STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK, DISTRICT COURT

Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

ELIZABETH BRITIANY KEYES,

Defendant.

Case No. **CR28-20-5762**

MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

Defendant ELIZABETH BRITIANY KEYES' Motion to Suppress is **DENIED**.
Laura McClinton and Art Verharen, Kootenai Co. Dep. Prosecuting Attorneys, lawyers for the Plaintiff.
Linda Payne and Ann Taylor, Kootenai Co. Public Defenders, lawyers for Defendant Keyes.

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

On April 17, 2020, a Criminal Complaint was filed charging defendant Elizabeth Britiany Keyes (Keyes) with Murder of the First Degree, Idaho Code § 18-4001, 18-4003(a)(d), claiming that on April 14, 2020, Keyes did willfully, unlawfully, deliberately, with malice aforethought and with premeditation, kill her new born baby, a human being, to wit: by strangling and disemboweling said child, or that she did unlawfully kill and murder a human being, committed in the perpetration or attempted perpetration of aggravated battery upon a child younger than twelve years of age, to-wit: by strangling and disemboweling her new born baby. Compl. 1. On June 15, 2020, Judge Clark Peterson signed an Order to Amend the Complaint, and on June 16, 2020, the Amended Complaint was filed, adding a Count II, Alteration of Evidence, Idaho Code § 18-2603, claiming that

Keyes, knowing that an object or thing, to wit: her recently strangled to death new born baby, was about to [be] used or discovered in a felony proceeding or investigation, did willfully alter said baby by cutting the baby multiple times with the intent thereby to prevent it from being so used or discovered. Am. Compl. 2. A preliminary hearing was held before Judge Mayli Walsh on June 16, 2020, at the conclusion of which Keyes was bound over to district court on both theories under Count I, Murder, and on Count II, Concealment of Evidence. On June 17, 2020, the Information was filed, and an arraignment hearing was scheduled before the undersigned on July 6, 2020. At the July 6, 2020, arraignment, Keyes entered a not guilty plea. On August 6, 2020, with "no objection" by counsel for Keyes, the Court ordered the Amended Information be filed, which claimed Keyes committed Murder of the First Degree by willfully, unlawfully, deliberately, with malice aforethought and with premeditation, kill her new born baby, a human being, to wit: by strangling said child and/or, did unlawfully kill and murder a human being, committed in the perpetration or attempted perpetration of aggravated battery upon a child younger than twelve years of age, to-wit: by strangling her new born baby. Am. Information 1-2.

On August 4, 2020, counsel for Keyes timely (under I.C.R. 12(d) relative to her plea entered July 6, 2020) filed a Motion to Suppress. Keyes seeks to suppress, "any and all evidence gathered against Keyes including all statements made by defendant, the observations made by the officers of the defendant before, during and after the unwarned interrogation as well as all materials seized without a warrant." Mot. to Suppress 1. On August 12, 2020, counsel for plaintiff filed State's Objection to Motion to Suppress and Motions to Dismiss (claiming Keyes' motion was untimely under the magistrate's Order Holding, and not supported by a memorandum also under the magistrate's Order Holding). On August 19, 2020, counsel for Keyes filed Defendant's Brief in Support of Motion to

Suppress Evidence. On August 28, 2020, counsel for plaintiff filed Plaintiff's Brief in Opposition to Defendant's Motion to Suppress.

The Motion to Suppress was heard on August 31, 2020. Art Verharen and Linda McClinton represented the plaintiff; Linda Payne and Ann Taylor represented Keyes

At that hearing, counsel for Keyes indicated that she could not be ready for the two-week jury trial on September 28, 2020, and requested a continuance of the trial. Keyes then waived her right to a speedy trial and the two-week jury trial was re-scheduled to begin March 15, 2021. The Court denied plaintiff's objection as to Keyes' motion to suppress (based on timeliness and lack of a memorandum).

At the hearing on the motion to suppress, plaintiff's exhibits 1-5 were admitted. Counsel for Keyes called as witnesses, William B. Ray, Administrative Sergeant with the Rathdrum City Police; Jacob David Allen, Patrol Officer with Rathdrum City Police: Kimberly Edmondson, Detective Commander with Kootenai County Sheriff's Office; Daniel Lee Guerrero, Emergency Department Technician at Kootenai Health; Jordan Munson, Lead Security Officer at Kootenai Health; Cody Wright, who was a Security Officer at Kootenai Health on April 14, 2020; Kimberly Ann Jordan, who works at Kootenai Health Outpatient Surgery Center but who was doing labor pool in the Emergency Department on April 14, 2020; Katelyn Weatherly, an Emergency Nurse at Kootenai Health; Patrick Magajna, M.D., who works at Kootenai Health in the Emergency Department; Sarah Lyon, a Registered Nurse in the Emergency Department at Kootenai Health; Andrew Henneberg, M.D., who is in private practice and who was called in to consult on April 14, 2020; Terry Hoggatt, a Security Officer at Kootenai Health; Detective Joseph Scholten, City of Coeur d'Alene Police Officer; Robert Reynolds, an employee of Kootenai Health; Danielle Clarkson, a Labor and Delivery Nurse at Kootenai Health; James Kirby, M.D., a Psychiatrist

at Kootenai Health; and Detective Glenda Hook, Rathdrum City Police. The plaintiff called Detective Kenneth Lallatin, Detective Sergeant at the Kootenai County Sheriff's Office. At the conclusion of that hearing, the Court ordered additional briefing (essentially closing argument) based upon the evidence and how it relates to the law; the first brief on behalf of Keyes due September 14, 2020, the plaintiff's reply brief due September 21, 2020, and Keyes' reply brief due September 25, 2020. The Court stated it would take Keyes' motion to suppress under advisement on September 25, 2020, and that it would listen to the audio portions of Keyes' interviews or read the transcripts. All briefing was submitted timely and has been read by the Court. Keyes' motion to suppress is now at issue.

The Court apologizes for the length of this decision. There are reasons for its length. First, much of the parties' briefing is included in its entirety. That was done because not all that was claimed to be fact by the parties was true, and because the Court felt it important to set forth the parties' positions fully so that the reader could understand what the Court was given to base its decision upon. Second, much of the transcripts of the two interviews sought to be suppressed are provided, so that the reader could understand the arguments of the parties in context and understand what arguments were supported and what arguments were baseless, and so that the reader could understand the Court's findings and decisions in context. Third, Idaho appellate law on interrogations in hospitals is limited. This Court reviewed that case law and also looked to opinions from other jurisdictions for a more complete framework for analyzing these issues. This is an emerging area; the seminal case in Idaho is only nine years old, and the New Mexico Court of Appeals dealt with this issue for the first time only eleven years ago. Fourth, the Court made some initial assumptions which turned out to be wrong, given the benefit of reading other cases not cited to the Court by the parties. Fifth, while there is one paramount

question to be answered, and that is whether these interviews were custodial or not, there are multiple layers of questions to be analyzed in reaching that decision, and each layer has multiple factors to be considered. Finally, the Court appreciates that no matter the decisions reached by this Court, and no matter the resolution of this lawsuit, the decision made in this opinion will in all likelihood be appealed. To assist that appellate review, this Court wished to thoroughly provide its reasoning and the basis for that reasoning.

II. STANDARD OF REVIEW.

In an appeal from an order denying a motion to suppress, Idaho appellate courts will not disturb findings of fact supported by substantial evidence, but will freely review whether the trial court's determination as to whether constitutional requirements were satisfied in light of the facts. *State v. Whiteley,* 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct. App. 1993). When evaluating the trial court's determination of voluntariness of consent given, reviewing courts will not disturb such a decision on appeal if the trial court's finding is based on reasonable inferences to be drawn from the record. *State v. Post,* 98 Idaho 834, 837, 573 P.2d 153, 156 (1978). Whether consent to a search was voluntary is a question of fact and reviewing courts accept the factual findings of a trial court unless they are clearly erroneous. *State v. McCall,* 135 Idaho 885, 886, 26 P.3d 1222, 1223 (2001). Findings are not deemed clearly erroneous when supported by substantial evidence in the record. *State v. Benson,* 133 Idaho 152, 155, 983 P.2d 225, 228 (Ct. App. 1999).

III. ANALYSIS.

A. POSITIONS OF THE PARTIES.

The following is a brief summary of the positions of the parties on four areas sought to be suppressed by Keyes. The following summary is taken from briefing submitted by the parties before the August 31, 2020, hearing on Keyes' motion to suppress.

