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

COMMONWEALTH OF KENTUCKY **PLAINTIFF**

v. **DEFENDANT'S POST-HEARING MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS STATEMENT**

GABRIEL PARKER **DEFENDANT**

*** *** *** *** ***

Defendant, by and through undersigned counsel, submits this post-hearing memorandum in support of his motion to suppress.

Defendant presented the legal arguments in support of suppression in his motion filed on July 15, 2019. Defendant adopts the arguments made in that motion by reference and incorporates the motion in its entirety in this supplemental post-hearing memorandum.

In its Response to Defendant's Motion to Suppress Statements, the Commonwealth disagreed with Defendant's factual summary contained in his motion, claiming that "many of the representations [were] either inaccurate or taken out of context" and that "there [was] no sworn testimony to support any assertion of facts" at the time the motion was filed (Response, p. 2). On August 19, 2019, this Court conducted a hearing on Defendant's motion, and there is now sworn testimony in the record supporting Defendant's factual summary contained in his original motion, and contextualizing the assertions made therein, as evidenced by the following table comparing the factual assertions in Defendant's motion with the testimony from the hearing:[1]

[1] Citations to Defendant's Motion will be by page number. Citations to the hearing testimony will be in the following format: [Witness - hh:mm:ss].

Motion	Hearing Testimony
Mary Garrison dropped Parker off at school shortly before 8:00 a.m. (5)	Dropped off Gabe at 10 minutes to 8:00. (Garrison-Minyard – 16:41:08 *et seq.*)
Marshall County 911 received its initial call reporting the incident at 7:57 a.m. (2)	First call related to the incident was at 7:57 a.m. (Byars – 10:29:08 *et seq.*)
Mary receives a phone call alerting her to a shooting at the school and immediately returns to the school, arriving before the police blocked all the entrances. (5)	Received a call from Gabe alerting her to a school shooting. (Garrison-Minyard – 16:42:03 *et. seq.*)
Marshall County Unit 01 reported "one in custody" at 8:11 a.m. (2)	Shooter in custody 8:11 AM. Shooter told Byars where weapon was. Gun and clip were found in front of PAC. (Byars – 10:33:48 *et seq.*)
Gabe Parker is handcuffed and transported to the Marshall County Sheriff's Office by Deputy Bret Edwards, who tells Parker to lie down on the back seat of the police cruiser. (2-3)	Edwards patted shooter down before putting him in back of Edwards' car. Told shooter to lie down in seat for officer and shooter safety. Transferred custody of shooter to him to transport. Left campus at 8:22 a.m. (Edwards – 10:46:00 *et seq.*)
Parker complies, but his glasses fall off during transport. (3)	Did not notice glasses were missing. Discovered them later in day after Daniels called—searched cruiser and found them. (Edwards – 10:52:27 *et seq.*)
	Gabe was not wearing glasses at time of interview. (Daniels – 11:09:18 *et seq.*)

Parker is taken immediately to the interview room at the Marshall County Sheriff's Office, arriving by 8:30. (3)	In the interrogation room by 8:30 a.m. (Edwards – 10:52:15 *et seq.*)
At 8:33 a.m., Marshall County Sheriff's Detective Jeff Daniels reads Parker his rights from a Rights Waiver Form and asks Parker if he understands them. Parker acknowledges that he understands and asks Daniels if the document contained his *Miranda* rights. Daniels responds, "yeah buddy," and then proceeds to begin questioning Parker. Daniels does not ask if Parker wished to waive his rights, nor does Daniels ask Parker to sign the rights waiver form. (3)	Began interview with shooter that morning. Edwards instructed Daniels to interview. Interview audio and video recorded. Walked into the room at 8:33 a.m. Started interview at 8:35 a.m. Introduced self and read Miranda. Went through rights with suspect at 1st part of interview. Form indicates 8:35 a.m. on 1/23/18 at MCSO. Suspect did not sign form at that time. Did not sign because still cuffed. Indicated that he understood his rights. After the rights were read, Gabe asked Daniels if those were his Miranda Rights. Continued with the interview after that. Miranda rights were read off the Statement of Rights form. Asked Gabe if he understood. Said yes. Did not ask if Gabe wanted to waive rights. Does not recall if a copy of the Statement of Rights form was in front of Gabe. A lot of chaos that morning. It should be on video if form was in front of Gabe. Gabe not wearing glasses at time of interview. (Daniels – 11:00:40 *et seq.*)
At 8:48 a.m., Marshall County Sheriff's Captain Matt Hillbrecht enters the interrogation room and takes over questioning from Daniels. (3)	Walked into interview room at 8:48 a.m. (Hillbrecht – 11:21:03 *et seq.*)

