

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

**JULISSA ANGELICA GENRICH
THALER,**

Defendant.

**STATE'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION TO SUPPRESS**

Court File No.: 27-CR-22-9775

C.A. Case No. 22A05582

TO: THE HONORABLE JAY QUAM, JUDGE OF HENNEPIN COUNTY DISTRICT COURT; BRYAN LEARY AND REBECCA NOOTHED, COUNSEL FOR DEFENDANT; AND DEFENDANT.

INTRODUCTION

Julissa Angelica Genrich Thaler (hereinafter "Defendant") is charged with second degree intentional murder for the death of her six-year-old son (hereinafter "Victim"). On May 20, 2022, Orono Police Officers conducted a traffic stop on a Chevrolet Impala that was driving without one of the front tires and was riding straight on the rim. Upon stopping the vehicle, Officers approached and encountered the driver, Defendant. Officers observed that the back window of the Impala was broken out and there appeared to be blood on Defendant's hand. Officers observed a shotgun shell, a spent casing, and blood in the vehicle. They also observed what appeared to be a bullet hole in the back seat. Officers subsequently searched the vehicle and located Victim's body in the trunk. Victim had been shot multiple times, and there was a shotgun in the trunk. Officers arrested Defendant and observed that Defendant had blood and what appeared to be brain matter in her hair at the time of her arrest.

At approximately 5:40 PM on May 20, 2022, Defendant asked to speak with investigators. At approximately 6:00 PM, the investigators conducted a recorded interview with Defendant at the Orono Police Department (hereinafter “Interview 1(a)”). At the beginning of the interview, Defendant was read her *Miranda* rights and she said she wanted to speak with the investigators. The interview was ultimately halted after approximately 15 minutes, because Defendant requested an attorney. Defendant then re-engaged the investigators, confirmed she understood *Miranda*, and said she wished to speak with the investigators. The second portion of the interview was approximately 38 minutes long (hereinafter “Interview 1(b)”). Defendant was subsequently transported to the Hennepin County Jail on May 21, 2022. On May 22, 2022, at approximately 1:30 PM, the Orono Police Investigators met with Defendant in the Hennepin County Jail to obtain a follow-up statement from her. The interview was recorded and was approximately eight minutes long (hereinafter “Interview 2”). The investigators read Defendant her *Miranda* rights and showed her photos related to the investigation. The recording ended because Defendant requested an attorney. Defendant was charged with second-degree murder on May 23, 2022.

Trial in this matter is scheduled to begin on January 30, 2023. On December 2, 2022, counsel for Defendant filed a motion to suppress all three of Defendant’s statements to the investigators from the Orono Police Department. In her motion, Defendant argues that the investigators violated her constitutional rights by interrogating her after she invoked her right to counsel. At trial, the State does not intend to introduce any of Defendant’s statements from Interview 1(b) or Interview 2 in its case in chief, and would only use those statements to impeach should Defendant testify. Thus, the Court does not need to make any findings related to those interviews. However, Defendant’s motion should be denied regarding Interview 1(a). The interview began with a valid *Miranda* waiver. Defendant requested at attorney in the middle of the

interview, but then she re-engaged the investigators and waived the right she previously invoked. She spoke with the investigators for approximately 10 more minutes before renewing her request for an attorney, at which time the investigators promptly ended the interview.

STATEMENT OF FACTS

On the morning of May 20, 2022, an Orono Police Officer transported Defendant from the crime scene to the Orono Police Department. Defendant was speaking to the Officer during this time, so he read her a *Miranda* warning as a precaution. He then escorted Defendant to an interview room and provided her with a blanket when she said she was cold.¹ Defendant was later interviewed by two investigators from the Orono Police Department. (*See* Interview 1(a) Video Recording). Inv. Schoenherr arrived at the interview room first, and he sat with Defendant until Inv. Kirschner arrived. During that time, Inv. Schoenherr made it clear that he did not want to discuss the case with her until Inv. Kirschner arrived for the formal interview. Defendant occasionally engaged Inv. Schoenherr in conversation, so he read her a *Miranda* warning as a precaution. (*Id.* at 04:37). Defendant said she understood her *Miranda* rights. (*Id.* at 05:14). Defendant then asked why she was being held in custody, and Inv. Schoenherr said they should wait for Inv. Kirschner. Inv. Schoenherr clarified that he was sitting with her just to make sure she got the food and soda she requested. (*Id.* at 05:15 – 05:55). Inv. Kirschner arrived approximately two minutes later. (*Id.* at 08:02).