In Keyes' Defendant's Brief in Support of Motion to Suppress Evidence, Keyes claims the following should be suppressed: 1) her "statements to Dr. Henneberg April 14, 2020, comprised of a disclosure of un-waived medical privilege"; 2) "The unlawful interrogation that caused Elizabeth Keyes to make involuntary and un-Mirandized statements to Kootenai County Sheriff's Office (KCSO) Detective Lallatin April 14, 2020"; 3) "The unlawful interrogation that caused Elizabeth Keyes to make involuntary statements to KCSO Detective Lallatin April 15, 2020"; and 4) "The unlawful search of Elizabeth Keyes' personal journal by KCSO Detective Lallatin April 16, 2020 without a warrant and without exception to the warrant requirement." Def.'s Br. In Supp. of Mot. to Suppress Evidence 1-2. Keyes claims these are the facts:

> During the early morning hours of April 14, 2020 Elizabeth Brittany Keyes gave birth to a nearly term fetus in the only working bathroom within the home she resided. No one in the occupied home was aware of what happened to Elizabeth until after the birth took place.
>
> The three bedroom, 2-bathroom ranch style home is located in Rathdrum, Idaho, a small community just northwest of Coeur d'Alene. The home is rented/leased/or owned by Cathy Roland who is the mother of Elizabeth's fiancé, Sean Roland. Mr. Roland was incarcerated at the time of these allegations. As of April 14, 2020, approximately eight people lived in the three bedroom residence, and included the following people: Elizabeth; Mrs. Roland; Raeanna Gardiner (daughter of Cathy Roland and sister to Sean Roland); and, Raeanna's significant other and her children. Elizabeth either slept on a couch in the living room or in the garage, which had been converted into a makeshift bedroom. The only working restroom was located in the master suite of the home, occupied by Cathy Roland.
>
> In the late evening April 13, 2020 and into the early hours of April 14, several of Raeanna Gardiner's children were in the living room while Elizabeth went into the bathroom; Elizabeth believed she had menstrual cramps and needed to use the bathroom. Unfortunately, at that point, Elizabeth discovered her situation was far more serious than menstrual cramps after she delivered a fetus. In a state of shock, Elizabeth tried to clean restroom and then told Cathy she had a miscarriage. Elizabeth placed the fetus, the contents from clean-up of the bathroom and the soiled clothing into a bag she placed on the porch of the house.
>
> After these events.[,] Elizabeth then went to bed in the garage. Hours later, Raeanna Gardiner awoke for the day, went to the bathroom where she noticed what appeared to be blood. Ms. Gardiner checked on

various family members, including Elizabeth, and a short time later, she found the white garbage bag Elizabeth had left on the front porch. Ms. Gardiner woke Elizabeth and told her she needed to go to the hospital. At the time, Ms. Gardiner observed blood on Elizabeth's legs. Both women retrieved the fetus, and drove to Kootenai Hospital located on the KHC in Coeur d'Alene.

Elizabeth arrived at the hospital April 14, 2020 after 10:00 a.m. through the emergency room entrance; she was taken to triage where she was examined. About an hour after her arrival at the hospital, Elizabeth was transferred to the Family Birth Center (FBC) labor and delivery postpartum unit, also located in the hospital building. Throughout this time, Ms. Gardiner accompanied Elizabeth; however, once Elizabeth arrived in the FBC, Ms. Gardiner wanted to leave the room but could not because at least 1 hospital security guard was posted at the door.

In the FBC/postpartum department, Elizabeth was given a hospital gown, and instructed to strip naked and medical professionals examined her. Various nurses attended to Elizabeth, they took her blood pressure, retrieved urine from her urinalysis, and drew her blood. Dr. Henneberg then examined Elizabeth and questioned her throughout the examination. It was at that time Ms. Gardiner successfully left the room; only to be detained and questioned by the police. Dr. Henneberg had completed his examination April 14 by 11:45 a.m.

Several hours passed while Elizabeth waited in her room in the FBC after the doctor examined her. About 3:00 p.m. Detective Lallatin and Deputy Coroner Acebedo entered Elizabeth's room. Only the two of them and Elizabeth remained in the room with the door closed or mostly closed. Elizabeth was in a hospital bed, still unclothed under the open back hospital gown. While the detective interrogated Elizabeth, a nurse came into the room to check on Elizabeth, Detective Lallatin instructed the nurse to return at a later time. Elizabeth's phone rang but Detective Lallatin instructed her to take the call later.

Lallatin's interrogation continued for over 90 minutes until he took an approximately 40 [minute] break, and then returned to continue the interrogation. The entire length of the interrogation, including the break was just over three hours. Throughout the entire interrogation and break, Elizabeth had no communication with Raeanna. Raeanna was her ride, and had promised to stay with her. At the conclusion of the interrogation April 14, Elizabeth was taken to the BHU, located in a separate building from the hospital, but still on the KHC. Upon arrival at BHU, Elizabeth was assessed and admitted.

April 15, Detective Lallatin returned and interrogated Elizabeth again while she was a patient in the BHU. Detective Lallatin read the Miranda warning to Elizabeth at that time. Throughout the hours between the first and second interrogation Elizabeth had security guards posted, watching over her. Elizabeth still had not had any opportunity to speak with any loved ones or friends since Raeanna left Elizabeth in the FBC room the day before.

April 16, 2020, in the late afternoon, Detective Lallatin returned to

> the BHU and arrested Elizabeth. Detective Lallatin obtained possession of Elizabeth's personal journal and searched the contents of it — the detective did not have a warrant to obtain and search the journal, and no exception to the warrant requirement existed.

Id. at 3-5. Keyes then provides legal argument on each of the four concerns she claims should be suppressed.

First, Keyes argues she did not waive her privilege (under I.R.E. 503(b)(2)) medical communication with Dr. Henneberg, or any medical staff at Kootenai Health. *Id.* at 5-6. Keyes argues:

> Dr. Henneberg's questions had nothing to do with physical status or diagnosis of Elizabeth. Questions about whether the child had any response, or was alive, had to do with the mental health of Elizabeth; that purpose is borne out with the doctor's recommendation to admit Elizabeth to the BHU. Such statements, when un-waived, as in Elizabeth's circumstances, must be suppressed. Further, Dr. Henneberg did not discharge Elizabeth after her examination - she remained in her room until Lallatin's interrogation with a KHC guard outside her door.

Id. at 6.

Second, Keyes argues her statements to Detective Lallatin on April 14, 2020, must be suppressed because the statements were obtained without a *Miranda* warning. *Id.* at 6-17. Keyes argues Detective Lallatin conducted a custodial interrogation of Keyes based on the level of investigation he conducted prior to interviewing her, and based on the fact he thought she was a crime suspect. *Id.* at 6-9. Keyes argues she did not believe she had the ability to leave or stop the interview. Her interview lasted about three hours, her hospital room door was closed and there were security guards posed at the door, and she was alone with Detective Lallatin and Deputy Coroner Acebedo. *Id.* at 9-11. She was interrogated in a hospital setting and she claims her facts are different than in *State v. Langford*, 136 Idaho 334, 33 P.3d 567, (Ct. App. 2001) where the hospitalized defendant was found not to be in custody. *Id.* at 11-12. Keyes argues she was in an emotionally

fragile state, that Detective Lallatin asked accusatory questions, used pet names such as "Hon" and "Lizzy", played on her emotions and told her he knew what she had told Dr. Henneberg. *Id.* at 12-14. Keyes argues she was in a custodial interrogation and *Miranda* warnings were required. *Id.* at 14-16. Keyes argues her statements made to Detective Lallatin on April 14, 2020, were not voluntary and must be suppressed. *Id. at* 16-17.

Third, Keyes argues Detective Lallatin's *Miranda* warning on April 15, 2020, was improper. *Id.* at 17-21. Keyes argues Lallatin's *Miranda* warning was improper because Detective Lallatin referred back to his interview with her the day before when *Miranda* warnings were not given, he downplayed her rights as being "basic" and "very simple", and when he asked her, "Having those rights in mind, do you agree to talk with me today?", there is no audible answer, even though there is a written waiver with her signature. *Id.* This is the "fruit of the poisonous tree" argument.

Fourth, Keyes argues Detective Lallatin's seizure and search of Keyes' journal without a warrant and without an exception to the warrant requirement, should warrant suppression of the contents of her journal. *Id.* at 21-22.

As to these four issues, the plaintiff responds as follows.

First, the plaintiff claims Keyes' statements to Dr. Henneberg were not privileged under Idaho Rule of Evidence 503, because the privilege is for confidential communications between a patient and certain care providers, but the exception under I.R.E. 503(d)(4) applies and there is no privilege, "in a criminal action or a proceeding as to communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child, including but not limited to the abuse, abandonment or neglect of a child." Pls.' Br. In Opp'n to Def.s' Mot. to Supp. 4-6.

Second, as to Detective Lallatin's interview of Keyes on April 14, 2020, conducted

without *Miranda* warnings, plaintiff claims *Miranda* warnings were not required to be given as Keyes was not in custody. *Id.* at 6-9.

Third, as to Detective Lallatin's interview of Keyes on April 15, 2020, plaintiff claims this was not an illegal interrogation because Keyes' statements were voluntary. *Id*. at 9-11.