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Hillbrecht acknowledges that he knows Parker's mother, and Parker provides Daniels and Hillbrecht with Mary's phone number. (3-4)	Det. Daniels was in the room when they talked about who Gabe's mom was. This happened about 7 minutes before Daniels left. In the interview, told Gabe, he knew his mom. Asked for her cell number. "How do I get ahold of her if we need to?" Knew Gabe's mom is a reporter. (Hillbrecht – 11:21:33 *et seq.*)
Daniels also acknowledges that he knows Mary as well, and that he had been to Parker's residence. (3-4)	Met Gabe one time before incident. That's how he knew who Gabe's mom was. Remembers asking if Gabe was Mary Garrison's son. Daniels knew this because of investigating stolen Xbox incident. (Daniels – 11:09:30 *et seq.*)
Neither Daniels nor Hillbrecht attempt to contact Mary prior to proceeding any further with the interrogation. (4)	Did not communicate with Mary before interrogation. (Daniels – 11:14:19 *et seq.*)
	Did not communicate with Mary prior to end of interrogation. (Hillbrecht – 11:37:04 *et seq.*)
At 9:27 a.m., Captain Hillbrecht notices that the rights waiver form lying on the table is unsigned. (4-5)	Noticed the statement of rights form was not signed at 9:26 AM, after Hamby and Dick arrived. 1 of them witnessed the signature on the form. Asked Gabe if Daniels had read it. (Hillbrecht – 11:34:25 *et seq.*)
Parker signs the form. Hillbrecht does not ask Parker if he wants to waive those rights. (5)	Did not go back over the form. Nobody asked him if he wanted to waive his rights. (Hillbrecht – 11:36:25 *et seq.*)

Mary receives information from someone standing near her vehicle that someone named "Gabe" or "Gabe Powers" was the shooter. (6)	Heard that shooter's name is Gabe or Gabe Powers. (Garrison-Minyard – 16:48:16 *et seq.*)
Mary is visibly upset by this news. (6)	Started to cry and got very upset. (Garrison-Minyard – 16:48:40 *et seq.*)
Mary receives a text message from her husband, Justin Minyard, that the Kentucky State police are at their house. Justin does not know why the police are there. Mary assumes that Parker has been shot, and she becomes hysterical. The pastor of a local church approaches her and she assumes that he has news that Parker is dead. Mary becomes even more hysterical. (6)	Received a text from Justin that the police were at the house. (Garrison-Minyard – 16:50:00 *et seq.*)
	Det. Green instructed Tpr. Chris Smith to help find shooter's parents. Job was to notify parents and inform them of bad news. Went to residence with Det. Fields. Left School at 9 a.m. Arrived at residence at 9:23 a.m. Knocked on door. Stepdad answered. Seemed to know what was going on. Asked him if they could come in and talk. (Smith – 14:13:30 *et seq.*)
	Gave Person Summary Report to Det. Fields before Fields went to residence. Document contains parent address and phone number and other contact information. (Green – 12:12:00 *et seq.*)
Justin calls Mary a short time later and informs her that Parker is the accused shooter. At this point, Mary becomes	Justin called and told Mary that Gabe was the shooter. (Garrison-Minyard – 16:52:08 *et seq.*)

inconsolable, and begins vomiting and sobbing uncontrollably. (6)	
Willcutt contacts Cheri Riedel to inform her that she was going to the Marshall County Sheriff's Office to attempt to stop the interview. (7)	(Willcutt – 15:23:37 *et seq.*) (Riedel – 14:55:42 *et seq.*)
At the Sheriff's Office, Willcutt identifies herself as an attorney and informs the front desk staff of the purpose of her visit. Hillbrecht denies Willcutt entry into the interrogation room. (7-8)	Hillbrecht left interview room at 10:08 a.m. because there was an attorney in lobby to see Gabe. Met with Bethany Willcutt. Walked into lobby. Bethany asked if Gabe was there. Asked her if she had been retained by family to see him. Said no. She said she was a personal friend of Mary's. Asked if appointed. Said no. Told her that she was not allowed to enter the interview room. (Hillbrecht – 11:22:15 *et seq.*)
Willcutt advises Riedel of the police response, and then proceeds to this Court's chambers. (8)	(Willcutt – 15:23:37 *et seq.*) (Riedel – 14:55:42 *et seq.*)
This Court appoints DPA to represent Parker, and Willcutt returns to the Sheriff's Office. (8)	(Willcutt 15:23:37 *et seq.*)
Ann Beckett arrives at Mary's location and takes possession of Mary's phone.	(Willcutt – 15:23:37 *et seq.*)
Beckett calls Willcutt again, and Willcutt advises Mary to call Det. Hillbrecht to tell him to stop the interrogation. Mary asks Willcutt to help her son. (6-7)	(Riedel – 14:55:42 *et seq.*) Ann Becket arrived at scene and took control of Mary's phone. (Garrison-Minyard – 16:53:29 *et seq.*)

