] privilege against self-incrimination." (Id). Accordingly, Defendant asserted the statements made on August 17, 2023, should be suppressed, citing *Commonwealth v. Medina*, 227 A.2d 842 (Pa. 1967)(new trial ordered where defendant was not advised that anything he said could and would be used

against him in court and noting that this particular warning "may serve to make the individual more acutely aware that he is faced with a phase of the adversary system—that he is not in the presence of persons acting solely in his interest"); *United States v. Wysinger*, 683 F.3d 784 (7th Cir. 2012)(new trial ordered where *Miranda* Warnings were inadequate when police told suspect that he had the right to talk to a lawyer before they ask questions or have one during questioning because the suspect had a right to consult an attorney both before and during questioning). (Defendant's Brief at 9-10).

The Commonwealth argued that under *Miranda*, when the United States Supreme Court ultimately summarized its holding, the language chosen by the Court was the exact same language that appears in the Lycoming County Regional Police Department's *Miranda* form. (Commonwealth's Brief at 2). Thus, it is the Commonwealth's position that the *Miranda* warnings delivered by Detective Segura are permissible, and the statements from August 17, 2023, should not be suppressed. (Id at 4).

The issue here is whether the Lycoming Regional Police Department delivered an appropriate reading of the *Miranda* Warnings to Defendant on August 17, 2023, when Detective Segura said: "[y]ou have the right to remain silent. Anything you say can be used against you in a court of law." (Commonwealth Exhibit No. 4, Interview with Detective Segura Transcript, 08/17/2023 at 3).

In the *Miranda* opinion, the Supreme Court of the United States systematically divided and comprehensively analyzed the necessity of the communication of each element encompassed in the warning for the right to remain silent to adequately convey the rights to which a suspect is prescribed. The Court in *Miranda*, set forth the formulation for an acceptable version of Warnings that advises a interrogee of his rights. Ultimately, the Court summarized its holding in *Miranda* and held that:

> when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive theses rights and agree to answer questions or make a statement.

Miranda v. Arizona, 384 U.S. 436, 78-79 (1966).

In the years following the issuance of *Miranda*, the Supreme Court maintained its position that *Miranda* warnings are an absolute prerequisite to custodial interrogation. However, in *Miranda* the Court did not specifically proclaim that only one version of *Miranda* warnings is acceptable. In *Duckworth v. Eagan*, 492 U.S. 195 (1989), the United States Supreme Court revisited the practical application of the warnings required by *Miranda* in advising a defendant of his rights against compelled self-incrimination prior to a custodial interrogation. The *Miranda* Court explained that it established "certain procedural safeguards that require police to advise criminal suspects of their rights under the Fifth and Fourteenth Amendments before commencing custodial interrogations." *Duckworth v. Eagan*, 492 U.S. 195, 201 (1989). In *Duckworth*, the higher court evaluated the language used by law enforcement officers when delivering the portion of the *Miranda* warnings related to an individual's right to counsel before and during a custodial interrogation. Nonetheless, the Court stated that it has "never insisted that *Miranda* warnings be given in the exact form described in that decision." *Duckworth v. Eagan*, 492 U.S. 195, 202 (1989). The Court continued by stating that:

> The prophylactic *Miranda* warnings are 'not themselves rights protected by the Constitution but [are] instead measures to insure that the right against compulsory self-incrimination [is] protected.' *Michigan v. Tucker*, 417 U.S. 433, 444, 94 S.Ct. 2357, 2364, 41 L.Ed.2d. 182 (1974). Reviewing courts therefore need not examine *Miranda* warnings as if construing a will or defining the terms of an easement. The inquiry is simply whether the warnings reasonably 'conve[y] to [a suspect] his rights as required by *Miranda*. [*California v.*] *Prysock*, 453 U.S. at 361, 101 S.Ct., at 2810.

Duckworth v. Eagan, 492 U.S. 195, 203 (1989)(citations in original)(internal brackets in original).

Again, in *Florida v. Powell*, 589 U.S. 50 (2010), the United States Supreme Court evaluated the requirements from *Miranda* in advising a defendant of his rights against compelled self-incrimination.[4] The Court explained that the intent of *Miranda* was to provide law enforcement agencies and courts with "concrete constitutional *guidelines*," *Powell*, *supra*, at 59, quoting *Miranda v. Arizona*, 384 U.S. 436, 441-442 (parallel citation omitted)(emphasis added), to follow by prescribing the four warnings: "[A suspect] must be warned prior to any questioning [1] that he has the right to remain silent, [2] that anything he says can be used against him in a court of law, [3] that he has the right to the presence of an attorney, and [4] that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Florida v. Powell*, 589 U.S. 50, 59-60 (2010) (quoting *Miranda v. Arizona*, 384 U.S. 436, 479 (parallel citation omitted)). The United States Supreme Court has long held that "[t]he four warnings *Miranda* requires are invariable, but this Court has not dictated the word in which the essential information must be conveyed." *Florida v. Powell*, 589 U.S. 50, 60 (2010) (citing *California v. Prysock*, 453 U.S. 355, 359, 101 S.Ct. 2806, 69 L.Ed.2d 696 (1981) (*per curiam*) ("This Court has never indicated that the rigidity of *Miranda* extends to the precise formulation of the warnings given a criminal

[4] *Florida v. Powell*, 589 U.S. 50 (2010) involved an issue with the choice of words by law enforcement officers in advising the suspect of his right to counsel with respect to a custodial interrogation.

defendant." (internal quotation marks omitted)); *Rhode Island v. Innis*, 446 U.S. 291, 297, 100 S.Ct. 1682, 64 L.Ed.2d. 297 (1980) (safeguards against self-incrimination include "*Miranda* warnings…or their equivalent").

With that framework in mind, Defendant argued several cases to assert that Detective Segura's omission of "and will" from his delivery of the *Miranda* warnings is sufficiently inadequate to justify the suppression of Defendant's statements on August 17, 2023. (Defendant's Brief at 7). Defendant is correct in asserting that the Court in *Miranda* deemed the four warnings as "absolute prerequisites to interrogation." *Miranda*, *supra*, at 471. However, Defendant's assertion that the "clear dictates of *Miranda* require a concise warning that any statement 'can *and will*' be used as evidence against the suspect, (Defendant's Brief at 7 (emphasis in original), quoting *Miranda* at 471 and citing *Estelle v. Smith*, 451 U.S. 454, 466-67 (1981)), is unfounded as explained above and misguided as explained below.

