COMMONWEALTH OF KENTUCKY
MARSHALL CIRCUIT COURT
CASE NO. 18-CR-00030

FILED 8/01/19
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: [signature] D.C.

COMMONWEALTH OF KENTUCKY **PLAINTIFF**

V.

GABRIEL PARKER **DEFENDANT**

COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS STATEMENTS

Comes now the Commonwealth of Kentucky, by counsel, and files the following response to Defendant's motion.

INTRODUCTION

On January 23, 2019, at approximately 7:57 a.m., Gabriel Ross Parker fired a handgun at several classmates in the Marshall County High School commons area. Two students were killed and fourteen other students were wounded. These actions created a situation of mass chaos, and resulted in multiple responses from law enforcement officers, school officials, and first responders throughout the area.

Shortly after this event, after Parker attempted to blend in with the student body, he was identified and taken into custody. He was questioned

by several law enforcement officers. These included Marshall County Sheriff's deputies, Kentucky State Police detectives, and an agent from the Federal Bureau of Investigation. In questioning Parker, the Commonwealth, through its agents, did not violate defendant's constitutional rights under the 5th Amendment and the 6th Amendment to the United States Constitution, and did not violate the provisions of the Kentucky Juvenile Code regarding parental notification. This will be made clear by the sworn testimony that the Commonwealth will present at the hearing on Defendant's motion to suppress.

RESPONSE TO DEFENDANT'S RECITATION OF "FACTS"

The Commonwealth does not agree with the purported "facts" as set out in Parker's motion, as many of the representations are either inaccurate or taken out of context. The Commonwealth would note that none of the "facts" have been established before the court, and it is not the Commonwealth's intent to submit a counterstatement of "facts", as there is no sworn testimony to support any assertion of facts at this point. The Court will be the finder of fact as to what happened that morning, and the Commonwealth will establish through sworn testimony of several witnesses what actually happened that morning.

In order to clarify both the factual scenario and to address the issues of law, the Commonwealth will comment briefly on what it believes are erroneous statements from defendant's motion, or matters taken out of context. Defendant's "facts" do not consider the actions of law enforcement and appear to view the situation in a vacuum. As this matter is submitted to the court, the court will be able to see that law enforcement officers acted reasonably and in accordance with the law, and did everything that it could possibly do to protect both the defendant and the defendant's rights.

The Commonwealth will comment on defendant's motion in an orderly manner. The Commonwealth will also clarify certain areas which it believes are unclear.

Regarding where defendant gleaned its facts, the Commonwealth would note that defendant's sources are incomplete, and are not factually accurate in some instances. What defendant has apparently done is to interview several witnesses whose testimony will not reflect what defendant represents. In addition, defendant apparently has chosen to try to represent what the Commonwealth will say. In that regard, defendant's statement is incomplete in that it does not include anything that the law

enforcement officers will say at the hearing, and it attempts to sensationalize the actions of law enforcement officers.

The Commonwealth will not disagree with the second and third paragraphs of defendant's "facts", except to say that the Court will have the benefit of hearing from MCSO deputy Bret Edwards, and will not have to rely on defendant's summary of events.

However, it should be noted that before Edwards transported Parker to the Marshall County Sheriff's office, he was apprehended by Marshall County Sheriff Kevin Byars. During that short interval, Parker admitted to the shooting. Defendant's motion is a motion to suppress ALL statements made to law enforcement officers, and as such, this statement, which is referenced to in discovery provided to defendant, would appear to fall within the province of this motion.

Turning to the main focus of defendant's motion, that being the interview of Parker, the Commonwealth believes that defense counsel's attempts to characterize the interview as being coercive is not consistent with the reality of the situation. The proof about what happened is memorialized in the video of the interview.

Regarding the first full paragraph on page three, leading into page 4, of defendant's motion, the video will speak for itself. It is the next paragraph that misrepresents what was going on. While the interview was going on, other law enforcement officers were attempting to comply with Kentucky's parental notification statute. The Commonwealth will offer testimony at the hearing to establish what its officers were doing, why they were doing what they were doing, and how they were complying with the law. This will allow the court to examine the situation outside the vacuum that defense counsel seeks to create.