Interview 1(a) began with the investigators gathering routine biographical information from Defendant, and then Inv. Kirschner re-read Defendant her *Miranda* rights. (Interview 1(a) Audio Recording at 01:24). Defendant stated she understood her rights, and she agreed to speak

¹ This information is contained in the Orono Police Report, which was disclosed to defense counsel on July 14, 2022.

with the investigators. (*Id.* at 01:50). They began discussing that she is in custody related to a homicide, and Inv. Kirschner said they had to “talk about a few things here,” to which Defendant replied, “sure.” (*Id.* at 02:12). After some discussion about the traffic stop and discovering Victim in the trunk of her car, Defendant said she was done covering for her ex, and then she asked for an attorney:

Defendant: Can I have a lawyer?

Inv. Kirschner: You want to speak to a lawyer?

Defendant: Yeah please.

Inv. Kirschner: Okay. Well...

Inv. Schoenherr: Just so we –

Defendant: Do you –

Inv. Schoenherr: Just so we understand –

Defendant: Do you need my ex’s name?

Inv. Schoenherr: Mmm-Mmm [negative response]

Inv. Kirschner: Nope, we don’t.

Inv. Schoenherr: Mmm-Mmm [negative response]

Defendant: Okay. So, hold on [inaudible] there’s a body in my trunk?

(*Id.* at 05:29 – 05:51).

In response to her question, Inv. Kirschner showed her a photo, told her there was a body of a young child in her trunk, and then put the photo away. (Interview 1(a) Video Recording at 15:27 to 15:41). After a moment of silence, Defendant began speaking, unprompted. She stated that she had been assaulted earlier in the day, and then she resumed talking about her ex. (*Id.* at 15:57). Inv. Kirschner interrupted Defendant, and the following exchange occurred:

Inv. Kirschner: So, so Julissa I just have to stop you, okay? Because a minute ago –

Defendant: Sorry, I just don't want to –

Inv. Kirschner: A minute ago you stated you wanted –

Defendant: I, there's stuff that I –

Inv. Kirschner: To talk to an attorney and –

Defendant: Didn't tell you about my ex –

Inv. Kirschner: A minute ago you stated you wanted to speak with an attorney, and I can't [inaudible] answer any questions after that. I mean, are you stating that you still, you still want to speak with us? I mean –

Defendant: Yeah, I guess I mean I was telling you a few things after the fact. If I tell you the stuff –

Inv. Kirschner: So having, having your, the rights in mind that I had read to you, that you stated that you understood, right? Your *Miranda* warning rights? Do you need me to re-read those to you or anything?

Defendant: Um, no.

Inv. Kirschner: Okay, you understand each of them?

Defendant: Yeah.

Inv. Kirschner: Okay. And then you still, you still want to speak with us?

Defendant: Yeah.

Inv. Kirschner: Okay.

(Interview 1(a) Audio Recording at 06:41 – 07:24).

Defendant then asked if she would be released if she gave the investigators the name of someone who may have committed the crime. The investigators then spoke to Defendant for approximately seven minutes, during which Defendant readily answered the investigators' questions. Towards the end of those seven minutes, Defendant asked to be released, and the

investigators explained that they needed to paint a picture of what happened. (Interview 1(a) Audio Recording at 14:23). Defendant said the investigators could ask her questions, but she did not want to be under arrest. (*Id.* at 14:30). When one of the investigators expressed an intent to ask her additional questions, the following exchange occurred:

Defendant: Actually, can I have a lawyer then if you're not gonna let me go home?

Inv. Kirschner: You want to speak to a lawyer tonight?

Defendant: Yes. Please.

Inv. Kirschner: Okay. Okay. Well then at this time, we're gonna end the statement at 18:25 hours.

 [Recording Ends].