Miranda explicitly did not "clearly dictate" any requirement for the choice of words in delivering *Miranda* warnings, as exhibited in the *Miranda* opinion and sustained in the subsequent case law. Rather, *Miranda* required that the information be delivered to a suspect prior to a custodial interrogation, but simply provided the framework and guidelines for the language that can be used in delivering *Miranda* warnings. As the Commonwealth pointed out in its brief,

> [i]t was in this preliminary part (the lengthy discourse on why warnings were needed to protect constitutional rights) that the court stated '[t]he warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court.' *Miranda* at 469. Two pages later, in explaining the sub-section that advises the accused of his right to consult a lawyer, the Court said "[a]s with the warnings of the right to remain silent and that anything stated *can be used* in evidence against him, this warning is an absolute prerequisite to interrogation." *Id* at 471 (emphasis added).

(Commonwealth's Brief at 1 and 2).

As further noted in the Commonwealth's brief, when the Court finally summarized its holding with respect to the requirements for the warning, the Court stated: "….[h]e must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court law…." *Miranda*, *supra*, at 478-79.

The Commonwealth argued that the Supreme Court of Pennsylvania and Superior Court of Pennsylvania have likewise accepted the version of *Miranda* warnings read to Defendant by Detective Segura. (Commonwealth's Brief at 2). In *Commonwealth v. Yandamuri*, 159 A.3d 503 (Pa. 2017) explicitly held that the iteration of *Miranda* "can be used against him in a court of law" was a permissible warning under the prescribed formulation. (Id at 3). The Commonwealth further provided: *Commonwealth v. Brown*, 375 A.2d 1260, 1264 n.5 (Pa. 1977)("The accused must be informed that he has the right to remain silent, that anything *can be used* against him in court.")(emphasis added in Commonwealth's Brief at 3); *Commonwealth v. Singleton*, 266 A.2d 753, 754-55 (Pa. 1970)("[T]he Court declared that the suspect should be told that any statement *can be used* in evidence against him.")(quoting *Miranda v. Arizona*, 384 U.S. 436, 471 (1966)(emphasis added in Commonwealth's Brief at 3); *Commonwealth v. Phillips*, 327 A.3d 1236, 1242 (Pa. Super. 2024)(officers must first warn the individual that…anything can be used against him in a court of law.)(citing *Miranda v. Arizona*, *supra*, 384 U.S. at 478-479); *Commonwealth v. Brown*, 700 A.2d 1310, 1314 (Pa. Super. 1997)("An individual held for interrogation must be clearly informed…that anything he says can be used against him in a court of law." (citing *Miranda v. Arizona*, *supra*, 384 U.S. at 471-472)).

Defendant supported his argument with cases that rely on the portion of *Miranda* that comes before the holding and states that *Miranda* requires a suspect be advised by law enforcement prior to any questioning that anything he says "can *and will* be used against him

in a court of law" from page 471 of *Miranda*, *supra*. For example, Defendant relies on *Estelle v. Smith*, 451 U.S. 454 (1981), when the Court held that using psychiatric testimony from a court-ordered pretrial competency evaluation to prove future dangerousness in a capital sentencing proceeding violates a defendant's Fifth Amendment self-incrimination and Sixth Amendment right to counsel if the defendant was not advised of his rights beforehand. (Defendant's Brief at 7 citing *Estelle*, *supra*, at 460). The Court in *Estelle* was not tasked with evaluating the choice of words used in advising an individual of his *Miranda* warnings because the defendant in *Estelle* was given no warnings at all prior to his pretrial competency evaluation. *Id* at 467("The considerations calling for the accused to be warned prior to custodial interrogation apply with no less force to the pretrial psychiatric examination at issue here" and "Yet he was given no indication that the compulsory examination would be used to gather evidence necessary to decide whether, if convicted, he should be sentenced to death. He was not informed that, accordingly, he had a constitutional right not to answer the questions put to him"). In its analysis, the Court cited to the portion of *Miranda* that comes before the summary of the holding. *Id* at 467, quoting *Miranda*, *supra*, at 467-469. Thus, the emphasis on the holding in *Estelle* is misguided because it is simply one of the examples of how the Court intended for the framework in *Miranda* to be used by law enforcement agencies and courts. *See*: *Duckworth v. Eagan*, 492 U.S. 195 (1989).

In *Commonwealth v. Medina*, 227 A.2d 842 (Pa. 1967), the record established that on two occasions during police questioning where statements were obtained, the defendant was warned that "he did not have to say anything unless he wanted to…." *Medina*, *supra*, at 633. Concluding that the phrase was insufficient as a warning against self-incrimination, the court relied on the portion of *Miranda* that came before the summarized holding. *Id* at 634 quoting *Miranda*, *supra*, at 468-469.

Defendant acknowledged that law enforcement officers are not required to parrot the exact words set forth in *Miranda*, but argued that the language used must be clear and cannot have the effect of undermining such warnings. (Defendant's Brief at 8). In his examples, Defendant proffers *United States v. Street*, 472 F.3d 1298 (11th Cir. 2006) and *Commonwealth v. Singleton*, 266 A.2d 753 (Pa. 1970). In *Street*, the officer testified: "I believe when I was talking [to the defendant] orally, I told him he has a right to remain silent and he has a right to have a lawyer present, and that's probably pretty much all I told him." *Street*, *supra*, at 1311. The Court in *Street* determined that the warning provided in that situation was inadequate, quoting the summarized holding in *Miranda*, "…that anything he says can be used against him in a court of law…" *Street*, *supra*, quoting *Miranda*, *supra*, at 476.

Then, in *Commonwealth v. Singleton*, law enforcement officers advised the defendant that any statement he gave could be used "for or against him" at trial. *Singleton*, 266 A.2d 753, at 755 (Pa. 1970). The Court, citing to the summarized holding in *Miranda*, determined that this deviation was too far removed from the requirements set forth by the Court in *Miranda*. *Id*. Additionally, the court in *Singleton* acknowledged that the Supreme Court "did not put an imprimatur on any one of the versions of the warnings referring to the use of a suspect's statement," *Singleton*, *supra*, at 755, pointing out the variations throughout the *Miranda* opinion. Regarding deviations, the *Singleton* opinion notes that the Supreme Court clearly established that "deviation from the prescribed formulation of the various warnings is permissible only when the offered version is more likely to give a suspect a better understanding of his constitutional rights and a heightened awareness of the seriousness of his situation." *Id* at 755. Unsurprisingly, the court determined that the warning provided to

the defendant prior to interrogation was an impermissible deviation from the prescribed formulation of the warnings that justified suppression.