Parsing through the "facts" presented in defendant's motion, the Commonwealth would simply note that the interview will be seen by the court, and it speaks for itself. As for the claims that "the officers" did not attempt to comply with the parental notification requirements of KRS Chapter 610, the court will hear testimony from several witnesses about what was actually happening.

Beginning at the middle of page 5 of defendant's motion and continuing through page 8, the court should disregard this entire section, as it is not supported by the testimony that the court will hear at the hearing. The Commonwealth will establish a credible and reliable timeline of what

occurred from the beginning of the interview until such time as the interview was completed. Rather than speculate or exaggerate the events by calling them "facts", the Commonwealth will present several witnesses, including individuals who were with Mary Garrison during this time. The Commonwealth believes that the representations made by defendant about what these witnesses will say is not accurate in large part, and certainly do not establish an accurate time frame for what was occurring.

The Commonwealth also submits that by introducing DPA supervising attorney Cheri Riedel and DPA staff attorney Bethany Wilcutt into the fact scenario, defendant has waived any attorney-client privilege between defendant, defendant's mother, and these attorneys, particularly attorney Wilcutt. Nonetheless, the Commonwealth will offer testimony which is greatly at odds with defendant's representations about the roles of the attorneys mentioned above.

STATEMENT OF LAW AND ARGUMENT

I. Defendant's statements should be admitted at the trial of this matter, as defendant was properly advised of his Fifth Amendment protection against self-incrimination.

The Commonwealth agrees that juveniles are entitled to, and receive safeguards under the law. But case law in the Commonwealth of Kentucky considers numerous rulings of the United States Supreme Court, and the cases cited by defendant stand for general principles with which the Commonwealth will not disagree.

The Commonwealth also recognizes the right to counsel of a juvenile, the length of time a child can be held in custody, and parental notification requirements set out in the Kentucky Juvenile Code. While the Commonwealth believes that it and defendant for the most part agree on the law, the disagreement lies in the application of the ACTUAL facts to the law.

A. The police obtained a voluntary, knowing, and intelligent waiver of Gabriel Ross Parker's rights under Miranda v. Arizona.

Defendant, after citing Miranda and what it stands for, also cites the court to Taylor v. Commonwealth, 276 SW3d 800 (Ky. 2008). The Commonwealth believes that Taylor fully addresses all the issues which the court has before it.

The exaggerated and erroneous statements which are found throughout defendant's motion are best shown by defendant's assertion

which begins on the last paragraph of page 9. There, counsel writes "The prosecution in this case cannot show any evidence-much less a preponderance thereof-that G.R.P. made such a knowing and intelligent waiver." This is incorrect. The video of the interview, from start to finish, shows clearly that a knowing and intelligent waiver was made. Citing an unpublished opinion in Ruff v. Commonwealth, defendant apparently wants the court to believe that defendant must make an affirmative statement that he is waiving his rights.

Defendant goes on to exaggerate the events by stating in his motion at the top of page 10 by writing "Detective Daniels was so eager to begin the interview that he made no attempt to determine whether G.R.P. understood his rights or whether he wished to waive them." The video speaks for itself, and refutes any notion that the waiver was not voluntary and intelligent.

While Parker was not initially asked to sign the waiver form, signing such a form is not required in order to have a knowing, intelligent, and voluntary waiver. Defendant noted that it was tendering both the video and the transcript of the interview, and the Commonwealth likewise will provide this information at the hearing. But on page three of the interview,

Detective Daniels goes though defendant's rights, and after so doing said to Parker, "Do you understand those rights, Gabe?" To which Parker responded "Yes sir. Those my Miranda rights, correct?" The questioning then began.

The Commonwealth agrees that it was after Detective Hilbrecht came into the room that Parker was asked to sign the waiver form. Again, the video shows how that transpired. But in further support, the court should consider Berguis v. Thompkins, 130 S.Ct. 2250 (2010) where the US Supreme Court addressed the waiver issue and stated

"In order for an accused's statement to be admissible at trial, police must have given the accused a *Miranda* warning. ... If that condition is established, the court can proceed to consider whether there has been an express or implied *Miranda* rights. ... In making its ruling on the admissibility of a statement made during custodial questioning, the trial court, of course, considers whether there is evidence to support the conclusion that, from the whole course of questioning, an express or implied waiver has been established. Thus, after giving a *Miranda* warning, police may interrogate a suspect who has neither invoked nor waived his or her *Miranda* rights. On these premises, it follows the police **were not required to obtain a waiver of Thompkins' *Miranda* rights before commencing the interrogation.**

In sum, a suspect who has received and understood the *Miranda* warnings, and has not invoked his *Miranda* rights, waives the right to remain silent by making an uncoerced statement to the police. The police, moreover, **were not required to obtain a waiver of Thompkins' right to remain silent before interrogating him.**"

Berguis, 130 S.Ct. at 388-389 (citations omitted) (emphasis added).

