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| <b>DISTRICT COURT, TELLER COUNTY, COLORADO</b><br>Court address: <b>P.O. Box 997</b><br><b>Cripple Creek, CO 80813</b><br>Phone Number: <b>(719) 689-2574</b> |  |
| PEOPLE OF THE STATE OF COLORADO, Plaintiff,<br><br>Vs   | DATE FILED: August 28, 2019<br><br><b>Court Use Only</b> |
| PATRICK FRAZEE, Defendant.  | Case Number: <b>2018CR330</b><br>Division <b>11</b>      |
| <b>ORDER REGARDING DEFENDANT'S MOTION TO SUPPRESS STATEMENTS</b>  |  |

INTRODUCTION

THIS MATTER came before the Court on August 23, 2019 for a hearing on Defendant's Motion to Suppress Statements (D-14). The People appeared by Mr. May, Ms. Reed and Ms. Viehman. Defendant appeared with Mr. Steigerwald and Ms. Porter. I have reviewed the People's Response (P-16), considered the testimony of Sergeant Sandefur and social worker, Mary Longmire and People's Exhibit #1. I find and Order as follows:

ISSUE

Whether statements made by Mr. Frazee to DHS caseworker, Mary Longmire on 12/26/2019 while incarcerated at the Teller County Jail should be suppressed?

DEFENDANT CONTENDS

Defendant contends Ms. Longmire is a government agent performing law enforcement duties who conducted a custodial interrogation without a Miranda advisement of rights.

DISTRICT ATTORNEY CONTENDS

District Attorney contends the Defendant was not in custody, Ms. Longmire is not a police officer, statements by Defendant were voluntary and a Miranda advisement was not required.

BACKGROUND

Defendant was arrested on 12/21/18 for murder in the first degree of Kelsey Berreth and solicitation to commit murder in the first degree. Defendant and Ms. Berreth have one child who was about 14 months old at that time and was in Defendant's custody at the time of his arrest. Ms. Berreth has not been seen since the Thanksgiving timeframe of 2018. On 12/21/19 the child was placed in the legal and physical custody of the Teller County Department of Social Services as per Court Order.

Ms. Longmire is the Administrator of Teller County Social Service and acted as the DHS intake worker in this case initially. Ms. Longmire visited Defendant at the

Teller County Jail on 12/21/18 and 12/26/18. Defendant seeks to suppress only the statements made by him on 12/26/18. Teller County DHS filed a Dependency and Neglect Petition on 12/27/19 in a separate juvenile proceeding.

## **FINDINGS OF FACT**

### **PLACE OF INTERVIEW AND PROTOCOL**

The Teller County Jail has an interview room in the TV advisement room where video advisements are held. It is not a cell and the room is used for inmate attorney visits and for other inmate visitors. The room is adjacent to the inmate booking area, has a large window, large television, shelves, chairs, table and telephone. There is one door to the interview room which does not have a lock or was unlocked on 12/26/18. The window allows those in the room to see booking personnel and booking to see into the room. The window has blinds that can be closed upon the request of the attorney.

When an inmate has a visitor a deputy will inform the inmate and the inmate may refuse the visit and is not brought to the interview room. The inmate or visitor may terminate the visit at any time by signaling the booking deputy.

### **PURPOSE OF VISIT BY MS. LONGMIRE ON 12/26/18**

Teller County DHS had custody of the minor child and a hearing was scheduled for 12/27/18 as per C.R.S. 19-3-403(3.5). Father was in jail and mother had been missing for a month. Neither parent was available to parent and three family members were requesting custody of the child. Ms. Longmire had a legal obligation as per the Colorado Children's Code to investigate and make a placement recommendation to the Judge the following day. Ms. Longmire is required by law to investigate allegations of abuse and neglect. She testified there were very tight timelines if the child was to be placed out of state. Defendant's mother and sister were also requesting custody and she had spoken with them. She wanted information on Defendant's upbringing, social history and whether his family was an appropriate placement.

Because of the nature of the criminal charge and the allegation the child had been exposed to violence she needed to determine where the child was during the time of mother's disappearance. She wanted information on the custody arrangement between the parents, relationship with mother and child's schedule, any medical issues or other needs of the child for placement purposes with potential caregivers.

### **WHAT MS. LONGMIRE KNEW ABOUT THE CASE AT TIME OF 12/26/18 VISIT**

She knew Defendant was charged with first degree murder of the child's mother and of an allegation of child abuse. She was aware of news reports regarding the case and knew mother had been missing since the Thanksgiving timeframe. The arrest warrant was sealed at that time. She did not notify law enforcement of the visit and law enforcement did not ask her to visit.

### THE ACTUAL VISIT

Ms. Longmire called the jail to schedule a 3pm visit. When she arrived, she was told Defendant was meeting with his attorneys and was told to return at 7pm which she did. Caseworkers routinely interview incarcerated parents at the Teller County Jail. She did not notify Defendant's criminal defense attorneys of the visit and the record is silent if she knew their identity.

A deputy brought Defendant into the room and left. Defendant was not in handcuffs, the door to the room was not locked and the window blind was not closed. Both parties sat at the table. The length of the meeting was sixty to ninety minutes.