Pursuant to the explanations of *Miranda* warnings in *Duckworth* and *Powell*, the Supreme Court intended to provide constitutional guidelines for warnings provided to advise an individual of his rights against compulsory self-incrimination in a custodial interrogation. The intent was never to pass down a script that requires exact adherence or an otherwise valid admission is void as unconstitutional. The examples of impermissible *Miranda* warnings provided by Defendant deviate significantly from what is prescribed by *Miranda*, and the examples are materially different than the warning Defendant received from Detective Segura on August 17, 2023. Thus, in comparing the *Miranda* warnings provided to Defendant both in writing and orally on August 17, 2023, to the examples of impermissible deviations, this Court finds that the warnings given to Defendant clearly manifest adherence to *Miranda*. Accordingly, Defendant's Motion to Suppress the Statements from August 17, 2023, on the basis that the contents are nonconforming, and thus insufficient, is not based in precedent and therefore denied on this basis.

c. Defendant's assertion that the *Miranda* Warnings by Detective Segura were Deficient and Designed to Minimize the Warnings is without merit.

Defendant argued that Detective Segura, in administering the *Miranda* warnings, undermined or deemphasized the significance of the interview and the implications Defendant would incur as a result of any statements made regarding the incident. (Defendant's Brief at 13). Defendant contended first that he was not presented with a choice regarding the interview and his participation. (Id at 12). Second, Defendant argued that Detective Segura's delivery of the *Miranda* warnings deemphasized the importance of the advisement of one's rights and implication of waiving those rights because Detective Segura's presentation gave the impression that the *Miranda* warnings are a mere formality

and an obligatory act that are required of law enforcement officers prior to speaking with suspects. (Id at 13). Defendant relies on the prohibition set forth in *Miranda* forbidding tactics, short of coercion, that involve trickery, threats, or cajoling. *Miranda*, s*upra*, 384 U.S. at 476.

The Commonwealth's position is that Defendant cited to no legal authority policing the tone of voice an officer employs in delivering the *Miranda* warnings to an individual. (Commonwealth's Brief at 4). Additionally, Defendant's claims are contradicted by the video recording of the interview because the *Miranda* warnings were read out loud and clearly, and the Defendant was provided a written copy for his review. (Id).

Defendant's characterization of the events leading to the statement here and what the Court intended to guard against in *Miranda* regarding "incommunicado incarceration" and law enforcement undermining the effect of an individual's privileges under the Fifth Amendment are in stark contrast. For context, the Court stated the following regarding its prohibition against trickery, cajoling, and threats:

> Whatever the testimony of the authorities as to waiver of rights by an accused, the fact of lengthy interrogation or incommunicado incarceration *before a statement is made* is strong evidence that the accused did not validly waive his rights. In these circumstances the fact that the individual *eventually made a statement* is consistent with the conclusion that the *compelling influence of the interrogation finally forced him* to do so. It is inconsistent with any notion of a voluntary relinquishment of the privilege. Moreover, any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege. The requirement of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privilege and not simply a preliminary ritual to existing methods of interrogation.
>
> *Miranda*, *supra*, at 476 (emphasis added).

Despite criticizing the trends in police interrogation tactics, the Court did not make any holdings for or against how police are able to conduct interviews apart from obviously egregious or inhumane conduct or superficial promises of leniency to induce admissions.

Miranda v. Arizona, 384 U.S. 436 (1966). The Court published a lengthy explanation about how then-current trends in interrogation tactics and the environment psychologically impact an individual's decision making. *Id* at 445-456. Nonetheless, the focus was on an individual being advised of his rights and advised on his ability to invoke or waive his rights prior to questioning. *Id*. With respect to incommunicado incarceration, this refers to lengthy detainments, long periods of isolation, refusal to permit individuals to contact an attorney or a family member until he is willing to make a statement, the Court found that this strongly supports a finding the individual did not validly waive his rights. *Id*. The Court expounded little on its meaning of "threats, trickery, or cajoling." *Id*.

Regarding this portion of *Miranda*, the Pennsylvania Supreme Court has explained that while recognizing the legitimate responsibility police have in conducting investigations, including interrogations:

> criminal suspects have a constitutional right to make up their own minds as to whether they want the *Miranda* protections. Promises of benefits or special considerations, however benign in intent, comprise the sort of persuasion and trickery which easily can mislead suspects into giving confessions. The process of rendering *Miranda* warnings should proceed freely without any intruding frustration by the police. Only in that fashion can we trust the validity of subsequent admissions, for if the initial employment of *Miranda* is exploited illegally, succeeding inculpatory declarations are compromised. Misleading statements and promises by the police choke off the legal process at the very moment which *Miranda* was designed to protect.
>
> *Commonwealth v. Gibbs*, 520 Pa. 151, 155 (1989).

In *Gibbs*, the Pennsylvania Supreme Court ultimately held that "authorities are not permitted to employ inducements which impair in any way a suspect's right to his own unfettered evaluation of the need for legal counsel." *Supra*, 520 Pa. 151, 155 (1989)(the interrogating officer told the suspect that he would advise the district attorney of the individual's cooperation). The pronouncement by the *Gibbs* Court applied to the right to counsel, was also intended to "extend to all of the rights elucidated in *Miranda* and

subsequent derivative case law, including the right to remain silent." *Commonwealth v. Morgan*, 606 A.2d 467, 469 (Pa. Super. 1992). The Court in *Morgan* concluded by stating that:

> It is the inducement which leads to overcoming resistance to police procedures with which *Gibbs* is concerned and not the specific right waived; nor is it dispositive whether the inducement occurred before or after a *Miranda* warning. *Gibbs* speaks to the fact that police cannot deliver what they promise in the inducement and, therefore, waiver of a right based upon a false promise cannot be fairly accepted as a knowing and voluntary waiver.

Commonwealth v. Morgan, 606 A.2d 467, 469 (Pa. Super. 1992).