Additionally, the content of the interview makes it clear that Parker knew what he was doing, and speculation by defense counsel is just that, speculation. The video tells the story accurately.

B. Under the totality of the circumstances, Parker's statements were voluntary.

Where the parties appear to agree with respect to the law in this area is that case law utilizes a totality of the circumstances approach to making a determination as to the voluntariness of a defendant's statement(s). The Commonwealth does not take issue with the propositions cited by defendant on page 11 and the top of page 12 of its motion, but does not agree with defendant's conclusions.

Defense counsel apparently wants the court to believe that Gabriel Ross Parker was a frightened, naïve, uninformed, immature child whose free will was overcome by five overbearing law enforcement officers. Defendant cites two Kentucky cases, one being Dye v. Commonwealth, 411 SW3d 227 (Ky. 2013), where officers conducted an indefensible interrogation of a seventeen year old. The facts in Dye bear no resemblance to the facts which the court will hear and see in this case.

Taylor, supra, is also cited as being at the other end of the spectrum. The Commonwealth believes that Taylor relates directly to this case and provides this court all the guidance it needs to rule in favor of the Commonwealth. Defendant's comparison to the interrogation in Commonwealth v. Bell, 365 SW3d 216 is inaccurate, as Bell involved a 13 year old who was interrogated by a detective. There, the child denied wrongdoing, and the officer continued to question him. Ultimately, after 32 minutes, the child admitted the charge. The Commonwealth does not disagree with the citations in Defendant's motion which come from Bell. But to compare Gabriel Parker's statements as being anywhere within the spectrum of what happened in Bell is simply wrong.

In the present case, Parker admitted from the outset that he was the shooter, and it is clear from the video and from Parker's answers that he was a highly intelligent, well-informed, mature individual who was nearing 16 years of age at the time of the shooting. While a picture may tell a story, a picture can also be taken out of context, when snapped as a small part of a video. The picture shown on page 14 of defendant's motion, is presumably offered by defendant to attempt to show a coercive environment for the interview. The video, again, tells the entire story, and

makes it clear that Parker was not subjected to anything remotely related to coercion. Parker's responses, which ended when he exercised his right to counsel, show both his maturity level, as well as a **complete** lack of coerciveness from the law enforcement officers.

C. Law enforcement officers did not disregard Kentucky's parental notification statute, and even if such occurred, Parker's statements would not be rendered involuntary.

KRS 610.200(1) states as follows:

> When a peace officer has taken or received a child into custody on a charge of committing an offense, the officer shall immediately inform the child of his constitutional rights and afford him the protections required thereunder, notify the parent, or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate, and if the parent is not available, then a relative, guardian, or person exercising custodial control or supervision of the child, that the child has been taken into custody, give an account of specific charges against the child, including the specific statute alleged to have been violated, and reasons for taking the child into custody.

Referring to defendant's motion, Murphy v. Commonwealth, 50 SW3d 173 (KY 2001) provides nothing new in the law. Taylor, supra, reiterates settled case law and cites Murphy as follows:

"Furthermore, this Court has held that a technical violation of KRS 610.200(1) does not automatically render a minor's confession inadmissible where it is otherwise shown to have been given voluntarily. *Murphy v. Commonwealth*, 50 SW3d 173, 184-185 (Ky.2001). Although such an infringement is an important factor in the overall analysis, if the confession

was otherwise made voluntarily and was not the result of police coercion, it can still be admissible even though the police did not adhere to the statutory provisions of the juvenile code. *Id.* At 1887 (Keller, J., concurring)"

Defendant seems to acknowledge the state of the law, also citing Shepherd v. Commonwealth, 251 SW3d 309 (Ky. 2008) which again utilizes the totality of the circumstances approach in analyzing the voluntariness of a statement made by a juvenile. But defendant's statement on page 17 of its brief that "Kentucky's parental notification statute certainly creates a parent's right to be present at questioning or to intervene in questioning" is wrong. Nowhere in case law or in the statute can that be found. The Commonwealth would agree that if a parent makes a request for counsel, or makes a request to see his/her child, such a request should be and would be granted. It also believes that the facts that will be established at the hearing will not be as set out in defendant's motion.