(*Id.* at 14:40 – 14:57)

ARGUMENT

The United States and Minnesota Constitutions provide the right to be free from compelled self-incrimination. U.S. Const. amend. V; Minn. Const. art I, § 7. Suppression is required when the suspect is in custody, subject to interrogation, and not properly warned. *State v. Seekon*, 392 N.W.2d 624, 627 (Minn. Ct. App. 1986). To trigger the *Miranda* requirement, a suspect must be in custody and subjected to interrogation. *State v. Scruggs*, 822 N.W.2d 631, 637 (Minn. 2012). However, if either element is absent from the interview, a *Miranda* warning is not necessary. *Miranda v. Arizona*, 384 U.S. 436, 478 (1966).

In this case, the parties agree that Defendant was in custody and subject to interrogation, so a *Miranda* warning was required. The investigators complied by providing a *Miranda* warning twice before commencing the formal interview. Defendant said she understood her rights, and she expressly agreed to speak to the investigators. Thus, Defendant voluntarily waived her *Miranda*

rights at the beginning of the interview. *See State v. Comacho*, 561 N.W.2d 160, 168 (Minn. 1997) (“Ordinarily, the state will be deemed to have met its burden of proving a knowing, voluntary, and intelligent waiver of *Miranda* rights if it shows that *Miranda* warnings were given and that the individual stated that he or she understood those rights and then gave a statement.”).

Even if a suspect waives their *Miranda* rights, custodial interrogation must cease if a suspect subsequently makes a clear and unequivocal invocation of their right to counsel. *See State v. Munson*, 594 N.W.2d 128, 139 (Minn. 1999). This determination is an objective inquiry. *Id.* A suspect must articulate their “desire to have counsel present sufficiently clearly that a reasonable police officer, in the circumstances, would understand the statement to be a request for an attorney.” *Id.* “When a suspect indicates by an equivocal or ambiguous statement, which is subject to the construction that the accused is requesting counsel, all further questioning must stop except that narrow questions designed to ‘clarify’ the accused’s true desires regarding counsel may continue.” *State v. Risk*, 598 N.W.2d 642, 648–49 (Minn. 1999) (quoting *State v. Robinson*, 427 N.W.2d 217, 223 (Minn. 1988)).

A suspect may, however, waive their previously invoked right to counsel by “initiat[ing] further communication, exchanges, or conversations with the police.” *Edwards v. Arizona*, 451 U.S. 477, 485 (1981). Under *Edwards*, a district court considers a three-step analysis to determine whether the defendant reinitiated conversation with law enforcement, yielding their statements admissible. First, the court determines whether the suspect invoked his right to counsel. *State v. Staats*, 658 N.W.2d 207, 213 (Minn. 2003). Second, if the defendant invoked his right to counsel, the district court considers whether the suspect reinitiated conversation with law enforcement. *Id.* Third, if the suspect re-initiated conversation with police, the district court examines whether he properly waived his previously invoked right to counsel. *Id.*

For the first step of the *Edwards* analysis in this case, Defendant invoked her right to counsel approximately 5 minutes and 30 seconds after her *Miranda* waiver to Inv. Kirschner. However, the second and third steps of the *Edwards* analysis demonstrate that Defendant's subsequent statements are admissible, because she reinitiated conversation with law enforcement and properly waived her previously invoked right to counsel.

I. Defendant reinitiated conversation with law enforcement after invoking her right to counsel.

A suspect reinitiates contact with law enforcement when statements made by the suspect “represent a desire on the part of [the suspect] to open up a more generalized discussion relating directly or indirectly to the investigation.” *State v. Ortega*, 813 N.W.2d 86, 95 (Minn. 2012) (citing *Oregon v. Bradshaw*, 462 U.S. 1039, 1045 (1983)). A distinction exists between statements or questions “relating to routine incidents of the custodial relationship” and those that “evinced a willingness and a desire for generalized discussion about the investigation.” *Id.* For example, in *State v. Staats*, the Minnesota Supreme Court held that a suspect who asks about the extension of his hold, a shower, and whether he could call his mother did not reinitiate conversation with law enforcement. 658 N.W.2d at 214. These questions were associated with the custodial relationship. *Id.* In comparison, in *Oregon v. Bradshaw*, the suspect asked “well, what is going to happen to me now?” 462 U.S. at 1045–46. The United States Supreme Court, in a plurality opinion, held this question constituted re-initiation by the suspect because the question “could reasonably have been interpreted...as relating generally to the investigation.” *Id.* at 1046.