The above-cases provide examples of what the Court is evaluating in determining whether an individual was the subject of threats, trickery, or cajoling in the process of a custodial interrogation. However, the analysis for the voluntariness of a statement ultimately turns to the totality of the circumstances. *See*: *Commonwealth v. Templin*, 568 Pa. 306 (2002).

Thus, within the limited scope of Defendant's claims in this subsection, the Court must evaluate whether the Defendant was the subject of "threats, trickery, or cajoling" as set forth in *Miranda* and derivative case law. Defendant has not argued any case law except the limited portion of *Miranda* involving this issue. With respect to Defendant's first claim, there is not an exhaustive list of examples of conduct by police that constitutes threats, trickery, or cajoling, it would be unreasonable to find that an officer's tone of voice invalidates a waiver of *Miranda* after an otherwise completely compliant communication of the warnings. Referring back to *Duckworth*, the inquiry is simply whether the warnings reasonably conveyed to a suspect his rights as required by *Miranda*. In addition, reviewing courts evaluate whether the suspect—of his own volition—was able to evaluate his need for the *Miranda* protections. There is nothing—as of yet—in the derivative case law that precludes a

statement due to the tone of voice used for the delivery of the *Miranda* warnings. Detective Segura read the *Miranda* warnings in a clear and audible tone of voice. Detective Segura advised Defendant he was going to read Defendant his Miranda Rights. Detective Segura asked Defendant if he knew what the Rights are, and Defendant nodded his head affirming his knowledge of the Rights. The answer to the inquiry here is that the record establishes that the delivery of the *Miranda* warnings was valid and free of "intruding frustration by police" so that the Defendant was provided unfettered time to evaluate his need for the *Miranda* protections.

With respect to Defendant's second claim that all communication from Detective Segura impressed upon Defendant that he did not have a choice whether he participated or not, the claim is legally unfounded and not supported by the record. The record demonstrates that Defendant surrendered himself and was apprehended immediately after the incident. Defendant was placed in the back of a police vehicle. Despite not being handcuffed, he was not free to leave. At the time prior to the reading of his *Miranda* warnings at the police station, Defendant was also not free to leave. Defendant was provided the opportunity to exercise his rights at any time during the interview. Defendant was appropriately advised of his rights under *Miranda*. Subsequent to the delivery of the *Miranda* warnings Defendant's choice boiled down to exercising his rights under the Fifth Amendment, sitting in silence, or participating in an interview. Ultimately, an affirmative act or omission by law enforcement is required to satisfy the prohibition against trickery, threats, or cajoling. Defendant's arguments are based on his perception of the circumstances that he would be met with leniency in exchange for his statement. The record supports the conclusion that Detective Segura made no untoward statements or promises such that the statement would be rendered inadmissible.

d. The *Miranda* waiver was voluntary and the statements made by the Defendant were voluntary as required under the standard that waivers be made knowingly and intelligently.

Defendant asserted that he did not validly waive his rights under *Miranda* on August 17, 2023. (Defendant's Brief at 14). Defendant argued that a valid waiver "must be made with a full awareness both of the nature of the right to be abandoned and consequences of the decision to abandon it." (Id quoting *Edwards v. Arizona*, 451 U.S. 477, 482-84 (1981). Defendant further argued that a signed waiver is not wholly indicative of an individual knowingly and intelligently waiving his rights for a custodial interrogation. (Defendant's Brief at 15 citing *North Carolina v. Butler*, 441 U.S. 369, 373 (1979). Defendant argued the record establishes that his waiver was invalid and undermined by police conduct that followed. (Defendant's Brief at 16). More specifically, Defendant takes issue with the commentary Detective Segura made after the reading of the *Miranda* warnings and the commentary before the reading of the *Miranda* warnings. (Id at 16-17). Defendant was never told he was free to leave, that he did not have to speak, and he was isolated in a holding cell for 90 minutes in the middle of the interview. (Defendant's Brief at 21). Thus, Defendant asserted that under the totality of the circumstances, the statement from August 17, 2023, must be suppressed. (Id at 21).

The Commonwealth argued that a court must consider whether the statement was voluntary and not the result of police pressure and whether the waiver was knowing and intelligent, as in, the suspect knew what rights he was abandoning and the consequences of such a decision. (Commonwealth's Brief at 4 citing *Commonwealth v. Patterson*, 91 A.3d 55, 76 (Pa. 2014)). The Commonwealth supported its argument with *Commonwealth v. Nester*, 709 A.2d 879, 882 (Pa. 1998), wherein the court determined that statements made after waiver are historically only deemed involuntary when the interrogation is so manipulative or

coercive that it deprives the Defendant of his ability to make a free and unconstrained decision to confess. (Commonwealth's Brief at 5). It is the Commonwealth's position that the Defendant was a sophisticated business man and CEO of a large company, there is no evidence or allegation that the law enforcement officials engaged in physical or psychological pressure to elicit the statements or promises of leniency. (Id). Regarding Detective Segura's statements before provided Defendant with context regarding the line of questioning and reaffirmed Defendant's rights and freedom to invoke his rights at any time during questioning. (Id citing *Commonwealth v. Dixon*, 379 A.2d 553 (Pa. 1977). After the delivery of the *Miranda* warnings, the Commonwealth argued that comments do not render the waiver invalid because once a valid *Miranda* warning has been provided interrogating officers are free to start the interrogation. (Id at 6 citing *Berghuis v. Thompkins*, 560 U.S. 370, 387-88 (2010)).

Based on the evidence contained in the record and the arguments made by counsel, the Court finds Defendant's assertion that he did not knowingly and intelligently waive his *Miranda* warnings unconvincing.

Pennsylvania courts have consistently held that an accused has the right to relinquish his constitutional right to remain silent so long as the waiver of his right is made knowingly, intelligently, and voluntarily. *Commonwealth v. D'Amato*, 514 Pa. 471, 481 (1987) citing *Johnson v. Zerbst*, 304 U.S. 458 (1938). "A confession given as a result of custodial interrogation is admissible only if the accused's *Miranda* rights, including the right to remain silent and the right to counsel, have been explained to him and he has knowingly, voluntarily, and intelligently waived those rights." *Commonwealth v. D'Amato*, 514 Pa. 471, 481 (1987); *See also*: *Commonwealth v. Barry*, 550 Pa. 109, 113-15 (1982) and *Commonwealth v. Williams*, 504 Pa. 511 (1984).