Beckett tells a Kentucky State Police trooper who was standing nearby that the interrogation of Mary's son needs to stop because Mary was requesting a lawyer for him. The trooper acknowledges the demand by saying "okay" and indicates that he was going to make a call. The trooper then returns to his cruiser. Beckett returns to Mary's location and informs her that the attorney request was taken care of. Mary then calls Justin and tells him that she had requested a lawyer and that the interrogation would end. (7)

The interrogation continues until 10:22 a.m., ending with Parker's invocation of his right to counsel. Hillbrecht informs Willcutt that Parker had invoked his right to counsel and that the interrogation was concluded. (5)

Found out that mom was at entrance of school. Saw Dunn, sent to mom's location. (Green – 12:20:43 *et seq.*)

Mary is visibly upset when Dunn finds her – crying, vomiting, and dry-heaving. Appeared to be suffering from an anxiety attack. Dunn called for EMS at 9:46 a.m. EMS treated Mary in firetruck. Mary's friend relayed a message from Mary to him that Mary did not want them questioning her son. Dunn called Green and relayed the message at 10:23 a.m. (Dunn – 14:21:15 *et seq.*)

Green receives call from Jay Dunn at 10:23 a.m. saying that Mary wanted questioning to stop. Green sends text to Det. Hamby because Green believed the shooter was still being interviewed. Text reads "Call ME ASAP. Mom says she wants an attorney." Hamby calls at 10:24 a.m., advising that interview had concluded when Gabe "lawyered up." (Green – 14:53:30 *et seq.*)
Gabe asked for attorney at 10:22 a.m. (Hillbrecht – 11:24:36 *et seq.*)

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Mary Garrison-Minyard is transported to the Marshall County Judicial Center. (8)	Receives call from Dunn, and instructs Dunn to take Mary to see Gabe. (Green – 14:53:30 *et seq.*) Took Mary to Judicial Building at 10:40 a.m. Hillbrecht waiting there when he arrived. (Dunn – 14:34:40 *et seq.*)

It is clear from the preceding that the factual summary contained in Defendant's Motion was both accurate and thorough. What is even clearer is the fact that law enforcement authorities—from both the Kentucky State Police and the Marshall County Sheriff's Office—knew the identity of the shooter before the custodial interrogation even began and were in possession of his mother's cell phone number within 30 minutes of the beginning of the interrogation. Further, Capt. Hillbrecht testified that he knew that officers from the Kentucky State Police were trying to locate Mary Garrison-Minyard, but he did not give them her phone number even though he had it in his possession early on. (Hillbrecht – 11:37:15 *et seq.*).

Defendant presented his legal argument regarding the requirements of Kentucky's Parental Notification Act (KRS 610.200) in his Motion and will not re-present it here. Suffice it to say, though, that the interpretation of that statute's requirements offered by Capt. Hillbrecht at the suppression hearing is simply wrong, and not at all supported by Kentucky Supreme Court jurisprudence. During his testimony, he offered his belief that the statute required notification only after an arrest was complete and that there was no requirement of notification prior to a custodial interview. (Hillbrecht – 11:28:48 *et seq.*). Such an interpretation flies in the face of a

clear reading of the statute and the holding of *Murphy v. Commonwealth*, 50 S.W.3d 173, 187 (Ky. 2001). As noted by the *Murphy* court, the statute "requires a peace officer to immediately notify a child's parent that the child has been taken into custody." *Id.* at 187. Otherwise, the statute would have no meaning at all, because a parent would be unable to protect her child at the time he needs it the most, i.e., at a time that is "so full of hazards for the accused that, if unaided by competent legal advice, he may lose any legitimate defense he may have long before he is arraigned and put on trial." Commentary to RCr 2.14.

The Commonwealth will point out that Mary Garrison-Minyard testified on cross-examination that she first learned that her son may have been the shooter at around 9:26 a.m., and made her request for counsel at 10:18 a.m. (17:01:07 *et seq.*). If the Commonwealth attempts to argue that she delayed her request for counsel for 50 minutes, this Court should recall that Garrison-Minyard testified that "it honestly didn't occur [to her] that [Gabe] was even being questioned" (Garrison-Minyard – 17:01:40 *et seq.*) until Bethany Willcutt texted her. Certainly no one from law enforcement ever told her that her son had been taken into custody, and had been undergoing interrogation for a full hour before she ever learned that he was a suspect. When she did learn that Gabe was in custody, she immediately requested counsel, and there is no reason to believe that she would not have done so at 8:30 a.m. had she been informed. Indeed, she testified that she would have done so had she been informed (*Id.*).

The Commonwealth will likely argue that Capt. Green attempted to comply with the notification requirements by sending Tpr. Smith and Det. Fields to Defendant's residence. Defendant submits that this was insufficient. Capt. Green testified at the hearing that he sent Fields and Smith to the residence for three reasons: to conduct a

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welfare check, to comply with the parental notification statute, and to ensure the parents or Defendant's siblings had not been involved in the commission of Defendant's crime. (Green – 12:08:40 *et seq.*). However, such a tripartite purpose is not supported by the written report Green prepared, which only addressed the "welfare check" aspect for the home visit. Capt. Green explained that he didn't call the residence rather than sending two officers in person—a drive of around 30 minutes—because he was concerned about destruction of evidence, the welfare of the family members, and the possible criminal involvement of other family members. (*Id.*). None of those concerns relates to compliance with the parental notification statute.