Fourth, as to the search and seizure of Keyes' journal, plaintiff states that it does not intend to introduce Keyes' journal at trial. *Id*. at 11.

This Court has read all briefing submitted by the parties subsequent to the August 31, 2020, hearing on Keyes' motion to suppress. Additionally, this Court has read the transcript of the August 31, 2020, hearing which was filed on September 9, 2020; has reviewed and listened to all exhibits admitted at that August 31, 2020, hearing which consist of: 1) Ex. 1, CD of Detective Lallatin's interview with Keyes on April 14, 2020, 2) Ex. 2, transcript of Detective Lallatin's interview with Keyes on April 14, 2020, 3) Ex. 3, CD of Detective Lallatin's interview with Keyes on April 15, 2020, 4) Ex. 4, transcript of Detective Lallatin's interview with Keyes on April 15, 2020, and 5) Ex. 5, *Miranda* warning signed by Keyes on April 15, 2020. This Court has also reviewed the Affidavit of Probable Cause filed on April 17, 2020; and has reviewed the June 16, 2020, preliminary hearing transcript filed on July 21, 2020.

B. ANAYLYSIS.

1. Defendant's communications to Dr. Henneberg are not privileged communications under I.R.E. 503.

In Keyes' Defendant's Closing Argument for the Motion to Suppress, Keyes did not address her communications with Dr. Henneberg. In Plaintiff's Closing Arguments Following Motion to Suppress, plaintiff argued:

> The Defendant's statements made to Dr. Henneberg on April 14, 2020 were not privileged communications. The statements were not intended to be confidential, see IRE 503 (b)(2). Dr. Henneberg testified at the

Motion to Suppress hearing (hereinafter MTS) that the Defendant's friend, Ms. Gardiner, was present during the discussion he had with the Defendant about the birth of baby boy Keyes. There was no testimony from any of the witnesses that the Defendant asked her friend to leave during the discussion or attempted to keep others from over-hearing the conversation. Further, the statements made to Dr. Henneberg were made in the context of a medical assessment, following the Defendant's home birth. Dr. Hennerberg testified that the purpose of the medical assessment was to make sure the Defendant was medically stable and that he always asks how baby was delivered and the condition of a baby upon birth. He testified that following home births, it is common to keep a patient in the hospital 6-8 hours for observation before discharge. Even if the communication was intended to be confidential, which the Plaintiff contends there is no evidence to support, ICR[E] 503(d)(4) clearly applies—there is no privilege as to communication relevant to an issue concerning the physical condition of or injury to a child, including abuse or neglect. Here, Dr. Henneberg was asking questions about the Defendant's home birth and the condition of the baby, in part to ascertain how the baby sustained multiple injuries he observed on the baby. Any statements made by the Defendant to Dr. Henneberg about the physical condition of her baby when he was born and the subsequent injuries inflicted upon him are not privileged statements as they related to the abuse of the child.

Pl.'s Closing Arg. Following Mot. to Suppress 1-2 (no page numbers in original). Keyes argues in her rebuttal brief:

> The statements Elizabeth made to Dr. Henneberg are privileged communications under IRE 503(b)(2) as they related to her mental or emotional condition. They were not related to treatment and therefore must be suppressed.
>
> * * *
>
> Elizabeth Keyes never waived her privileged medical communications with Dr. Henneberg, or any medical staff at the KHC. Idaho Rule of Evidence 503(b)(2) provides:
>
> > "Criminal action. A patient has a privilege in a criminal action to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of a patient's mental or emotional condition, including alcohol or drug addiction, among the patient, the patient's psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the psychotherapist, including members of the patient's family."
>
> Various medical staff at the hospital in both the emergency room and triage attended to Elizabeth Keyes before transferring to the FBC. Dr. Henneberg entered Elizabeth's room and explained the need to examine

> her. Dr. Henneberg asked Elizabeth questions about the process of giving birth and the doctor ultimately arranged to have Elizabeth transferred to the BHU based on postpartum and psychiatric concerns. (See Interrogation 1 pages 83-84).
>
> The doctor completed his examination over three hours prior to Detective Lallatin's Interrogation. Throughout those three hours, Elizabeth remained in a private room behind closed doors, alone and isolated with a KHC hospital guard posted at her door. Dr. Henneberg spoke with Detective Lallatin before Elizabeth was interrogated, and the doctor came in at Detective Lallatin's request to talk about admission of Elizabeth into the BHU.
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> Elizabeth talked with Dr. Henneberg and ultimately followed his advice to admit to the BHU, but at no time did Elizabeth waive her privileged communications as provided by I.R.E. 503(b)(2). Dr. Henneberg's questions had nothing to do with physical status or diagnosis of Elizabeth. Questions about whether the child had any response, or was alive, had to do with the mental health of Elizabeth and therefore do not meet the requirements of IRC[E] 503(d)(4). The purpose of the questions was completed with the doctor's recommendation to admit Elizabeth to the BHU. Dr. Henneberg testified that it is common to keep a patient in the hospital for 6-8 hours following birth, but Elizabeth spent much of this time being interrogated by Detective Lallatin, who denied the treating nurse entrance to the room to preform her medical duties. At this point, Elizabeth was not being held for medical treatment or diagnosis, but for interrogation. As a result, such statements, when un-waived, as in Elizabeth's circumstances, must be suppressed.

Def.'s Rebuttal Closing Arg. For the Motion to Suppress 1-2.

Dr. Henneberg testified at the August 31, 2020, hearing. He testified he examined Keyes in a labor and delivery room about 11:50 a.m. on April 14, 2020. He had already examined the deceased baby on his way to evaluate Keyes. August 31, 2020, hearing Tr. 112:17 – 115:4. Dr. Henneberg testified that when he spoke with Keyes she had her friend with her, the friend that brought Keyes to the hospital, and that friend remained in the hospital room the entire time he had his discussion with Keyes. Tr. 124:14-25. Dr. Henneberg testified that he did not know when Keyes' friend left. Tr. 126:16-17. He testified that his questions of Keyes pertained to diagnosis and treatment of both her and her dead baby. Tr. 125:1-4. His questions also pertained to the physical condition of the dead baby. Tr. 125:5-14. In order to find out how the birth happened, Dr. Henneberg

testified, "I asked her [Keyes] was the baby crying when it was born." Tr. 116:1-15. He testified Keyes told him that the baby made, "some sort of a response." Tr. 116:1-5.

The presence of Keyes' friend, Raeanna Gardiner (Gardiner) is uncontroverted. Gardiner's presence during the entire conversation between Keyes and Dr. Henneberg causes that conversation to not be a "confidential communication" under I.R.E. 503(a)(4). That rule reads: "A communication is 'confidential' if not intended to be disclosed to third persons, except person present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family." There is no evidence that Gardiner meets the criteria of that kind of third person (one who was there to further the interest of the patient). Neither Gardiner nor Keyes testified at the August 31, 2020, hearing. Since Gardiner is simply a regular third person under the rule, this Court finds the communication was not intended by Keyes to be confidential. Although the following cases dealt with I.R.E. 505 (religious privilege), they are instructive. The Idaho Supreme Court in *State v. Hedger*, 115 Idaho 598, 601, 768 P.2d 1331, 1334 (1989) held a conversation between a rape defendant and minister was not a privileged confidential communication where the conversation did not take place in private and a third person was present. In *State v. Gardiner*, 127 Idaho 156, 160-61, 898 P.2d 615, 619-20 (Ct. App. 1985), the Idaho Court of Appeals reached a similar conclusion where presence of a family member resulted in the communication not being confidential.

Even if this Court could find that Keyes intended her communications to Dr. Henneberg to be confidential, those communications were not made by Keyes, "for the purpose of diagnosis or treatment of the patient's mental or emotional condition", the

language found in I.R.E. 503(b)(2) which limits the rule's application in criminal actions. As pertains to the privilege, the patient here is Keyes, not the deceased baby. There is no possible way to construe the conversation about whether the baby made a noise or was crying when born, as a conversation about Keyes' mental or emotional condition. Also, Dr. Henneberg is an obstetric-gynecology specialist. Tr. 112:16-19. His questions *generally* pertained to Keyes' physical condition, not her "mental or emotional condition", even though Dr. Henneberg felt a transfer to the Behavioral Health Unit would be safer for her. Tr. 117:4-11. His *specific* question to Keyes (and Keyes' response) as to whether the baby made any noise can in no way be construed to pertain to Keyes' mental or emotional condition.

Finally, even if this Court could find that Keyes intended her communications to Dr. Henneberg to be confidential, and even if the communications were made for the diagnosis or treatment of Keyes' mental or emotional condition, the exception under I.R.E. 503(d)(4) clearly applies: "There is no privilege under this rule in a criminal or civil action or proceeding as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child." Asking the question whether her baby made any noise is clearly a communication relevant to an issue concerning the baby's physical condition at birth, not Keyes' mental state. There can be no other conclusion reached.