The Commonwealth bears the burden of establishing that a defendant knowingly and voluntarily waived his *Miranda* rights. *Commonwealth v. Lukach*, 163 A.3d 1003, 1010 (Pa. Super. 2017)(citing *Commonwealth v. Cohen*, 53 A.3d 882, 885-86 (Pa. Super. 2012)). A defendant is required to explicitly waive his *Miranda* rights by making an outward manifestation of that waiver. *Id*. "The determination of whether a waiver is valid depends on: (1) whether the waiver was voluntary, in the sense that defendant's choice was not the end result of governmental 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 right being abandoned and the consequence of that choice." *Commonwealth v. Lukach*, 163 A.3d 1003, 1011 (Pa. Super. 2017).

A reviewing court evaluates the totality of circumstances in determining the voluntariness of a confession and the validity of a waiver of the right to remain silent. *Commonwealth v. D'Amato*, 514 Pa. 471, 481 (1987)(internal citations omitted). Under the totality of the circumstances test surrounding a confession, courts evaluate innumerable factors including the duration and methods of interrogation, the conditions of detention, the manifest attitude of police toward the accused, the accused's physical and psychological state, *Commonwealth v. D'Amato*, 514 Pa. 471, 481 (1987), and "all other conditions present which may serve to drain one's powers of resistance to suggestion and undermine his self-determination." *Commonwealth v. Crosby*, 464 Pa. 337 (1975). In the event the totality of the circumstances reveals an uncoerced choice and the requisite level of comprehension, a court may properly find that *Miranda* rights have been waived. *Commonwealth v. Lukach*, 163 A.3d 1003, 1011 (Pa. Super. 2017).

Since having found Defendant did receive a valid *Miranda* warning on August 17, 2023, the Court turns to the totality of the circumstances to determine whether Defendant's

waiver was made knowingly, intelligently, and voluntarily. Preliminarily, Defendant argued that Detective Segura's comments prior to the reading of the *Miranda* warnings invalidates the waiver. The Commonwealth, citing to *Commonwealth v. Dixon*, 379 A.2d 553 (Pa. 1977), countered that the Supreme Court of Pennsylvania has actually held that a waiver may be held involuntary if a suspect is not first advised of the line of questioning. (Commonwealth's Brief at 5). Thus, as applicable here, Detective Segura was fulfilling his obligation not to blindside Defendant with a shocking line of questioning. (Id). On this point, the Court agrees with the Commonwealth, in that, the brief introduction by Detective Segura before the *Miranda* warning does not render the waiver invalid. Rather the brief introduction to the anticipated line of questioning weighs in favor of a finding for a valid waiver under the totality of the circumstances. *E.g.*, *Commonwealth v. Templin*, 568 Pa. 306, 318-19 (2002).

Defendant also argued that Detective Segura's comments immediately following the *Miranda* warning were impermissible under *Miranda* and its progeny. (Defendant's Brief at 19). Defendant asserted that Detective Segura's one-sided comments implied that Defendant did not have a choice and would sign the waiver form. (Defendant's Brief at 16). Additionally, Defendant argued that Detective Segura's comments impressed on the Defendant that speaking with law enforcement would help his circumstances and make a difference in the investigation. (Defendant's Brief at 19). Defendant further argued that a signed waiver form in and of itself is not determinative of whether a Defendant waived his rights under *Miranda*. (Id at 15 citing *North Carolina v. Butler*, 441 U.S. 369, 373 (1979)).

The Commonwealth argued, citing to *Berghuis v. Thompkins*, 560 U.S. 370, 387-88 (2010) that police are free to start the interrogation prior to any written waiver. (Commonwealth's Brief at 6). Rather, the Commonwealth argued, the comments made by Detective Segura prior to Defendant signing the waiver served to reaffirm the rights

Defendant was waiving if he agreed to speak to Detective Segura and further served to reiterate that Defendant was free to invoke his rights at any time during questioning. (Id). As evidenced by the interview, Detective Segura stated "if there's something that I ask you and you don't want to answer it, you do not have to answer that…if there is something you don't want to answer it you don't have to." (Commonwealth's Brief at 6-7, quoting Transcript of Video/Audio Interview, 08/17/2023 at 24). There is no requirement, beyond the warning, that interrogators must further explain the rights a suspect is relinquishing as Defendant asserts. At no point did Detective Segura threaten, trick, or make a promise of leniency to Defendant in order to obtain a confession. *Supra*, Section II (d).

A final point of contention that Defendant raised was the condition of his interview and the periods of isolation to which Defendant was subjected on August 17, 2023. (Defendant's Brief at 20). Defendant asserted that he was held isolated for more than three hours in the police station, the presence of Detective Segura in plain clothes with a holstered firearm contributed to a coercive/oppressive environment, and Defendant was placed in a holding cell for ninety (90) minutes. (Id at 20-21). Defendant also raised that he was never told he was free to leave nor were the *Miranda* warnings reissued after the ninety (90) minute break. (Id).

The Commonwealth asserted that this argument has no merit because the record reveals that police were overly kind to Defendant on August 17, 2023, and the issue is not whether the Defendant was in custody—because he was, both parties have submitted that is not at issue—but whether the interview was so manipulative or coercive that it deprived the Defendant of his ability to make a free decision to make a statement. (Commonwealth's Brief at 7). The Commonwealth submitted that the interview and conditions thereof were completely contrary to the narrative posited by Defendant. (Id). Specifically, the

Commonwealth noted that no second officer was present in the room so as not to "double team" the Defendant, Defendant was never handcuffed, he was offered lengthy breaks and sustenance, the interview started in the late morning and concluded by the early afternoon, and Defendant had access to his phone for the entirety of the interview. (Id at 7-8). Additionally, the tone of the interview by Detective Segura remained friendly and sympathetic. (Id).