Almost every witness at the August 19 hearing used "chaotic" to describe the scene at Marshall County High School on the morning of January 23, 2018. Without a doubt, that word probably does not even begin to describe the turmoil and confusion as first responders attempted to gain control over the situation on the school grounds. What was not chaotic, though, was the scene inside the interrogation room at the Marshall County Sheriff's Office. Officers had already obtained an admission from Gabriel Parker that he was the shooter and that he had acted alone. He had directed them to the location of the weapon. He had submitted to his arrest without incident and had answered their questions regarding his identity and the name and phone number of his mother. There was clearly no urgency in the interrogation room that justifies the officers' failure to comply with the parental notification statute.

As for Defendant's *Miranda* waiver, there was none. The testimony of Dets. Daniels and Hillbrecht confirms that neither of them received a voluntary waiver of Defendant's *Miranda* rights. Daniels read the rights to Parker from a form and asked him if he understood them, but he never asked Parker if he wished to waive the rights.

An hour into the interrogation, Det. Hillbrecht observed the unsigned waiver form, but did not go back over the rights with Parker, nor did he ever ask Parker if he wanted to waive them. Hillbrecht's unprompted testimonial opinion that "Gabe could see the form just fine despite not having his glasses" (Hillbrecht – 11:35:05 *et seq.*), is belied by the video from the interview, where it is clear that Parker has to move his face to within inches of the form in order to see it, and even then does not know where to sign it.

Finally, Capt. Hillbrecht's unilateral decision not to allow Attorney Bethany Willcutt access to Parker during the custodial interview was beyond his power or authority to make. The criminal rule and the holding of *Terrell* do not give any police officer the authority to deny any attorney access to her client. Whether an attorney is retained, appointed, or acting *pro bono publico*, is irrelevant, and Hillbrecht's actions with regard to Willcutt's attempt to speak with her client should not be condoned.

Under the totality of the circumstances—the failure of law enforcement to comply with the parental notification statute, the invalid "waiver" of *Miranda* rights, and the denial of attorney access—this Court must find that the statement given by Defendant at the Marshall County Sheriff's Office on January 23, 2018, was not voluntary, and must enter an Order excluding Defendant's statement from the trial of this matter.

Respectfully submitted this 13th day of September, 2019.

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By: _____
Douglas Moore

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion was served on **Dennis Foust, Esq.**, Commonwealth Attorney for the 42nd Judicial Circuit, 80 Judicial Drive, Benton, Kentucky 42025, by emailing and mailing a true and accurate copy of same on this 13th day of September, 2019.

_____
Douglas Moore

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

COMMONWEALTH OF KENTUCKY PLAINTIFF

v.

FILED 9/16/19
TIFFANY FRALICX GRIFFITH
CIRCUIT CLERK
MARSHALL COUNTY
BY: Smith D.C.

GABRIEL ROSS PARKER DEFENDANT

COMMONWEALTH'S BRIEF IN RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS

Comes the Commonwealth, by and through the undersigned counsel, and files its brief in response to the Defendant's Motion to Suppress. Defendant has filed its post-hearing brief, and with respect to the brief, the Commonwealth notes that Defendant's version of the facts is not disputed for the most part, but is incomplete. At the hearing held on August 19, 2019, the following facts were established and are submitted as a more complete statement, particularly with respect to the timeline of the events of January 23, 2018.

FACTUAL SUMMATION

1. Marshall County Sheriff Kevin Byars (ret.) testified that he arrived on campus at the scene of the shooting around **8:03 a.m**, which was approximately six minutes prior to the shooting (**7:57 a.m.**). At around **8:11 a.m.**, Byars eventually located this Defendant in the weight room where Byars motioned the Defendant to come forward from a group of other students. The Defendant came forward, kneeled down without prompting, and put his backpack on the ground. Byars asked the Defendant if there were other shooters and where the firearm was located. In response, Byars testified that the Defendant stated "No, it was me, I did it," and thereafter disclosed the whereabouts of the weapon.[1]

[1] Although defense counsel has not challenged this statement, the Commonwealth will address it now. Even if the Defendant's response was one of custodial interrogation, it is unquestionably admissible under the public safety exception of Miranda. In the seminal case of New York v. Quarles, 467 U.S. 649, (1984), the Supreme Court of the United States held admissible an arrestee's statements in a similar fact pattern where it was essential that a firearm be located. In this case, Byars's undisputed main priority in asking the Defendant these two questions was one of public safety, i.e., determining if there were any other threats and locating a firearm on school grounds before anyone else could be injured or killed. Byars stated that he could not take the Defendant at his word that there were