Ms. Longmire told Defendant he did not have to answer questions. She described Defendant's attitude as cooperative, personable and he provided information about the child, custody arrangements and Thanksgiving timeframe. Defendant signed a release of information at her request. Ms. Longmire and Defendant were the only people present. Ms. Longmire described her own demeanor as non-confrontational because she had no information to confront him with. She sought information in fourteen areas as per the Family Social History and Assessment (People's Exhibit 14).

Defendant asked questions about the process, he never refused to answer questions, and Ms. Longmire never made any threats or limited Defendant's movement.

Ms. Longmire testified she is not law enforcement, did not give a Miranda warning and had never given anyone a Miranda warning.

Defendant was free to leave anytime, and it would have been ok if he did not want to talk with her and no restrictions were placed upon him regarding sharing the paperwork she gave him with others.

### APPLICABLE LAW

Social workers are not included in the definition of peace officers in C.R.S. 16-2.5-101 to 16-2.5-152. A law enforcement officer means a peace officer C.R.S. 16-2.5-101(3).

In order for there to be a *Miranda* violation, the Court must determine that the statement was obtained while the Defendant was subject to custodial interrogation. "For *Miranda* to be applicable, the suspect must be in custody and the statement must be the product of a police interrogation." *People v. Baird*, 66 P.3d 183, 188 (Colo. App. 2002). "The term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police, other than those normally attendant to arrest and custody, that the police should know are likely to elicit an incriminating response." *Id.*

The fact that the Defendant was incarcerated, and the interview took place at the Teller County Jail does not automatically mean that the Defendant was in custody. Colorado law has recognized that the traditional test of custody is inapplicable in a prison or jail setting because it would lead to the conclusion that all prison questioning is custodial because a reasonable person would always believe he could not leave the prison freely." *People v. Parsons*, 15P.3d 799, 801 (Colo. App. 2000). The Colorado Supreme Court adopted a four-part test first formulated in *Cervantes v. Walker*, 589 F.2d 424 (9<sup>th</sup> Cir. 1978). "In determining whether an inmate has been restricted s as to require the advisement of *Miranda* rights, four factors are to be considered: (1) the language used to summon the individual; (2) the physical surroundings of the interrogation; (3) the extent to which he is confronted with evidence of his guilt; and (4) the additional pressure exerted to detain him." *People v. Denison*, 918 P.2d 1114, 1116 (Colo. 1996). This test has been followed in *In Re J.D.*, 989 P.2d 762 (Colo. 1999) and expanded further in *Parsons*:

The factors set forth in *Denison*, however, are not necessarily dispositive of the inquiry whether an individual has been further restricted to such an extent as to be deemed in custody for *Miranda* purposes. Other circumstances a court may consider include: (1) the time, place, and purpose of the encounter; (2) the persons present during the interrogation; (3) the words spoken by the officer to the defendant; (4) the officer's tone of voice and general demeanor; (5) the length and mood of the interrogation; (6) the placement of any limitation of movement or other form of restraint on the defendant during the interrogation; (7) the officer's response to any questions asked by the defendant; (8) any directions given to the defendant during the interrogation; and (9) the defendant's verbal or nonverbal response to such directions. *Parsons* at 801-02.

Custodial interrogation is defined as "questioning initiated by law enforcement officers after a person has been taken into custody," *People v. Robledo*, 832 P.2d 249, 250 (Colo. 1992). "[T]hus *Miranda* by its own terms applies only to actions of law enforcement officials," *People v. Chastain*, 733 P.2d 1206, 1213 (Colo. 1987). "State action has been extended to include civilians acting as agents of the state in order to prevent law enforcement officials from circumventing the *Miranda* requirements by directing a third party to act on their behalf," *Robledo* at 250. "Determination of whether an individual is acting as an agent of the police requires examination of the totality of the circumstances," *Id.* Citing *People in Interest of P.E.A.*, 754 P.2d 382, 385 (Colo. 1988).

The Colorado Children's Code requires social services to investigate and act in a situation like this. A hearing shall be held within 72 hours of placement, parents and family members must be interviewed, advised and reports completed as per C.R.S. 19-3-403. The Children's Code has expedited time lines for children under six years of age C.R.S. 19-3-505 and 19-1-123. Social services is required to prepare a social study and

report to the Court and provide a list of services available to families that are specific to the needs of the child. C.R.S. 19-1-107. Social services is required to notify parents of court proceedings as per 19-3-312 and 19-3-502(7).

### CONCLUSION

I had the opportunity to listen to and observe the testimony and demeanor of both witnesses. I find them both credible witnesses.

I find by a preponderance of the evidence Defendant made the statements attributed to him. Ms. Longmire is not a police officer, peace officer or law enforcement officer. Her actions were consistent with her duties under the Colorado Children's Code. A Judge placed legal custody of a child with her and she was required by law to investigate and make a recommendation to the Court on 12/27/18. She was not working as an agent of law enforcement and was in fact working independently of law enforcement.

Ms. Longmire had no legal duty to give Defendant a Miranda advisement or warning because she is not a police officer. Defendant was in jail, but no custodial interrogation took place.

The meeting was voluntary. When I consider the totality of the circumstances, I find no threats, limits of movement, harsh words, confrontation of evidence of guilt, or any other factor mentioned in the *Cervantes and Dennison* cases that would indicate any type of Miranda warning was required or to find any constitutional violation.

Defendant's Motion to Suppress is DENIED.

BY THE COURT:

  
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Scott A. Sells  
District Court Judge

8/28/2019