In consideration of the evidence admitted to the record and the arguments by counsel, the Court finds that the circumstances surrounding the custodial interview on August 17, 2023, support a conclusion that the statement was voluntary. The interview was conducted by a single detective, and the interview did not last an excessive period of time. Including the ninety (90) minute break, the interview on August 17, 2023, lasted three (3) hours and nineteen (19) minutes. There was no physical coercion or intimidation: Defendant was not handcuffed or arrested, either during the ride to the Lycoming Regional Police Department nor during the interview. To the contrary, Defendant has asserted consistently in his Motion and brief that Detective Segura was overly polite. *See*: *Commonwealth v. Edmiston*, 535 Pa. 210, 228 (1993)(comfortable surroundings and non-coercive atmosphere, absence of force or compulsion, absence of handcuffing or shackling, and polite demeanor of police weigh in favor of finding of voluntariness)(declined to follow on other grounds by *Commonwealth v. Freeman*, 573 Pa. 532 (2003)). Defendant has not submitted that he was under the influence of drugs or alcohol. It is clear that the Defendant can read, write, and understand English. Also, as noted by the Commonwealth, the subject of the interview was explained to Defendant by Detective Segura before the *Miranda* warnings were provided. Detective Segura's statements after reading the *Miranda* warnings did not serve to trick, threaten, or cajole the Defendant to provide a statement. Rather, the statements served to reinforce the

rights Defendant would be relinquishing if he made a statement and that he was able to invoke his right to remain silent or to have counsel present at any time during the interview. To that point, Defendant had access to his cellular telephone for the entirety of the interview, [even in the holding cell], and could have made a call to his attorney or family of his own volition. Regarding Defendant's claim that he was not re-*Mirandized* after the 90-minute break, no such requirement exists. *See*: *Berghuis v. Thompkins*, 560 U.S. 370, 386 (2010). The holding cell in which Defendant was placed has bars to the cell and is not indicative of solitary confinement, such that "incommunicado interrogation" implications may be triggered. Contrary to Defendant's assertion, he was not subjected to a lengthy period of interrogation before making a statement nor was he confined for a long period of time before being interrogated. Defendant was immediately apprehended at the scene, delivered to the police station, and taken to the interview room. Within the first ten minutes of arriving at the police station's interview room, Defendant was read his *Miranda* warnings. "The *Miranda* rule and its requirements are met if a suspect receives adequate warnings, understands them, and has an opportunity to invoke the rights before giving any answers or admissions." *Berghuis v. Thompkins*, 560 U.S. 370, 387-88 (2010). Note that, the Court does not require the officer not to ask any questions—just that a suspect has an opportunity to invoke his rights which will be honored before providing any answers or admissions. Moreover, "[a]ny waiver, express or implied, may be contradicted by an invocation at any time…[i]f the right to counsel or the right to remain silent is invoked at any point during questioning, further interrogation must cease." *Id*. In the instant case, Defendant knowingly and voluntarily waived his right to remain silent. In fact, the impression is not that Detective Segura's statements and questions implied Defendant must answer, but rather, Defendant felt compelled to unburden himself by making the statement.

"Where the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent." *Berghuis v. Thompkins*, 560 U.S. 370, 384 (2010). Thus, the totality of the circumstances reveals an uncoerced choice by the Defendant and a requisite level of comprehension, for the Court to find that Defendant waived his *Miranda* rights in a knowing and voluntary manner such that he made a free and unconstrained decision—free of physical or psychological pressure—to confess.

f. Factual Background for the Statements made by Defendant on August 25, 2023

Defendant asserted that the statements obtained from him by law enforcement on August 25, 2023, warrant suppression as fruits of the initial, illegal interrogation on August 17, 2023, and/or as obtained in violation of his Sixth Amendment Rights under the United States Constitution and as made applicable to the states through the Fourteenth Amendment. (Defendant's Brief at 25). Thus, Defendant contended that his statements from August 25, 2023, must be suppressed as a violation of his Sixth Amendment Right because the police contacted him despite knowing that he had an attorney and that the attorney did not want Defendant to talk to police, but the police proceeded with an interview despite that knowledge. (Id). Additionally, Defendant alleged that the statement was obtained in violation of the Rules of Professional Conduct. (Id).

Following the August 17, 2023, interview, there was a decision to conduct a second interview with Defendant. (Omnibus Hearing Transcript, 09/12/25 at 33). Detective Segura testified that a determination was made that Detective Sorage would enter the investigation to assist Detective Segura in a second interview given Detective Sorage's experience in homicide investigations. (Id 09/12/25 at 34-35). At the time it was decided a second interview would occur, there was no charging decision. (Id 07/16/25 at 47).

On August 25, 2023, Detective Segura called Defendant in for an additional interview at the Lycoming Regional Police Department. (Omnibus Hearing Transcript, 09/12/2025 at 38-39). Detective Segura spoke directly with Defendant and requested he appear for a second interview. (Id). Following the call with Defendant, Detective Segura was contacted by James Clancy. (Id). Mr. Clancy introduced himself as counsel for Cable Services, LLC, and counsel for Defendant. (Id). Mr. Clancy advised Detective Segura that he directed Defendant not to present for a second interview with law enforcement agents. (Id at 39). Additionally, Detective Sorage was aware of the phone call from Attorney Clancy to Detective Segura and the contents of the conversation. (Omnibus Hearing Transcript, 07/16/2025 at 48 and 54). Nonetheless, Defendant presented to the Lycoming Regional Police Department, without an attorney, on August 25, 2023. Defendant arrived at the Lycoming Regional Police Department in his personal vehicle which was driven by his wife who waited in the vehicle during the interview. (Id at 35). Defendant was permitted to maintain possession of his phone during the entirety of the August 25, 2023 interview. (Id at 36). Defendant was not read in his *Miranda* warnings prior to the second interview. (Id at 52). Also, Defendant was expressly told by Detective Segura that he would not be read his *Mirada* warnings and that Defendant was free to leave at any time. (Id). Detective Sorage provided a truncated version of *Miranda* warnings to remind Defendant that did not have to speak to the detectives and he was free to leave. (Id). Detective Sorage also told Defendant that he did not have speak at all if he wanted his attorney present. (Id at 53). Nonetheless, Defendant engaged in a several hours-long conversation with Detectives Segura and Sorage. (See Commonwealth Exhibit No. 7, Interview with Detectives Segura and Sorage, August 25, 2023).