This Court finds that as a matter of fact and of law, Keyes' communications to Dr. Henneberg are not privileged communications under I.R.E. 503.

2. *Miranda* warnings were not required during Detective Lallitan's interview of Keyes at Kootenai Health on April 14, 2020.

Much of the August 31, 2020, hearing concerned testimony of those whom Keyes encountered at Kootenai Health (hospital), and where and when those encounters took place. Keyes' argument in Defendant's Closing Argument for the Motion to Suppress

makes clear the reason for such testimony. Keyes' argument, in its entirety, is as follows:

> Elizabeth concedes she was not handcuffed or in a jail cell when she was interrogated by Detective Lallatin. Further, she agrees neither law enforcement nor hospital staff forced her into the hospital or made her stay by use of force or threat. However, Elizabeth was in custody for the purposes of Miranda because her freedom of action had been curtailed. *Berkemer v. McCarty* 468 U.S. 420, 440, 104 S.Ct. 3138, 3150, 82 L.Ed.2d 317, 334-35 (1984) provides application of protections of Miranda when handcuffs and jail cells are not utilized. *Berkemer* further instructs a reasonable person standard is used to determine a custodial setting for the application of Miranda warnings. In Elizabeth's situation, whether she believed she was free to leave or in a custodial setting should be assessed as a reasonable person in the same circumstances would have understood the situation. *Berkemer* 468 U.S. at 442, 104 S.Ct. at 3151, 82 L.Ed.2d. To understand how Elizabeth, or a reasonable person in her circumstances, would have understood her ability to leave requires an understanding of events leading up to Detective Lallatin walking into her hospital room and interrogating her.
>
> For Elizabeth, her circumstances began in the early morning hours of April 14, 2020. Elizabeth Keyes gave birth alone in the bathroom of the house where she resided. Raeanna Gardiner found the remains of the child and took the child and Elizabeth to Kootenai Health. They arrived in a Gold colored SUV just before 11:00 am. Lead Security Officer Jordan Munson was present in the parking lot when Elizabeth and Raeanna pulled up to the hospital. He directed Raeanna inside and had more staff join him outside as needed. (MOTION TO SUPPRESS TRANSCRIPT hereinafter MTS page 67)
>
> Prior to Elizabeth being seated in the wheelchair to go into the Emergency Department, Security Officer Cody Wright joined Security Officer Jordan Munson in the outdoor area nearby. Kootenai Health Security Officers are dressed in Khaki pants and a black shirt with lettering stating "Security". Security is equipped with Law Enforcement tools, specifically, handcuffs, a baton, pepper spray and a radio. (MTS page 81). Dan Guerrero, Emergency Department Technician, said he saw security around the woman and the baby. (MTS page 55)
>
> Elizabeth did not immediately get out of the vehicle and into the wheelchair, but took some time and some convincing. Dan Guerrero and nurses Kimberly Jordan and Kaitlyn Weatherly assisted Elizabeth and convinced her to go into the hospital. (MTS pages: 56, 88, 95) Hospital staff wheeled Ms. Keyes into the hospital. Once inside the hospital Elizabeth was in room 14 of the Emergency Department for about 40 minutes. Dr. Magajna assessed her and transferred her to Labor and Delivery. Hospital staff, including security, escorted Elizabeth from the Emergency Department to Labor and Delivery and into the room where hours later she was interrogated.
>
> After Elizabeth was in her room in Labor and Delivery Dr. Henneberg examined her. Elizabeth remained in the room for over 3

hours from the time Dr. Henneberg completed his exam and left her room until the interrogation began. During the 3 hours, hospital security was outside her hospital room. (MTS pages: 79, 122, 129, and 146). Additionally, Detectives from Coeur d'Alene police department came to her room and had Raeanna come talk to them. Elizabeth saw Raeanna again after Coeur d'Alene detectives were there; but later, Raeanna left again and was detained by Detective Hook. Thereafter Detective Lallatin began his interrogation. (MTS page 187)

By the time Detective Lallatin walked into Elizabeth's room she had been in her room and in her bed for 3 hours. She wore a hospital gown and mesh underwear provided by Kootenai Health. She was alone. Raeanna had left the room and did not return. Raeanna was her ride home. Elizabeth lived in Rathdrum and could not walk home. No hospital personnel came in to discharge her and various personnel came in to check on her.

Elizabeth, or a reasonable person similarly situated would know she was further restricted as soon as Detective Lallatin began interrogating her. Elizabeth's interrogation began with Detective Lallatin's remark "do you have a minute, obviously". Elizabeth then learned he was the lead homicide detective. Detective Lallatin did not inform Elizabeth she was free to go. He did not inform her she did not have to answer questions. Elizabeth was not informed she could have an attorney present. Instead, Lallatin plowed forward, interrogating her and controlling the environment. Detective Lallatin directed her attention and eye positioning. Elizabeth had to move her hair so he could look at her. When her phone rang, he told her to take a phone call later. He told the nurse to come back later. The questions he asked were accusatory and kept coming whenever she hesitated or was silent. Detective Lallatin was investigating a death and he had a suspect. (MTS pages 206-207)

Relevant Idaho case law instructs that a hospital setting does not create a custodial setting on its own. However, Idaho case law does not say a hospital setting is not custodial. The Court of Appeals in, *State v. Langford*; 136 Idaho 334, 33 P.3d 567, (Ct. App. 2001) discussed why being in a hospital did not create a custodial setting because the questioning by law enforcement did not happen in a private setting; medical personnel was attending to Mr. Langford, and further, the length of questioning was brief. The *Langford* court discussed both *State v. Sandoval* 92 Idaho 853, 452 P.2d 350 (1969) and *State v. Cooper* 119 Idaho 654, 809 P.2d 515 (Ct.App.1991) noting that both people were questioned briefly and not in private. (Sandoval was in a hospital waiting room and Cooper was in a hospital waiting room.) These cases discuss the lack of privacy as well as additional medical personnel being present and the length and nature of the questions asked. Elizabeth's situation is starkly different. The United States Supreme Court instructs that all of the circumstances surrounding an interrogation must be considered to determine custody. *Stansbury v. California,* 511 U.S. 318, 322, 114 S.Ct. 1526, 1529, 128 L.Ed.2d 293, 298 (1994).

Elizabeth, seated behind a closed, or mostly closed, door was

> interrogated in her private hospital room. The room was not in a public place. Medical staff did not come in to provide medical care; the nurse attending to Elizabeth tried but was refused entry. Detective Lallatin and Deputy Coroner Acebedo, investigating the death of baby boy Keyes were the only people present. The interrogation, including a break, was just over 3 hours long. The quality of the questions were that of an accusatory interrogation. Detective Lallatin questioned her about whether she strangled or killed the baby and if she tried to get rid of the baby. Detective Lallatin posed these questions because Elizabeth was a criminal suspect.
>
> Elizabeth was in custody and should have been advised of her rights pursuant to *Miranda v. Arizona* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, 10 A.L.R.3d 974 (1966). A reasonable person in Elizabeth Keyes' position would not believe she was free to leave. A reasonable person would recognize she was alone in her hospital room, seated in a hospital bed and clothed in a hospital issued gown and mesh underwear while being questioned in an accusatory fashion. A reasonable person that did not drive herself to the hospital, but obtained a ride would rely on her driver to take her away if she wanted to leave. A reasonable person, who did not drive herself to the hospital, and not having access to the person who gave her a ride, would not believe she had a way to leave. A reasonable person would not feel free to leave a room controlled by law enforcement. A reasonable person knows the situation is controlled by law enforcement based on the use of words of accusation, and based on law enforcement controlling medical personnel access to the room. A reasonable person would believe she had to obey a law enforcement officer when told not to take a very important call. A reasonable person would feel her freedom to leave was controlled, and restricted. Elizabeth Keyes did not believe she was free to leave.

Def.'s Closing Argument for the Motion to Suppress 2-6. Before moving on to plaintiff's argument, the Court points out the false statement made by Keyes that, "Elizabeth learned he [Detective Lallatin] was the lead homicide detective." *Id.* at 5. There is no evidence to support such a claim. The only evidence is that Detective Lallatin greeted Keyes as follows: "Hi, I'm Ken Lallatin. I'm a detective with the Kootenai County Sheriff's Office. How are you doing?" Ex. 2, April 14, 2020, interview, Tr. 1:19-21.