What the Commonwealth will do at the hearing is call several witnesses. Some will be from law enforcement and some will be people who were with Parker's mother on the morning of the shooting. The Commonwealth will, through these witnesses, show what was going on, what law enforcement was doing, and the attempts and ultimate success

achieved in contacting Mary Garrison-Minyard and her husband Justin Minyard.

Defendant's assertion that "the interrogating officers made no attempt at all to comply with the requirements of KRS 610.200" is wholly inaccurate. In this case, there were numerous officers who were involved in the investigation. This investigation entailed much more than just questioning the identified perpetrator of a mass shooting in a school, which resulted in two deaths and fourteen serious injuries, not to mention the untold chaos that was created. In New York v. Quarles, 104 S.Ct. 2626 (1984) the US Supreme Court noted a public safety exception to Miranda warnings and stated:

"We hold that on these facts there is a "public safety" exception to the requirement that Miranda warnings be given before a suspect's answers may be admitted into evidence, and that the availability of that exception does not depend upon the motivation of the individual officers involved. In a kaleidoscopic situation such as the one confronting these officers, where spontaneity rather than adherence to a police manual is necessarily the order of the day, the application of the exception which we recognize today should not be made to depend on post hoc findings at a suppression hearing concerning the subjective motivation of the arresting officer. Undoubtedly most police officers, if placed in Officer Kraft's position, would act out of a host of different, instinctive, and largely unverifiable motives—their own safety, the safety of others, and perhaps as well the desire to obtain incriminating evidence from the suspect.

Whatever the motivation of individual officers in such a situation, we do not believe that the doctrinal underpinnings of Miranda require that it be applied in all its rigor to a situation in which police officers ask questions reasonably prompted by a concern for the public safety."

Id. at 2631-2632.

Of course, defendant was read his *Miranda* rights prior to any questioning by law enforcement. But what should not be lost in the moment is what was going on that day. Defendant's actions created a public emergency, as will be testified to at the hearing, and this was not a typical "one officer, one defendant" case. The safety of the public was in great question even though defendant had been apprehended, as it was unknown whether he acted alone or in concert with others, as well as untold other matters which had to be investigated. To suggest that law enforcement did anything more than protect the public (as well as Parker himself) is wrong, but in carrying out its work, law enforcement did so in such a way as to protect the public, the defendant, and the defendant's constitutional rights.

II. Defendant's statements should be admitted at the trial of this matter, as defendant was not denied his Sixth Amendment right to counsel.

The Commonwealth acknowledges the wording of RCr 2.14(2) but does not agree with the statements made by counsel as to what occurred on the morning of January 23, 2018, specifically as it related to interaction between attorney Bethany Wilcutt and Detective Matt Hilbrecht. Defendant wants to claim that two attorneys were denied access to Parker, and the Commonwealth is unaware of a second attorney. It would note, that after Parker invoked his right to counsel, two attorneys (Wilcutt and Mike Crider) did come to see him at the Marshall County Sheriff's Office.

The facts, and most importantly in those facts, the timeline of events, will be established at the hearing. The Commonwealth believes that the testimony will establish that Parker was not denied his right to counsel.

CONCLUSION

The one thing that the Commonwealth agrees with defendant in its motion is the request to supplement the record following the hearing with a memorandum of facts and authorities. However, no matter what is brought to the table in terms of additional law and an actual summary of facts which are based on sworn testimony, the inescapable conclusions that the court will be able to make are as follows:

1. Kentucky law requires a "totality of the circumstances" analysis in determining whether law enforcement officers acted properly and whether Parker's statements were made knowingly, intelligently, and voluntarily,
2. Gabriel Parker's statements made on January 23, 2018, to law enforcement officers were made knowingly, intelligently, and voluntarily, and
3. Law enforcement officers acted properly in conducting their investigation.

Dated this the 1st day of August, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed on this the 1st day of August, 2019, to Defendant's counsel as follows:

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