Following the interview, Detective Sorage and Detective Segura accompanied Defendant to Cable Services and to his residence on Tallman Hollow Road. (Omnibus

Hearing Transcript, 07/16/25 at 35 and 60). Prior to both stops, Defendant was given an opportunity to speak with his attorney. (Id). Defendant traveled with his wife in their private vehicle and the detectives followed in a separate vehicle. (Id). During the "evidence collection expedition" (id), Defendant was not restrained nor was his vehicle ever blocked in to prevent Defendant from leaving or traveling freely. The "evidence collection expedition" occurred in order for the detectives to collect ammunition, firearms, and magazine clips. (Id). Defendant remained at his private residence following the evidence collection expedition. (Id at 36).

g. Defendant's contention that the August 25, 2023, statement requires suppression as fruit of the initial, illegal interview conducted on August 17, 2023

With respect to Defendant's first contention that the August 25, 2023, statement requires suppression as fruits of the illegal interrogation on August 17, 2023, the Court denies the motion on this basis. The Court has determined that the interrogation that occurred on August 17, 2023, was not in violation of the Defendant's rights.

h. Defendant's contention that the statement was obtained in violation of his Fifth and Sixth Amendment Right to counsel

Defendant contended that the interview conducted on August 25, 2023, was in violation of the Defendant's constitutional right to counsel under the Sixth Amendment because police contacted him despite knowing he had an attorney and over the attorney's advisement to Defendant not to speak to law enforcement officers. The Commonwealth contended that the Defendant is not entitled to relief and the statement should not be suppressed because the Defendant was not subject to a custodial interrogation on August 25, 2023, and because charges were not yet filed against the Defendant. Thus, the interview was not conducted in violation of the Defendant's Sixth Amendment right to counsel.

The Sixth Amendment right to counsel does not attach until judicial proceedings have

been initiated, meaning that charges have been filed, by the government. *Commonwealth v. Bland*, 115 A.3d 854, 855 (Pa. 2015). The Fifth Amendment right to counsel attaches in the context of a custodial interrogation. *Id* at 863.

The record establishes that charges were not filed against Defendant on or before August 25, 2023. Accordingly, Defendant's arguments based on the Sixth Amendment have no bearing in the Court's determination with respect to this issue. Accordingly, the Court must only determine whether the Defendant had a Fifth Amendment right to counsel for the interview on August 25, 2023.

The Fifth Amendment right to counsel only attaches in the context of a custodial interrogation. *Commonwealth v. Bland*, 115 A.3d 854, 863 (Pa. 2015). A custodial interaction occurs when an individual is physically deprived of his freedom in any significant way or placed in a situation in which he reasonably believes he is not free to leave or his movement is restricted by the questioning. *Interest of J.N.W.*, 197 A.3d 274, 280 (2018). To determine a defendant's reasonable belief, a reviewing court must evaluate the totality of the circumstances including, the reason for the detention, the duration, location, any transferring of a defendant against his will, to where, and why, the use of any restraints, a display, threat, or use of force, and the methods of investigation invoked to confirm or dispel suspicions. *Id*. Law enforcement detentions only become custodial when the conditions or duration or both become so coercive as to constitute the functional equivalent of a formal arrest under the totality of the circumstances. *Commonwealth v. Busch*, 713 A.2d 97, 100 (1998). A defendant's psychological state and the restrictions placed on him, even in his own home, are factors considered by a court in determining whether a defendant is in custody. *Interest of J.N.W.*, 197 A.3d 274, 280 (2018). Regarding matters where a defendant is the focus of the investigation, the court considers the factor, but such a scenario does not require, per se,

Miranda warnings. *Id* at 99 citing *Commonwealth v. Peters*, 642 A.2d 1126, 1130 (Pa. Super. 1994). Ultimately, unless told he has a right to decline, an individual is unlikely to perceive a request from a police officer to talk as a choice. *Id*. The initial determination of custody relies on the "objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury v. California*, 511 U.S. 318, 323 (1994).

Defendant relies on *Commonwealth v. Hilliard*, 370 A.2d 322 (Pa. 1977), however, the defendant in *Hilliard* was the subject of a custodial interrogation. Thus, this case is not applicable to Defendant's argument. Additionally, Defendant relies on *United States v. Gouveia*, 467 U.S. 682 (1972) and *Maine v. Moulton*, 474 U.S. 159 (1982), both of which assess violations of an individual's Sixth Amendment right to counsel after charges have been formally lodged.

Under the Fifth Amendment, courts have consistently held that the test for voluntariness of a statement is consideration of the totality of the circumstances surrounding the interview. Inculpatory statements made by an interviewee who is not subject to a custodial interrogation are admissible so long as the statements were voluntary. Here, Defendant voluntarily presented to the Lycoming County Regional Police Department. He was neither handcuffed nor locked in the interview room. Defendant was advised that he was free to leave at any time and free not to answer questions he did not wish to answer. Defendant stated that he understood he was not in custody. (Commonwealth Exhibit No. 8 at 8). The detectives offered for Defendant to contact Attorney Clancy several times throughout the interview and again before conducting the evidence collection expedition. Defendant responded by saying "I'd rather not deal with attorneys." (Commonwealth Exhibit No. 8 at 88). Attorney Clancy was aware that Defendant had spoken with the detectives and was

asked to present for a second interview. Despite being advised by an attorney not to present for the interview, Defendant arrived at the police station in his own vehicle. At the conclusion of the evidence collection expedition, to which Defendant drove his vehicle, the detectives left Defendant's house and he remained on his property. The Court notes that the August 25, 2023, interview was lengthy, but the tone and demeanor of the participants is not indicative of a manipulative, restrictive, or threatening environment such that Defendant reasonably could have felt coerced into speaking with the detectives. Further, the Court's review of the recorded interview reveals nothing unusual about Defendant's physical or psychological state that would have impacted his decision to speak with Detective Sorage and Detective Segura. Defendant is correct that he was not expressly told that he was the sole suspect in a homicide investigation; however, Defendant was aware that there were no other suspects because he turned himself over to law enforcement immediately following the incident. The Court does not find that such an omission by the detectives so taints the statements as to render suppression warranted under the totality of the circumstances.

Accordingly, under the totality of the circumstances, the Court finds that Defendant was not subject to a custodial interrogation such that *Miranda* Warnings would be indicated and a waiver of his right to counsel required before he made the statements.

i. Defendant's contention that the August 25, 2023, statement was obtained in violation of the Rules of Professional Conduct when police were prompted to conduct a second interview by prosecutors

Defendant asserted that the prosecution violated the Rules of Professional Conduct by prompting police to request a second interview with Defendant. Defendant relies on *United States v. Koerber*, 966 F.Supp. 2d 1207 (D. Utah 2013), wherein suppression was granted based on the finding that the prosecutor and investigators violated Utah's Rules of Professional Conduct no contact rule when the prosecutor contacted and interviewed the

defendant knowing him to be represented by counsel and without first obtaining counsel's permission. (Defendant's Brief at 25-26).