Counsel for plaintiff's argument, also in its entirety, is as follows:

> The Defendant[']s statements to Sgt. Lallatin at Kootenai Health were made in a non-custodial environment, such that Miranda warnings were not required. The statements were voluntarily made and thus not suppressible. It is clear from all the testimony taken at the MTS, the

> Defendant was a voluntary admission at the hospital, transported and accompanied by her friend, Ms. Gardiner, and was free to leave at all times. Importantly, both physicians who testified, Dr. Magajna and Dr. Henneberg, stated the Defendant was free to leave and was never placed on physician's hold. The numerous security officers and security supervisor, Bob Reynolds, testified the Defendant was not on a law enforcement hold and was free to leave. Sgt. Lallatin testified the Defendant was not physically restrained in any manner during his interview with her. She was not handcuffed, tied down to her hospital bed, or threatened with violence or force at any time. Sgt. Lallatin maintained a pleasant tone of voice during his interview with the Defendant and was dressed in civilian clothing, with the exception of a badge and gun on his hip. Sgt. Lallatin took at least one break during the interview and allowed the Defendant to use her cellphone during their contact. The security officers testified they never entered into the Defendant's room. Further, they testified that the Defendant never attempted to leave her hospital room or requested to do so. The Defendant's friend, Ms. Gardiner was detained by law enforcement, but that detention occurred outside of the Defendant's room and not in her presence. There was no testimony that the Defendant even had knowledge of Ms. Gardiner's detention. At the conclusion of Sgt. Lallatin's interview, he left the Defendant. She was not arrested or even momentarily detained. She was free to leave. The fact that Ms. Gardiner had left the hospital and her vehicle was towed has no bearing on whether or not the Defendant could have walked out of the hospital at any point in time. Based on the testimony at the MTS it is clear that the Defendant was never in custody at any point on April 14, nor was she in any kind of custodial setting. As such, Miranda was not required and her interview should be admissible.

Pl.'s Closing Argument Following Mot. to Suppress 2-4 (no page numbers on original).

A review of applicable law is essential to this Court's determination on this aspect of Keyes' motion to suppress. Turning first to Idaho appellate case law, the most recent case is *State v. Langford*. The Idaho Court of Appeals in *Langford* held:

> Two Idaho cases discuss whether a person is in custody for purposes of *Miranda* when interviewed by police while hospitalized. In *State v. Sandoval,* 92 Idaho 853, 452 P.2d 350 (1969), the Idaho Supreme Court held that a defendant/patient was not subject to a custodial interrogation because he was not under arrest, the authorities did nothing to restrain his freedom of action, the questioning took place in a hospital room, and another patient was present. In *State v. Cooper,* 119 Idaho 654, 809 P.2d 515 (Ct.App.1991), this Court held that a defendant/patient was not subject to custodial interrogation because he was questioned in the public waiting area, the defendant was not arrested

or detained by police officers, and the interview lasted only thirty minutes. This Court explained that the majority view is that "questioning in hospitals by police is not custodial when the suspect is not under formal arrest." *Id.* at 658, 809 P.2d at 519. This is also in accordance with the majority view that a defendant/patient is not subject to custodial interrogation even though restrained or confined to a hospital bed or room by medical personnel. *See People v. Mosley,* 73 Cal.App.4th 1081, 87 Cal.Rptr.2d 325 (1999); *People v. DeBoer,* 829 P.2d 447 (Colo.Ct.App.1991); *Cummings v. State,* 27 Md.App. 361, 341 A.2d 294 (1975); *People v. Ripic,* 182 A.D.2d 226, 587 N.Y.S.2d 776 (N.Y.App.Div.1992).

Here, like the defendants in *Sandoval* and *Cooper,* Langford was questioned while hospitalized. However, there is no evidence Langford was ever placed in police custody. He was never arrested and, although he was restrained while being questioned at the hospital, he was restrained by hospital personnel for medical purposes. The investigating officers who testified at the hearing on Langford's motion to suppress stated that, as far as they were concerned, Langford was free to leave but was prevented from doing so by hospital staff. Moreover, medical personnel were present in Langford's room while he was being interviewed by the officers and the interview only lasted a few minutes. Therefore, we conclude the district court did not err by finding Langford was not in custody at the time he was interviewed by police officers.

Langford also argues that the statements he made to the officers were not voluntary because at the time he made the statements he was restrained, confused, intoxicated, and had a head injury. In addition, Langford claims his will was overborne because the officers interviewed him while he was undergoing painful medical treatment and because they secretly tape recorded some of the interview.

Notwithstanding the fact that an interview is noncustodial, statements made by an individual may be rendered inadmissible if they were not voluntary for Fifth Amendment purposes. *State v. Radford,* 134 Idaho 187, 191, 998 P.2d 80, 84 (2000); *State v. Kuzmichev,* 132 Idaho 536, 544, 976 P.2d 462, 470 (1999). Statements are not voluntary if, based upon the totality of the circumstances, the defendant's will was overborne. *See Radford,* 134 Idaho at 191, 998 P.2d at 84; *Kuzmichev,* 132 Idaho at 544, 976 P.2d at 470.

Here, there is no evidence suggesting Langford's statements to the officers were not voluntary. Langford never told the officers he did not want to speak with them or answer their questions. Langford called his attorney after being brought to the hospital and prior to being interviewed. There is no indication that Langford's attorney advised him not to speak with the officers, and Langford never told the officers he wanted to speak with his attorney during their interview with him. Therefore, we conclude that Langford has failed to show that his statements were involuntary. Thus, we hold that the district court did not err by denying Langford's motion to suppress statements he made to the police officers.

Langford, 136 Idaho at 338-39, 33 P.3d at 571-72. *Langford* makes clear the ultimate

question for this Court to decide in determining custodial status, is whether Keyes' statements were made such that, "based upon the totality of the circumstances, [Keyes'] will was overborne." 136 Idaho at 339, 33 P.3d at 572.

In finding that Langford's will was not overborne, the Idaho Court of Appeals analyzed several factors to determine if Langford's statements were voluntary. The only factor that is not similar in the present case is the amount of time of the interview; three hours in the present case compared to "a few minutes" in *Langford*. Later in this opinion, this Court will come back to the factor of the amount of time which transpired. First, this Court discusses the other factors mentioned by the Idaho Court of Appeals in *Langford,* in the order discussed in *Langford*, and this Court discusses those factors and compares those to the facts in the present case.

First, "the authorities did nothing to restrain his freedom of action." 136 Idaho at 338, 33 P.3d at 571. This is appropriate to consider at the beginning, because it is the restraint at the hands of law enforcement which is critical, not the restraint caused by the hospital, care providers or the defendant's injuries which are to be considered in determining custodial status. A person in a hospital who has two broken legs is not free to leave, regardless of whether they are interrogated by law enforcement; but that is true because they lack the physical ability to leave…they are not able to ambulate out of the hospital. A person who has been shot in the arm and who needs emergency surgery to repair a damaged artery, is not free to leave the hospital, even though that person may be able to walk of the hospital at that precise instant. That person will soon die were he to leave the hospital. In each of these two examples, the person is not free to leave due to medical reasons. The New Mexico Court of Appeals made this clear in *State v. LaCouture*, 146 N.M. 649, 213 P.3d 799 (2009):

> Our appellate courts have never considered whether the interrogation of a hospital patient constitutes a custodial interrogation. We therefore look to other state authority that has dealt with the issue. Based on the out-of-state authority the determination that a defendant was subjected to custodial interrogation most often turns on the distinction between **circumstantial restraints** and **direct police-imposed limitations** on a defendant's freedom. *See Yarborough v. State,* 178 S.W.3d 895, 901–02 (Tex.App.2005) (holding that factors incident to medical treatment, not police, restrained the defendant); *Commonwealth v. Perry,* 710 A.2d 1183, 1185–86 (Pa.Super.Ct.1998) (holding that a defendant who was wearing a neck brace, attached intravenously to tubes, and lying on a hospital gurney was not in custody); *see also State v. Melton,* 239 Neb. 506, 476 N.W.2d 842, 845 (1991) (holding that a hospital patient was not subjected to custodial interrogation); *Hammond v. State,* 569 A.2d 81, 94 (Del.1989) (where an emergency room patient was restrained not by police but by his condition); *but cf. Ybarra,* 111 N.M. at 235, 238, 804 P.2d at 1057 (interrogation was custodial where a hospital patient was placed in handcuffs by police prior to questioning); *State v. Pebria,* 85 Hawai'i 171, 938 P.2d 1190, 1192, 1194 (Ct.App.1997) (interrogation was custodial where defendant was detained by hospital security guards prior to and during questioning); *State v. O'Loughlin,* 270 N.J.Super. 472, 637 A.2d 553, 555, 557 (Ct.App.Div.1994) (interrogation was custodial where defendant was detained by police at a hospital).
>
> On the record before us, we find little evidence to support the notion that LaCouture was subjected to a custodial interrogation. His inculpatory statements were made prior to being placed under formal arrest. And though he had experienced serious physical injuries and was apparently in a great deal of pain, LaCouture was never placed in handcuffs, and the record indicates no time at which he and Officer Diaz engaged in physical contact of any kind. Officer Diaz questioned LaCouture in a public place, as indicated by the ambient noise on the interview tape. Finally, Officer Diaz never antagonized LaCouture or applied aggressive tactics to elicit the confession.