2. Deputy Brett Edwards (ret.) testified that he left campus with the Defendant at **8:22 a.m.** and while en route he instructed the Defendant to lie down in his cruiser for the safety of both Edwards and the Defendant. This is apparently when the Defendant's eyeglasses fell off. Edwards stated that he arrived at the interview room of the Marshall County Sheriff's Office with the Defendant at approximately **8:30 a.m.**

3. Then Detective Jeff Daniel testified that he had received a directive from Edwards to meet him at the Sheriff's Office and that Daniel's interview with the Defendant began at approximately **8:35 a.m.**

4. Before questioning the Defendant, as is plain from the transcript and the video entered into evidence, Daniel gave this Defendant a detailed explanation of his Miranda warning. Daniel finished this warning by stating "Do you understand these rights Gabe?" This Defendant replied "Yes sir. Those the Miranda rights, correct?" At this time, the Defendant had not yet been charged with anything.

5. Detective Matt Hilbrecht testified that he initially responded directly to the scene of the shooting. Along with several others who testified at this hearing, Hilbrecht stated that the scene was chaotic with several agencies responding. Hilbrecht testified that there were discussions on scene among law enforcement officers about locating the Defendant's mother and that Hilbrecht was aware of this ongoing effort by other officers before he arrived at the Sheriff's Office's to interview the Defendant. During his questioning of the Defendant, Hilbrecht once again discussed Miranda, telling the Defendant explicitly that he "didn't have to [talk] if [he] didn't want to." The Defendant responded that he understood this right to remain silent by stating "Yeah." And once again, Hilbrecht reiterated that during his interview with the Defendant, he had not been charged with anything.

6. Hilbrecht further testified that at approximately **10:08 a.m.**, Bethany Willcutt appeared at the Sheriff's Office and represented to him that she was a family friend of the Defendant. He stated that she asked if she could see the Defendant. However, Hilbrecht stated that Willcutt told him that she had not been retained by the family and had not been appointed in her capacity as an attorney with the public defender's office. Accordingly, Hilbrecht stated that he denied her entry to see the Defendant, to which Willcutt responded something to the effect of "it was worth a try."

7. Detective Cory Hamby testified that he responded to the interview room of the Sheriff's Office with the other officers and corroborated Hilbrecht's testimony regarding the interaction with Willcutt. Hamby further stated that he too was aware of ongoing efforts by other officers to locate the Defendant's mother. Hamby stated that at approximately **10:22 a.m.**, the Defendant invoked his right to counsel and the

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no other shooters involved and that there were at least three separate safety sweeps conducted throughout the school that day.

interview was concluded. As is clear from the transcript and the video, the Defendant expressly states that "I would like to request an attorney."

8. Lieutenant Trey Green was another officer who testified that the scene of the shooting was generally chaotic. He stated that it was the largest undertaking he had ever been involved with as a law enforcement officer. He testified that as a supervising officer, he was involved with coordinating numerous different objectives simultaneously, including directing an effort to locate the Defendant's mother. Green stated that he directed Trooper Chris Smith and Detective Eric Fields to travel to the Defendant's home to try and make personal contact with the Defendant's mother and/or step-father. Green stated that this directive was given just before **9:00 a.m.** Importantly, Green testified that a phone call was not placed for various reasons, including: (1) cell phone service had been erratic; (2) it was not known at that time if there was anyone at the Defendant's residence who may have been involved with the Defendant in the shooting; and (3) there was a need to make initial contact in person to prevent the possibility of someone at the residence having an opportunity to tamper with evidence related to the crime.

9. Smith testified that he and Fields left the campus to go to the Defendant's residence at **9:00 a.m.** and that they arrived at the residence at approximately **9:22 a.m.** Smith stated that he informed Justin Minyard that the Defendant was in custody and was the suspected shooter upon arrival. Smith stated that Minyard relayed this information to the Defendant's mother via phone call shortly thereafter. Smith testified that he and Fields accompanied Minyard inside the residence where they all discovered that Minyard's pistol was missing, which was later identified as the pistol used by this Defendant in the shooting.

10. Trooper Jay Dunn testified that, as directed by Green, he made personal contact with Mary Garrison Minyard at the High School Road entrance to the school once her physical location was known. He stated that this contact would have been shortly before **9:46 a.m.**, because that was the time he requested emergency medical assistance for Garrison. Dunn stated that it took a while for EMS to respond, possibly 30 minutes or so.

11. Abigail Hendrickson testified that she was a paramedic on scene and that she responded to Dunn's request for help for Garrison. Hendrickson stated that somewhere between **10:20 – 10:25 a.m.**, Garrison made a comment that she wanted an attorney for her son.

12. Dunn and Green testified that at approximately **10:24 a.m.**, Garrison's request for an attorney for the Defendant was relayed to Hamby at the interview room of the Sheriff's Office.