The Commonwealth argued that the rule on which Defendant relies is only applicable to interactions between the prosecutor and the "accused" in a "criminal case." (Commonwealth's Brief at 13). The Commonwealth argued that there was no violation of the rule because charges were not filed until August 31, 2023, and thus a criminal case did not exist and the Defendant was not the accused at the time of the second interview. (Id). The Commonwealth does not dispute that the detectives were in contact with the District Attorney's Office prior to the second interview, rather that, the contact was not in violation of the rules of professional conduct.

As above, it was determined that Defendant was not an accused at the time of the conversation between Detective Segura and Defendant such that it was barred under the Rules of Professional Conduct, and therefore a violation warranting suppression. Defendant was not formally charged until August 31, 2023, and all communication between Detective Segura, Defendant, and Detective Sorage occurred prior to that date, as with any conversations that may have occurred between the detectives. Accordingly, the Court does not find that the prosecution violated the rules of professional conduct on and before August 25, 2023, while engaging in conversation between Defendant and the detectives.

III. Defendant's Motion to Suppress Physical Evidence

In his Motion, Defendant requests the suppression of the following physical evidence: (1) evidence obtained from the expedition that occurred on August 25, 2023, and (2) the cellular telephone ping that was conducted on Defendant's phone to determine his location at the time law enforcement intended to effectuate the arrest. Defendant asserts that the physical evidence warrants suppression because the evidence was obtained in violation of his federal

constitutional rights under the Fourth and Fourteenth Amendments and Article I, Section 8 of the Pennsylvania Constitution. Defendant did not develop his argument further in his brief; thus, the Court relies on the arguments set forth by Defendant in his Omnibus Motion and the record in its determination regarding the physical evidence.

Defendant argued that any purported consent by him that was obtained was not knowing, intelligent, and voluntary. Additionally, Defendant argued that a warrant was necessary to conduct the ping of Defendant's cellular telephone to locate him at the time the officers intended to effectuate the arrest. Defendant argued that there is no exception to the warrant requirement that could justify this warrantless search and seizure to justify the violation of Defendant's privacy interest in his location.

In its brief, the Commonwealth argued the Motion to Suppress Physical Evidence be deemed waived because the Defendant did not develop any argument to justify suppression. The Commonwealth further argued that, to the extent the motion is not deemed waived, the testimony and evidence established that the Defendant surrendered the physical evidence voluntarily during a time when he was not in police custody and after being provided the opportunity to consult with counsel. Thus, the Commonwealth requested Defendant's motion be denied as the items were not seized in violation of the Defendant's rights.

At the conclusion of the Omnibus Hearing on September 12, 2025, the parties reviewed the issues they wished to argue in briefs. Counsel for the Defendant stated that there are two primary issues to brief—the suppression issues regarding the statements and the habeas. (Id 09/12/2025 at 57-58). Because the Court did not hear oral argument, the Court specifically requested the parties argue the issue of suppression of physical evidence in their briefs. (Id at 58). Accordingly, the Court deems the issue of suppression of physical evidence withdrawn.

IV. Defendant's remaining motions included in his Omnibus were discussed by the parties as being more appropriately raised at the time closer to trial if resolution the requests is not satisfied in the interim.

At the conclusion of the Omnibus hearing on September 12, 2025, counsel for Defendant indicated that some of the issues may not be pursued further based on the testimony that was elicited at the Omnibus hearings. (ID 09/12/2025 at 59). In response, the Court directed counsel to specify the issues that would be pursued by making argument in order for the Commonwealth to respond to the arguments. (Id). With respect to the issues regarding discovery, enhanced security measures, in court identification, jury selection, and any Rule 404(b) evidence the Commonwealth intends to introduce at trial, Counsel indicated that the issues may be more properly resolved by way of a Motion in Limine. (Id at 59-61). The Commonwealth did not object. Accordingly, the Motions demarcated as issues ten through twelve raised in the Omnibus Motion are hereby denied without prejudice.

V. Defendant's Motion to Reserve Right

Defendant's Motion to Reserve Right to file additional motions as discovery becomes available is granted.

Accordingly, the Court enters the following Order:

ORDER

AND NOW, this 19th day of June, 2026, pursuant to the foregoing, Defendant's Omnibus Motion is disposed of as follows:

I. Defendant's Petition for Writ of Habeas Corpus is **denied;**

II. Defendant's Motion for Suppression of Statements is **denied in whole** with respect to the statements made on August 17, 2023, and August 25, 2023;

III. Defendant's Motion for Suppression of Physical evidence is **dismissed as withdrawn;**

IV. Defendant's Motion to Dismiss Information for the Commonwealth's Withholding and/or Destruction of Brady Information is **denied without prejudice for refiling in a Motion in Limine;**

V. Defendant's Motion to Exclude Video and Photographs of the Crime Scene is **denied without prejudice for refiling in a Motion in Limine;**

VI. Defendant's Motion to Preclude Enhanced Security Measures Outside of the Courtroom is **denied without prejudice for refiling in a Motion in Limine;**

VII. Defendant's Motion for Individual Voir Dire is **denied without prejudice for refiling in a Motion in Limine;**

VIII. Defendant's Motion to Suppress In Court Identification is **denied without prejudice for refiling in a Motion in Limine;**

IX. Defendant's Motion to Compel Disclosure of and Substance of Promises of Immunity, Leniency, or Preferential Treatment and Criminal History is **denied without prejudice for refiling in a Motion in Limine;**

X. Defendant's Motion for Disclosure of Other Crimes, Wrongs, or Acts Pursuant to Pa. R. Evid. Rule 404(b) is **denied without prejudice for refiling in a Motion in Limine;**

XI. Defendant's Motion for Request of Timely Notice of Any Expert Testimony is **denied without prejudice for refiling in a Motion in Limine;**

XII. Defendant's Motion for Production of Discovery is **denied without prejudice for refiling in a Motion in Limine;** and

XIII. Defendant's Motion to Reserve Right is **granted.**

By the Court,

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Ryan M. Tira, Judge

RMT/asw

CC: CA

Martin Wade, Esquire—*First Assistant District Attorney, Lycoming County District Attorney's Office*

Michael J. Rudinski, Esquire

Edward J. Rymsza, Esquire

Gary Weber, Esquire—*Lycoming Reporter*