146 N.M. at 653-54, 213 P.3d at 803-04 (bold added). Going back to *Langford*, Langford was restrained by medical personnel (136 Idaho at 339, 33 P.3d at 571); Keyes was not restrained by medical personnel. Keyes was not "confined to a hospital bed or to a room by medical personnel", where Langford was. *Id.* "Langford also argues that the statements he made to the officers were not voluntary because at the time he made the statements he was restrained, confused, intoxicated, and had a head injury." *Id.* None of those factors are present with Keyes.

Second, "He [Langford] was never arrested." *Id.* Keyes was never arrested.

Third, "The investigating officers who testified at the hearing on Langford's motion to suppress stated that, as far as they were concerned, Langford was free to leave but was prevented from doing so by hospital staff." *Id.* In the present case, Dr. Henneberg testified Keyes was free to leave the hospital. Tr. 122:19-21. There was no hold on Keyes, "ever", she was there voluntarily. Tr. 125:5-10. She was free to leave when she was at the emergency department, according to the testimony of Dr. Maganja. Tr. 106:1-5. After the emergency department, Keyes was transferred to the Labor and Delivery Unit. According to the testimony of Danielle Clarkson, Labor and Delivery nurse, while in the Labor and Delivery Unit, Keyes was able to leave whenever she wanted, she was not on a physician's hold and she was not on any law enforcement hold. Tr. 158:24 – 159:4. Danielle Clarkson was present about 6:00 p.m. when Dr. Henneberg came in to speak to Keyes at the end of Detective Lallatin's interview. Even at that point, Clakrson testified, "My understanding is she [Keyes] was free to leave whenever she wanted. We weren't keeping her there." Tr. 157:1-14. This only makes sense as Keyes clearly came to the hospital voluntarily, and at 6:00 p.m. Dr. Henneberg certainly made it clear to Keyes that it was her choice to remain at Kootenai Health but transfer to the Behavioral Health Unit. April 14, 2020, interview, Tr. 83:21 - 84:19. Dr. Henneberg told Keyes, "Well, I can understand not liking the idea, but I do think when people have a really stressful thing happen, it's good to be around people who are trained to watch for how people are doing and give them every option to do as good as they can. What do you think about that?" Tr. 84:14-19. Keyes replied, "I'm glad I got my shift covered tomorrow." Detective Lallatin reinforced Keyes' decision to remain. Tr. 84:20 – 85:2. No one forced Keyes to remain at the hospital. The only inference that can be made is that the hospital had no legal ability to keep her, and Keyes was not detained

by law enforcement. This Court finds Keyes was free to come in to the emergency department the morning of April 14, 2020, and she made the decision to do so. This Court finds that at all times throughout that day Keyes remained free to leave the hospital, and she chose to stay. This Court finds that at 6:00 p.m., it was Keyes' decision to stay at Kootenai Health and transfer to the Behavioral Health Unit. No one was keeping Keyes at the hospital. The only evidence is that Keyes went to the Behavioral Health Unit with her phone. Tr. 85:13-15. The entire time Keyes was at the hospital she was free to contact whomever she wished.

Fourth, "Moreover, medical personnel were present in Langford's room while he was being interviewed by the officers." 136 Idaho at 339, 33 P.3d at 571. While medical personnel were not present at all times in Keyes' interview, they were immediately present outside her room at all times and there were at least two interruptions by medical personnel during the April 14, 2020, interview. There was an interruption by Danielle Clarkson, who came into the room during the interview to give Keyes a fundal rub. She was asked to come back in a little bit, which she did. Tr. 154:14 – 155:7. The transcript of Detective Lallatin's interview shows an unidentified female ("interruption by nurse") at about eight minutes before Detective Lallatin took a 28 minute break. After the break, Detective Lallatin stated, "Keyes, who has been in with a nurse, taking a break from our last conversation." Dr. Henneberg also interrupted the interview as he came in toward the end of the interview. Tr. 83:21 – 85:5. The presence of another person, someone other than the defendant and the interviewing officer, seems to be one of the more important factors, not only in *Langford*, but in other cases reviewed by this Court. Keyes had the presence of another person, Raenna Gardiner, from the time Keyes arrived at the hospital in Gardiner's vehicle, but also right up to the time the interview with Detective Lallatin started. It is clear

that Gardiner was not present in the same room while Detective Lallatin and Lynn Acebedo met with Keyes, but it is also clear that Gardiner was nearby for quite likely the entire interview. Rathdrum City Police Detective Glenda Hook testified at the motion to suppress hearing. She testified she detained Gardiner in one of the other birthing rooms while Detective Lallatin and the coroner viewed the body of the baby, at which time Detective Hook's detention of Gardiner ended. August 31, 2020, hearing Tr. 187:18 – 188:13. When Detective Lallatin finished viewing the body, he asked Detective Hook to interview Gardiner while he went to interview Keyes, and Detective Hook interviewed Gardiner for over an hour. Tr. 188:14-21. Detective Hook actually gave Gardiner a ride home, because Gardiner's vehicle had been seized for investigative purposes, though Detective Hook could not recall what time they left the hospital. Tr. 188:22 – 192:6. Detective Hook made it clear that Keyes could not have seen her detain Gardiner, because that did not take place in Keyes' presence or where she could see such occur. Tr. 192:10 – 193:1. Was Gardiner still at the Labor and Delivery Unit when Detective Lallatin took his 28 minute break with Keyes? Probably, we don't know for sure. Did Gardiner visit with Keyes during the 28 minute break that Detective Lallatin took on April 14, 2020? We don't know. There was no testimony on this because the question was not asked. Dr. Henneberg testified he did not know what time Keyes' friend (Gardiner) left. Tr. 126:16-17. Dr. Henneberg testified that Keyes' friend (Gardiner) was present during Dr. Henneberg's entire interview with Keyes. Tr. 124:14-25. Thus, we know for a fact that Gardiner was present and Keyes knew she was present, up until the time that Keyes' interview with Detective Lallatin began. The entire interview with Detective Lallatin is recorded and transcribed. At no time during that interview was Keyes informed that Gardiner was leaving the hospital. What we do know is that at no point in the interview by Detective Lallatin on April 14, 2020, did Keyes

ever ask Gardiner to return back to the room Keyes was in. The only inference that can be made is that Keyes knew Gardiner was nearby, and that certainly if Keyes knew that Gardiner had left the hospital or was about to leave the hospital, she did not care. At some point the fact that Gardiner would be leaving or had left became irrelevant to Keyes, as Keyes agreed to be admitted to the Behavioral Health Unit after speaking with Dr. Henneberg after Detective Lallatin's interview. This Court finds from piecing together the testimony from Detective Lallatin's interview with Keyes on April 24, 2020, and the August 31, 2020, testimony of Dr. Henneberg, Danielle Clarkson, Detective Hook and Detective Lallatin, in all likelihood Gardiner left at about the same time Keyes agreed to spend the night at the Behavioral Health Unit. Once the interview started, while no medical personnel were present (such as was the case in *Langford*), nor was any third party present, both medical personnel and other third parties were present just outside the room Keyes was in. Keyes never asked to leave that interview. Keyes never got up and left the room. Keyes had access to her phone throughout the entire interview.

Fifth, "Langford never told the officers he did not want to speak with them or answer their questions." *Id*. At the April 14, 2020, interview, Keyes never told Detective Lallitan that she did not want to speak with him or answer his questions.

Sixth, "Langford called his attorney after being brought to the hospital and prior to being interviewed." *Id.* This factor is not present in the instant case, as there is no evidence that Keyes had an attorney prior to April 14, 2020.

Reviewing these six factors from *Langford*, this Court does not find that what occurred vis-à-vis these factors, would have caused Keyes' will to be overborne. Upon those factors, this Court cannot find that, "based upon the totality of the circumstances, [Keyes'] will was overborne." 136 Idaho at 339, 33 P.3d at 572.

However, the Court has not yet analyzed the factor of the **duration** of the interview. As mentioned above, the duration of the interview is only one of many factors which must be reviewed in totality. *Id.* In *Langford*, that time period was brief; it "only lasted a few minutes." *Id.* In the present case, it was three hours with a 28 minute break. The Court now returns to analyze the amount of time Keyes spent in the interview with Detective Lallatin and Lynn Acebedo.