13. Cheri Reidel and Bethany Willcutt both testified that they were involved in efforts to have the public defender's office appointed for this Defendant. Reidel stated that neither the Defendant nor anyone from his family on his behalf had contacted her

about being appointed as counsel or assisting in his representation. Willcutt also corroborated the testimony of Hamby and Hilbrecht regarding the time and the nature of her interaction with those officers at the Sheriff's Office at **10:08 a,m,**. Willcutt stated that her first contact with Garrison came at about **10:18 a.m.** via a phone call from Ann Beckett, and that her prior visit to the Sheriff's Office at around **10:08 a.m.** was not at the request of Garrison.

14. Text messages and phone call logs verify that the first request from Garrison to obtain counsel for the Defendant came at about **10:18 a.m.** Indeed, a text message from Riedel to Willcutt at **10:16 a.m.** shows that no contact had been made between the two attorneys and Garrison due to the fact that Riedel stated that they needed to get Garrison to ask that the interview be stopped.

15. Mary Garrison Minyard testified that she first became aware that the Defendant, her son, was the suspected shooter and was in custody at about **9:15 a.m.** She further corroborated the timeline established by the testimony of Smith regarding the arrival of the Kentucky State Police at her home and the information provided by Smith to her husband about the Defendant. Garrison corroborated the timeline established by Dunn regarding Dunn's personal contact with her just prior to **9:46 a.m.** Garrison expressly stated that the first time she ever requested an attorney for her son was around **10:18 a.m.** via a phone call made by Beckett. She expressly admitted that she made no attempt to request counsel at **9:15 a.m.** when she first had an idea that the Defendant was the shooter, that she made no request at **9:22 a.m.** when the state police arrived at her home, and that she made no request at around **9:46 a.m.** when Dunn made personal contact with her. Garrison admitted that her emotional state beginning at **9:15 a.m.** through **10:18 a.m.** was the same and unchanged.

16. Accordingly, the following timeline has been established beyond any dispute:

    a. 7:57 a.m. – Defendant opens fire in the commons area, killing two students and wounding at least 14 more.

    b. 8:11 a.m. – Defendant is placed in custody and admits to Byars he was the shooter.

    c. 8:35 a.m. – Interview of Defendant begins after Miranda is read.

    d. Between the time of Defendant's arrest and just before 9:00 a.m., a coordinated discussion and effort to locate Defendant's mother takes place.

    e. 9:00 a.m. – Smith and Fields travel to Defendant's residence.

    f. 9:15 a.m. – Garrison states she first became aware Defendant may have been the shooter.

g. 9:22 a.m. – Smith and Fields arrive at Defendant's residence. Smith then advises Minyard that Defendant is the suspected shooter and is in custody. Minyard relays that information to Garrison on the phone.

h. 9:46 a.m. – Dunn makes personal contact with Garrison at the school and requests medical assistance.

i. 10:08 a.m. – Willcutt appears at the Sheriff's Office for the first time asking to see Defendant. This appearance is unsolicited and not at the request of Defendant or anyone else on his behalf. She has also not been appointed at this time.

j. 10:18 a.m. – Garrison states she makes the first request to obtain counsel for the Defendant.

k. 10:22 a.m. – The Defendant invokes his right to counsel and interview concludes.

l. 10:23 a.m. – Hilbrecht is made aware that counsel for the Defendant has been appointed.

m. 10:24 a.m. – Garrison's request for counsel is relayed to the interviewing officers.

The Commonwealth would point out that in Defendant's post-memorandum brief, at pages 6 and 7, that the time frame of the events is incomplete, and the Commonwealth has set out the actual time frame with respect to all of the events which were testified to at the hearing.

LEGAL ANALYSIS

The Defendant has raised various issues in his Motion to Suppress and the Commonwealth will now address those in turn:

A. Validity of the Miranda Waiver

The Defendant argues, among other things, that "the police failed to obtain a voluntary, knowing, and intelligent waiver" of the Defendant's Miranda rights. This is simply not true. As this Court well knows, whether or not a valid Miranda waiver has occurred will depend upon "the particular facts and circumstances surrounding that case, including the background,

experience, and conduct of the accused." North Carolina v. Butler, 441 U.S. 369, 375 (1979). Importantly, an express written or oral waiver of Miranda is not required. Id. at 373. In Berghuis v. Thompkins, 560 U.S. 370, 388-89 (2010), the Supreme Court of the United States expounded upon this principle:

> 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. Thompkins did not invoke his right to remain silent and stop the questioning. Understanding his rights in full, he waived his right to remain silent by making a voluntary statement to the police. The police, moreover, were not required to obtain a waiver of Thompkins' right to remain silent before interrogating him.

