

**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 <i>et seq.</i>)
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 <i>et seq.</i>)
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 <i>et. seq.</i>)
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 <i>et seq.</i>)
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 <i>et seq.</i>)
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 <i>et seq.</i>) Gabe was not wearing glasses at time of interview. (Daniels – 11:09:18 <i>et seq.</i>)

<p>Parker is taken immediately to the interview room at the Marshall County Sheriff's Office, arriving by 8:30. (3)</p>	<p>In the interrogation room by 8:30 a.m. (Edwards – 10:52:15 <i>et seq.</i>)</p>
<p>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 <i>Miranda</i> 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)</p>	<p>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 <i>et seq.</i>)</p>
<p>At 8:48 a.m., Marshall County Sheriff's Captain Matt Hillbrecht enters the interrogation room and takes over questioning from Daniels. (3)</p>	<p>Walked into interview room at 8:48 a.m. (Hillbrecht – 11:21:03 <i>et seq.</i>)</p>

<p>Hillbrecht acknowledges that he knows Parker’s mother, and Parker provides Daniels and Hillbrecht with Mary’s phone number. (3-4)</p>	<p>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 <i>et seq.</i>)</p>
<p>Daniels also acknowledges that he knows Mary as well, and that he had been to Parker’s residence. (3-4)</p>	<p>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 <i>et seq.</i>)</p>
<p>Neither Daniels nor Hillbrecht attempt to contact Mary prior to proceeding any further with the interrogation. (4)</p>	<p>Did not communicate with Mary before interrogation. (Daniels – 11:14:19 <i>et seq.</i>)</p> <p>Did not communicate with Mary prior to end of interrogation. (Hillbrecht – 11:37:04 <i>et seq.</i>)</p>
<p>At 9:27 a.m., Captain Hillbrecht notices that the rights waiver form lying on the table is unsigned. (4-5)</p>	<p>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 <i>et seq.</i>)</p>
<p>Parker signs the form. Hillbrecht does not ask Parker if he wants to waive those rights. (5)</p>	<p>Did not go back over the form. Nobody asked him if he wanted to waive his rights. (Hillbrecht – 11:36:25 <i>et seq.</i>)</p>

<p>Mary receives information from someone standing near her vehicle that someone named “Gabe” or “Gabe Powers” was the shooter. (6)</p>	<p>Heard that shooter’s name is Gabe or Gabe Powers. (Garrison-Minyard – 16:48:16 <i>et seq.</i>)</p>
<p>Mary is visibly upset by this news. (6)</p>	<p>Started to cry and got very upset. (Garrison-Minyard – 16:48:40 <i>et seq.</i>)</p>
<p>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)</p>	<p>Received a text from Justin that the police were at the house. (Garrison-Minyard – 16:50:00 <i>et seq.</i>)</p> <p>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 <i>et seq.</i>)</p> <p>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 <i>et seq.</i>)</p>
<p>Justin calls Mary a short time later and informs her that Parker is the accused shooter. At this point, Mary becomes</p>	<p>Justin called and told Mary that Gabe was the shooter. (Garrison-Minyard – 16:52:08 <i>et seq.</i>)</p>

<p>inconsolable, and begins vomiting and sobbing uncontrollably. (6)</p>	
<p>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)</p>	<p>(Willcutt – 15:23:37 <i>et seq.</i>) (Riedel – 14:55:42 <i>et seq.</i>)</p>
<p>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)</p>	<p>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 <i>et seq.</i>)</p>
<p>Willcutt advises Riedel of the police response, and then proceeds to this Court's chambers. (8)</p>	<p>(Willcutt – 15:23:37 <i>et seq.</i>) (Riedel – 14:55:42 <i>et seq.</i>)</p>
<p>This Court appoints DPA to represent Parker, and Willcutt returns to the Sheriff's Office. (8)</p>	<p>(Willcutt 15:23:37 <i>et seq.</i>)</p>
<p>Ann Beckett arrives at Mary's location and takes possession of Mary's phone. 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)</p>	<p>(Willcutt – 15:23:37 <i>et seq.</i>) (Riedel – 14:55:42 <i>et seq.</i>) Ann Becket arrived at scene and took control of Mary's phone. (Garrison-Minyard – 16:53:29 <i>et seq.</i>)</p>

<p>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)</p>	<p>Found out that mom was at entrance of school. Saw Dunn, sent to mom’s location. (Green – 12:20:43 <i>et seq.</i>)</p> <p>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 <i>et seq.</i>)</p> <p>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 <i>et seq.</i>)</p>
<p>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)</p>	<p>Gabe asked for attorney at 10:22 a.m. (Hillbrecht – 11:24:36 <i>et seq.</i>)</p>

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

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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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