In *Sandoval*, cited in *Langford*, nothing in the record that tells us how long the interview in the Elmore Memorial Hospital lasted. In *Cooper*, also cited in *Langford*, the defendant was noted to be questioned at the Blaine County Medical Center by law enforcement for one half hour. 119 Idaho 654, 658. 809 P.2d 515, 519. That amount of time was noted in the recitation of *Cooper* given by that same Court of Appeals ten years later in *Langford*. 136 Idaho at 338, 33 P.3d at 571. This Court can only assume that the Idaho Court of Appeals has no issue with a thirty minute interview by law enforcement at a hospital. In *Cooper*, the defendant was charged with driving under the influence and reckless driving after she wrecked her car. 119 Idaho at 655, 809 P.2d at 516. A magistrate judge granted Cooper's motion to suppress statements made by her to law enforcement, and the district court affirmed. *Id.* The Idaho Court of Appeals reversed. In doing so, it held:

> The only evidence at the suppression hearing that Cooper was "in custody" at the hospital was provided by the following questions put by defense counsel to Officer Haynes:
>
> Q. And once you arrived there at the Blaine County Medical Center in Hailey, Idaho, did you have occasion to meet with a female person named Claudia Cooper?
> A. Yes, I did.
> Q. What was your purpose in meeting with her?
> A. It was at the request of Deputy Reimann.
> Q. Okay. At that time, did you take her into your custody and transport her to the Blaine County Sheriff's Office for Officer Reimann?

A. Not me personally. Officer Dean Biggs was the officer that was there with me and he took the lead in this investigation as far as our part was concerned.
Q. Did the two of you arrive at the medical center in the same vehicle?
A. Yes, we did.
Q. And that was a Hailey patrol vehicle, was it not?
A. Yes.
Q. So when you say Officer Biggs took the lead, he is the one who actually took Claudia Cooper into his custody and you were just observing?
A. As I recall, yes, sir.

It may be argued that this single answer to defense counsel's compound question is substantial evidence on *whether* Cooper was taken into custody, but this answer is not probative of *when* any officer took Cooper "into custody." This issue must be determined by considering all of the evidence relating to the events occurring at the hospital between Cooper and the two police officers. All of the evidence was provided by the police officers themselves and was wholly undisputed. The evidence is clear that Cooper was not arrested or in custody when the officers questioned her about the accident and her drinking. There was no evidence that Cooper was detained at the hospital for a half-hour by the officers. Cooper did not then have a car. No evidence was introduced to show that she had a ride waiting for her or that she was intending to walk home from the hospital. Moreover, under the circumstances shown here, it cannot be said that a short period of detention for the purposes of pursuing an investigation into a serious accident was "unreasonable" in the constitutional sense. The importance of prompt investigation of suspected driver intoxication cannot be ignored. It is a commonly accepted fact that the most relevant and important evidence of intoxication will be lost if not obtained within a relatively short period of time.

We conclude that Cooper's admission was properly obtained and that she was not "in custody" when questioned at the hospital. The findings and conclusions of the magistrate to the contrary are not supported by the evidence or by existing law. *See, e.g., State v. Sandoval, supra* (police and prosecuting attorney questioned appellant at hospital to complete an accident investigation; held, non-custodial); *People v. Milhollin,* 751 P.2d 43 (Colo.1988) (defendant's response to officer's questions regarding alcohol-related traffic investigation conducted in hospital held not to be made in a custodial setting); *State v. Sadler,* 85 Or.App. 134, 735 P.2d 1267 (1987) (in-hospital questioning of defendant where defendant admitted driving the car involved in the accident and blood test showed .193% blood alcohol content held non-custodial); *State v. Kelter,* 71 Wash.2d 52, 426 P.2d 500 (1967) (in-hospital interview of defendant by officer investigating fatal accident held not to be in-custody interrogation). These cases are in accord with the majority view that questioning in hospitals by police is not custodial when the suspect is not

> under formal arrest. *See generally* 2 W. RINGEL, SEARCHES & SEIZURES, ARRESTS AND CONFESSIONS § 27.3(A)(2) (2d ed. 1990 supp.).

119 Idaho at 657-58, 809 P.2d at 518-19. Some of the analysis in *Cooper* is instructive in the present case. "Cooper was not arrested or in custody when the officers questioned her [at the hospital] about the accident and her drinking." 119 Idaho at 658, 809 P.2d at 519. Keyes was not arrested or in custody at the hospital. "There was no evidence that Cooper was detained at the hospital for a half-hour by the officers." *Id.* There is no evidence that Keyes was detained by Detective Lallitan for three hours on April 24, 2020. "Cooper did not then have a car." *Id*. Keyes never had a car. "No evidence was introduced to show that she had a ride waiting for her or that she was intending to walk home from the hospital." *Id.* In Keyes' situation, she had a ride that brought her to the hospital, and there was nothing presented that showed that her knowledge was anything other than that ride was available to Keyes when she was done at the hospital. After the interview concluded, it was Keyes' decision to remain at the hospital and go to the Behavioral Health Unit.

While the amount of time spent in a hospital interview is certainly a factor in determining whether or not a person is in custody, it is only **a factor**. Length of time alone is not a determinative factor, at least not in Keyes' case. This Court is not willing to find that while thirty minutes in *Cooper* was not a sufficient amount of time to turn an interrogation into a custodial interrogation, that three hours is necessarily enough time to make it custodial. While three hours is a factor weighing toward a finding of custodial interrogation, this Court must look at the "totality of the circumstances" to make that determination. *Langford,* 136 Idaho at 339, 33 P.3d at 572.

This Court has read *State v. Jones*, 55 A.3d 432 (Me. 2012). In that case, the Supreme Judicial Court of Maine found that an interrogation which "lasted approximately

three hours (55 A.3d at 437)," did not amount to a custodial interrogation. *Id*. at 438-40. Jones was convicted of manslaughter. *Id.* at 435. He had brought his three month old daughter to the hospital with serious injuries, and the baby died four days later. Maine State Police interrogated Jones at the hospital for about thirty minutes (*Id.*), then at Jones' apartment for about seventy-eight minutes (*Id.* at 435-36), and then at the police station for fifty-two minutes. *Id.* at 436-37. Even though Jones was not an adult at the time (he was seventeen, *Id.* at 435), there was no custodial interrogation. The factors which led to this result were discussed by the Supreme Judicial Court of Maine. The interrogation at the hospital was in a waiting room which had two doors, one of which was unlocked (*Id.*); the initial "interrogation was non-confrontational: only a single detective was present, he was dressed in plain clothes, he asked to speak with Jones rather than demanding to speak with him, and he gave Jones the option to have his mother in the room during questioning." *Id*. at 438. "Throughout the interrogation, the detective never indicated to Jones that a crime had been committed, much less that there was probable cause to arrest. Instead, the detective emphasized the routine nature of the interrogation, and that the focus of the investigation was to aid the doctors in the baby's medical treatment." *Id.* at 439. At the second interrogation, at Jones' apartment, the detectives (plural this time) were in plain clothes, the detectives mentioned they found some marijuana in the apartment but dropped the subject, "And although the detectives indicated to Jones that they believed Jones was not being truthful about his role in the baby's injuries, given the totality of the circumstances, a reasonable person in Jones's position would have felt free to leave." *Id.* At the police station, Jones was told he was free to leave.

> Because a reasonable person in Jones's position would have felt free to terminate and leave each of the three interrogations, at no point during those interrogations was Jones in custody within the meaning of *Miranda. See Prescott,* 2012 ME 96, ¶ 10, 48 A.3d 218. As such, any

> statements made by Jones during those interrogations are not subject to the requirements of *Miranda,* and are therefore not excludable on those grounds.

Id. at 439-40.

The Court has read the transcript of Detective Lallatin's April 14, 2020, interview with Keyes. Pl.'s Ex. 2. Lynn Acebedo with the Kootenai County Coroner's Office was present as well. Detective Lallatin asked nearly all the questions and determined the direction of the interview. Lynn Acebedo asked a handful of follow-up or clarifying questions. The Court has also listened to the recording of this interview. Pl.'s Ex. 1. The interview was very cordial. Detective Lallatin was polite, friendly and calm. Keyes was exceptionally calm and composed given what had allegedly happened earlier that day. Some of the conversation was about subjects other than the event in question. When the questioning turned to the subject matter being investigated, Keyes was at times vague. The Court would describe her as being vague in her recollection, not vague as in being elusive. The questioning of Keyes began at about 3:00 p.m. on April 14, 2020. Tr. 1:10-17. Detective Lallatin introduced himself to Keyes: "Hi, I'm Ken Lallatin. I'm a detective with the Kootenai County Sheriff's Office. How are you doing?" Tr. 1:19-21. Keyes answered, "I'm all right." Tr. 1:22. Detective Lallatin then said, "Yeah, probably been better, huh? You got a minute, obviously. I was hoping to visit with you." Tr. 1:23-24. The Court finds this is an important as, "I was hoping to visit with you" is not an order, or a directive or a command. The first forty minutes of the interview were for the most part discussions concerning background information. About forty minutes into the interview, the following occurred:

> Detective Lallatin: Sure. So when you woke up, do you remember having—giving birth?
> Elizabeth Keyes: Um, that one's a little fuzzy because it happens and then it doesn't, just to find out it did, which explains probably some of the

relief in my system. Not that I know of.
Detective Lallatin: So you don't remember giving birth this morning?
Elizabeth Keyes: I do and I don't.