In this case, the Defendant repeatedly and mistakenly asserts that the lack of an immediate signature on the written form constituted an invalid waiver. This failed argument is directly contrary to the standard cited above as established by this nation's highest court. Moreover, the Defendant did, in fact, sign this waiver form later on during the interview. Defense counsel's novel reference to the Defendant not having his eyeglasses also completely ignores the fact that the Defendant was able to read the words on the form, asking Hilbrecht where he needed to sign by referring to the actual words on the form.

The Defendant also attempts to characterize this interview as being coercive in nature, resulting in unknowing and involuntary statements and admissions. If a picture is worth a thousand words, then the video of this interview is worth a million. Upon having been read the Miranda warning by Daniel, this Defendant actually refers to this admonition as "those the Miranda rights, correct?" This Defendant also explicitly stated, when asked if he understood those rights, "Yes sir." As stated previously, the Defendant later on signed his name to the waiver form. This form stated, among other things, that:

> "I fully understand what my rights are. I am ready and willing to answer questions or to make a statement without first consulting with a lawyer or without having a lawyer present during questioning. In waiving my rights to remain silent, I wish to state that no promises or threats have been made to me and no persuasion or coercion has been used against me."

The Defendant, when told by Hilbrecht that he did not have to speak with the officers if he did not wish to, stated "yeah" in response, and continued to talk freely. The tone of this interview could not have been less confrontational. At no point did any officers raise their voices or try to coerce the Defendant to make statements. During a discussion with Hilbrecht about the date of the shooting also being Hilbrecht's wife's birthday, the Defendant is seen chuckling slightly. When detectives from KSP and a detective from the FBI later enter the room, the Defendant and one of those officers politely shake hands. Finally, and perhaps most importantly of all, this Defendant actually invoked his Miranda rights expressly by eventually requesting an attorney. What better evidence could there possibly be that this Defendant understood his rights than the Defendant actually invoking those rights during the interview, especially in light of the fact that he specifically stated he understood those rights on two separate occasions and executed a waiver stating the same thing. To argue that this interview was coercive, or that the Defendant's statements and admissions were involuntary, is to dwell in an alternate universe detached from the reality depicted on the video.

B. Parental Notification Issue

The Defendant falsely claims that the "interrogating officers made no attempt at all to comply with the requirements of the KRS 610.200." Nothing could be farther from the truth. KRS 610.200(1) states in pertinent part that "[w]hen a peace officer has taken or received a child into custody on a charge of committing an offense, the officer shall notify the parent ... 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 the reasons for taking the child into custody." At the outset, it is important to note that this Defendant, although in custody, had not yet been charged with anything during his interview. Accordingly, the actual applicability of KRS 610.200 to this interview is questionable, given that the officers could not have, at that time, "given an account" to Garrison of the "specific charges" or "the specific statute alleged to have been violated." Nevertheless, the facts established at the suppression hearing show that the officers did in fact comply with notification requirements.

This Defendant was placed into custody at 8:11 a.m. His interview began at 8:35 a.m. Hilbrecht and Hamby both testified that they knew, prior to arriving at the Sheriff's Office to interview the Defendant, that concerted efforts were underway by other officers to locate the Defendant's mother.[2] This testimony was corroborated by Green and Smith. Smith and Fields left the high school at 9:00 a.m. to attempt to make personal contact with the Defendant's mother/step-father, which was approximately 25 minutes after the interview began. Actual contact and notification was accomplished shortly after 9:22 a.m., which was approximately 45-50 minutes after the interview began. Garrison stated that she first learned of her son's possible involvement at around 9:15 a.m., but made no attempt whatsoever to obtain counsel for the Defendant until 10:18 a.m.

Numerous officers testified regarding the chaotic nature at the scene of the shooting. Dozens upon dozens of law enforcement personnel, medical personnel, fire and ambulance personnel, and various school officials were literally running to and fro dealing with various aspects of this emergency. As a supervisory officer, Green stated that he was coordinating multiple response actions, including the security sweeps of the school and the notification of the

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[2] See Lamb v. Commonwealth, Ky. 510 S.W.3d 316 (2017) (discussing the collective knowledge doctrine which states that knowledge among officers engaged in a joint investigation can be imputed between them).

Defendant's parents. It is worth stating bluntly the exact nature of the situation confronted by these officers, i.e., this Defendant, in his own words, walked into the crowded commons area inside Marshall County High School and "opened fire" upon his classmates, killing two students and wounding 14 or more others. It is remarkable, in the midst of this mayhem, that the officers made parental notification as quickly as they did.

In Taylor v. Commonwealth, Ky., 276 S.W.3d 380, (2008), our Supreme Court held in a similar case that even if an officer commits a technical violation of KRS 610.200, that in and of itself does not render statements inadmissible.[3] Rather, it is merely one factor to consider in the totality of the circumstances approach discussed previously. In Taylor, the parent in that case was not notified until "several hours" after the defendant had been taken into custody. In this case, efforts to contact the mother/step-father were underway less than 30 minutes after the Defendant's arrival at the Sheriff's Office, and actual notification took place approximately 45-50 minutes after that arrival. In addition, the situation in Taylor was that of a murder where there was apparently no indication of any ongoing threats or persons in need of emergency treatment.