In this case, Defendant asked for a lawyer, but then less than 10 seconds later, she began voluntarily offering information to the investigators, during their attempt to confirm whether she was invoking her right to counsel. As one of the investigators began, “Just so we understand...”

Defendant interrupted and offered, “Do you need my ex’s name?” (Interview 1(a) Audio Recording at 05:37). This comment was related to the investigation, as she had previously indicated that she was “done covering for [her] ex” after the investigators told her there was a dead body found in the trunk of her car. (*Id.* at 05:15). The investigators answered her question and said no, to which Defendant promptly replied, “Okay. So, hold on [inaudible] there’s a body in my trunk?” (*Id.* at 05:40 – 05:51). This statement is directly related to the investigation. With these two statements, Defendant actively re-engaged with the investigators about the investigation. She furthered that engagement with unprompted statements about how she had been assaulted earlier in the day, and she resumed talking about her ex. (*Id.* at 06:22). Considering *Bradshaw* and *Staats*, the present facts are more similar to the suspect’s question in *Bradshaw*. In fact, here, Defendant did more than ask a general question about the investigation. She proactively offered to provide information related to the investigation, in an attempt to provide an alibi and shift blame to her ex. As such, Defendant reinitiated conversation with law enforcement.

II. Defendant properly waived her previously invoked right to counsel.

A finding of re-initiation does not end the inquiry. The district court must also consider whether the suspect waived their previously invoked right to counsel. *See State v. Munson*, 594 N.W.2d 128, 138-39 (Minn. 1999). In determining whether a defendant knowingly, intelligently, and voluntarily waived their *Miranda* rights, the district court uses a multi-factor analysis, considering “the defendant’s age, maturity, intelligence, education, experience, ability to comprehend, lack of or adequacy of warnings, length and legality of detention, nature of the interrogation, physical deprivations, and access to counsel and friends.” *State v. Miller*, 573 N.W.2d 661, 672 (Minn. 1998).

In this case, Defendant reinitiated conversation with the investigators in an unprompted, narrative format, without any questions from the investigators. The investigators interrupted her to clarify that she intended to waive her previously invoked right to counsel. One of the investigators specifically asked Defendant if she still wanted to speak with them, despite her prior request for an attorney. She affirmed that she did. Even after this, Inv. Kirschner reminded her of her *Miranda* rights and offered to re-read them to her. Defendant declined and reiterated that she understood each of her *Miranda* rights. Inv. Kirschner then asked if she wanted to keep speaking to them, and Defendant responded affirmatively that she wished to continue the interview. (Interview 1(a) Audio Recording at 06:41 – 07:24). Defendant was of sufficient age and maturity to understand the *Miranda* warnings (she was 28 years old and had completed high school and obtained a degree from a technical college), she had been read her *Miranda* rights three times prior to her second waiver (by the arresting officer, by Inv. Schoenherr, and by Inv. Kirschner), she had only been interviewed for approximately 7 minutes at the time of her second waiver, and she did not suffer any physical deprivations during the interview (law enforcement had provided her with a blanket when she said she was cold, and pizza and soda when she said she was hungry). Thus, Defendant properly waived her previously invoked right to counsel.

For the next seven minutes, Defendant spoke to the investigators and answered their questions, until she changed her mind and decided to re-invoke her right to counsel. At that time, the investigators promptly ended the interview.

CONCLUSION

At trial, the State does not intend to introduce any of Defendant's statements from Interview 1(b) or Interview 2 in its case in chief, and would only use those statements to impeach should Defendant testify. Thus, the Court does not need to make any findings related to those interviews.

However, Defendant's motion should be denied regarding Interview 1(a). Defendant reinitiated conversation with the investigators after invoking her right to counsel, and she waived her previously invoked *Miranda* rights. Therefore, Defendant's motion to suppress Defendant's first statement should be denied.

Date: December 16, 2022

Respectfully submitted,

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