Contrast that scenario with the chaos created by this Defendant. At the time of his apprehension, it was still not known if there were other shooters involved, if there were explosive devices at the school, or if possibly anyone else in the Defendant's family was involved. In addition, the scene at the high school was an extremely fluid situation with victims being attended to and various security operations underway. Finally, the fact that the officers may have known Garrison's phone number early on is totally irrelevant. The officers needed to make initial contact in person for various reasons, including the preservation of potential

[3] The Commonwealth does not concede that a violation of KRS 610.200 even occurred here given that the Defendant's mother and step-father were actually notified in less than an hour after the Defendant's arrival at the Sheriff's Office, and efforts to do so had been underway much earlier than that. However, even if this Court were to find technical noncompliance, Taylor nevertheless supports the admissibility of this Defendant's confession.

evidence and to ensure that other possible suspects were not given a "heads up" that officers might be on their way to the residence. In addition, as testified to by various witnesses, phone service was sporadic at the time. Accordingly, given the fact that the Defendant's statements constituted a knowing and voluntary confession (as discussed previously), Taylor dictates that his confession is admissible at trial.

C. Right to Counsel Issue

The Defendant incorrectly contends that the Defendant's confession should be suppressed due to an alleged violation of his right to counsel under the Sixth Amendment. In doing so, defense counsel has curiously and erroneously turned the Sixth Amendment right to counsel on its head in a hitherto unheard of claim that an un-retained, non-appointed, and unsolicited attorney has a right to access the accused. For obvious reasons, this floated theory falls flat.

The actual text of RCr 2.14(2), coupled with the undisputed facts and timeline established at the suppression hearing, dispels any notion that this Defendant was deprived of his right to counsel. Plainly, RCr2.14(2) states that "[a]ny attorney at law entitled to practice in the courts of this Commonwealth shall be permitted, at the request of the person in custody or of some one acting in that person's behalf, to visit the person in custody." In this case, it is undisputed that this Defendant did not ask for an attorney until approximately 10:22 a.m. It is also undisputed, from the testimony of Garrison herself, that she did not request an attorney for the Defendant until 10:18 a.m. The Defendant attempts to argue that Willcutt's arrival at the Sheriff's Office at 10:08 a.m. and the denial of her entry to see the Defendant at that time runs afoul of RCr 2.14(2). However, Willcutt was, by her own testimony (later corroborated by Garrison), not there as retained or appointed counsel, but rather as a family friend. This was plainly not a situation that triggers RCr 2.14(2).

In Terrell v. Commonwealth, Ky., 464 S.W.3d 495, 501-03 (2015), the Supreme Court of Kentucky explained the import of RCr 2.14(2) thusly:

> if the individual in custody wishes to have counsel during custodial interrogation, he may either request an attorney or, under RCr 2.14(1), contact an attorney. Illustrated by both the instant case and West, the individual's family also may contact an attorney and request representation on behalf of the individual in custody. But the constitutional right to counsel is a personal right [emphasis original].

Stated another way, it is the accused, or perhaps in some circumstances, the accused's family, who has the right to request that an accused be permitted to speak with an attorney. It is not, despite defense counsel's apparent argument to the contrary, the other way around. The Defendant's interpretation of this rule would have the effect of cloaking attorneys in this state with the ability to lurk around detention centers, unsolicited, and stop interviews of suspects at his or her whim. That is an absurd result and is plainly not supported by the law in any way, shape, or form.[4] The undeniable conclusion based on the testimony is that no one with actual authority to do so requested an attorney until 10:18 a.m., at which time the interview was already essentially over anyway. Simply stated, there was no violation of RCr 2.14(2) or the Sixth Amendment right to counsel.

CONCLUSION

As stated previously, there is no dispute as to the pertinent facts regarding the timeline of events related to the Defendant's Motion to Suppress. A valid Miranda waiver occurred, the parental notification statute was followed and satisfied, and there was no violation of the Sixth Amendment. While Defendant in its post-hearing memorandum disputes these conclusions, the reality is that the Commonwealth, through its law enforcement officers, did not violate either

[4] Even if there was a violation of RCr 2.14(2), and the Commonwealth vehemently argues that there was not, Terrell would only support a possible suppression of those statements made by the Defendant after Willcutt was denied entry at approximately 10:08 a.m.

Defendant's statutory rights under the Kentucky Juvenile Code, or the Defendant's Constitutional rights afforded under both the United States Constitution and the Kentucky Constitution. Accordingly, the Commonwealth respectfully requests that the Defendant's motion be DENIED in full and that this Court rule that the Defendant's statements are admissible at trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was sent to Tom Griffiths and Doug Moore by emailing and mailing a true and accurate copy on this the 16th day of September, 2019.

DENNIS R. FOUST