Tr. 23:3-10.

Detective Lallatin: Uh-huh. Well, what happened when the baby was born?
Elizabeth Keyes: I feel like I was in shock, so I just don't know.
Detective Lallatin: Yeah. Did the baby make any sounds when it was born?
Elizabeth Keyes: Mmm…
Detective Lallatin: Was the baby alive when it was born?
Elizabeth Keyes: I don't know.
Detective Lallatin: You don't know?
Elizabeth Keyes: I don't know. I don't know how to deal this kind of situation.
Detective Lallatin: Yeah. Well, what did you do with the baby once it was born?
Elizabeth Keyes: I don't remember doing much with it. Um, I really wish I did more about it or that it was.

Tr. 27:6-20.

Detective Lallatin: Okay. So how did you handle it? Do you know what you did with your baby?
Elizabeth Keyes: I don't. I think the idea there was a baby scared me.
Detective Lallatin: Yeah. I can't even imagine. I can't imagine. Did you try getting rid of the baby?
Elizabeth Keyes: Um, I really don't know at this point. I got mixed feelings about it. I don't know at this point.

Tr. 28:15-23.

Detective Lallatin: Did you strangle the baby first?
Elizabeth Keyes: I don't know.
Detective Lallatin: I think you do. Do you remember putting your hands around the baby's neck or was it something else?
Elizabeth Keyes: I'm not sure. It's getting harder to talk about it.

Tr. 30:10-15. Even though Keyes said "It's getting harder to talk about it.", Keyes was not at all emotional. Keyes asked Detective Lallatin, "I mean, how much is known about it so far?" Tr. 30:18. When she asked this question, Keyes was clearly asking about the baby, and was not asking how much is known as pertains to her part in the situation. This is clear in Detective Lallatin's response to Keyes' question:

Detective Lallatin: Quite a bit. Like what do you want to know? What was done to the baby?
Elizabeth Keyes: I don't even want to think about that.
Detective Lallatin: Well—
Elizabeth Keyes: Did they have an estimate yet of how far along it was or what they thought?
Detective Lallatin: Probably close to full-term.
Elizabeth Keyes: That's what my sister-in-law said.
Detective Lallatin: Yeah.
Elizabeth Keyes: Doesn't help me.
Detective Lallatin: I'm sorry. Hey, you know what, I know this is probably the most difficult thing you've ever had to face in your entire life, not knowing your background, I'm sure, and I'm sorry. I wish I wasn't here talking to you about this. I do. And I think you need some help. And talking about it is the first step in that.
Elizabeth Keyes: Just over it, probably to grieve.
Detective Lallatin: There's some pretty serious injuries to the baby that I need to understand. Did you use something to put around the baby's neck or did you use your hands? Do you know?
Elizabeth Keyes: Huh-uh.
Detective Lallatin: Which? Neither?
Elizabeth Keyes: I don't know.
Detective Lallatin: How did the baby get cut open?
Elizabeth Keyes: I would imagine something sharp.
Detective Lallatin: Yeah. Can you tell me what it is, though? Because I need to be able to identify that for the hospital. And I know it's at the house, right? But I can't tell them what it is. What was used to cut the baby open? Liz, can you tell me, please, so I can tell them? Please. What was used and where is it now? Lizzy, what was used? What was so sharp that was used?
Elizabeth Keyes: Well, something sharp enough do something like that.
Detective Lallatin: Okay. What was it? Was it a knife? Huh? Lizzy, what was it?
Elizabeth Keyes: I'm not exactly sure.

Tr. 30:21 – 32:10. Detective Lallatin was very soft spoken, at times almost in a whisper tone. He went very slowly with his questions. Much of the time there was quite a bit of silence between the question and Keyes' answer, and at times a bit of silence between Keyes' answer and the next question. Detective Lallatin was very patient and not accusatory. Detective Lallatin assured Keyes that the sooner she could tell him what his investigators back at the house she lived in were looking for (as far as a knife), the sooner they could get out and not bother Keyes' mother-in-law. Tr. 34:11-25. Keyes seemed to

know she was the target of the investigation and that perhaps she had done something wrong. Keyes also seemed to have difficulty remembering much of what had happened.

> Detective Lallatin: Okay. I'm trying to help you here.
> Elizabeth Keyes: Um, with everything that's going on, where does that put me?
> Detective Lallatin: I don't know yet, honestly. I don't know.
> Elizabeth Keyes: I don't either.
> Detective Lallatin: I think you need some help. That's what I think.
> Elizabeth Keyes: Well, if you know a good therapist, let me know.
> Detective Lallatin: Well, we're going to get you one. We're going to get you somebody to talk to, okay. You've been through a very traumatic experience. But, hey, right now, just because there's kind of a time issue, and I'd like to get my guys out of that house as quickly as I can before your mother-in-law goes really—gets really upset, okay, can you help me with that, please? Help your mother-in-law. Help yourself. What are my guys looking for? Lizzy?
> Elizabeth Keyes: Huh?
> Detective Lallatin: Hey, they're going to find it eventually.
> Elizabeth Keyes: No, I know.
> Detective Lallatin: It would just be a lot easier if you could tell me so I could tell them.
> Elizabeth Keyes: I know. That part scares me.
> Detective Lallatin: Hmm?
> Elizabeth Keyes: Thinking about that part scares me.
> Detective Lallatin: I'm sure it does. But, you know what—look at me—you're going to have to deal with it, okay? You're not going to be able to get better until you deal with it. Does that make sense?
> Elizabeth Keyes: Uh-huh.
> Detective Lallatin: Look at me. What happened when you did to the baby after it was born?
> Elizabeth Keyes: I don't know I just --
> Detective Lallatin: What?
> Elizabeth Keyes: Just a rush of adrenaline. I don't know.
> Detective Lallatin: Yeah. So you did something without even thinking about it? Was the baby making noise?
> Elizabeth Keyes: I'm not sure. It was all happening really fast. I don't know.
> Detective Lallatin: Do you remember telling the doctor that when the baby was born it was making noise?
> Elizabeth Keyes: I thought that I could be hearing something, but…
> Detective Lallatin: Uh-huh.
> Elizabeth Keyes: If it sounds like it was almost full-term, it doesn't sound too good.
> Detective Lallatin: What were you trying to – how were you trying to get rid of the baby? Lizzy?
> Elizabeth Keyes: I did whatever I could in the moment.

Detective Lallatin: You did whatever you could. How did you make it stop breathing? Do you know?
Elizabeth Keyes: Huh-uh.
Detective Lallatin: Do you remember? Do you know what you did?
Elizabeth Keyes: No.
Detective Lallatin: You were just trying to get rid of it?
Elizabeth Keyes: You make it sound like it's really bad.
Detective Lallatin: I just need to understand.
Elizabeth Keyes: Just hearing it, then saying it, it makes it sound like it's really bad.
Detective Lallatin: Yeah. Lizzy, what did you use to cut the baby? Please tell me so I can let my guys know, okay? Then we can talk about the other stuff. But I need to let them know what they're looking for.
Elizabeth Keyes: I—it was a box knife.
Detective Lallatin: A box knife?
Elizabeth Keyes: Yes.
Detective Lallatin: From work?
Elizabeth Keyes: No, I don't carry it.
Detective Lallatin: Is it something from the garage?
Elizabeth Keyes: No, I don't take things out of there.
Detective Lallatin: Where did you get the box knife from?
Elizabeth Keyes: (Inaudible) its more of a carving—used for carving.
Detective Lallatin: A carving knife?
Elizabeth Keyes: Its--
Detective Lallatin: Well, you know, box knives are flat and thin and the blade comes out. Was it like that?
Lynn Acebedo: An X-Acto knife?
Detective Lallatin: Yeah. Or is it like a tiny, little X-Acto knife that you do arts and crafts with?
Elizabeth Keyes: All I know is the blade can be replaced.
Detective Lallatin: The blade can be replaced. Is it like what--
Elizabeth Keyes: And so it slides.
Detective Lallatin: --a carpenter would use?
Elizabeth Keyes: It slides.
Detective Lallatin: With the thumb?
Elizabeth Keyes: Yeah.
Detective Lallatin: Where is that now? So it's a utility knife. Is it, like, silver? Do you know? Lizzy, do you know what color it is?
Elizabeth Keyes: I don't remember what color it is.
Detective Lallatin: But it's like a utility knife, right?
Elizabeth Keyes: I—I guess so.
Detective Lallatin: It's about that big around and it's got the handle on top that you push the blade out? (telephone interruption) Can you wait a minute?
Elizabeth Keyes: I apologize, let me make sure he calls later.
Detective Lallatin: Yeah. Will you let him know what we're looking for?
Elizabeth Keyes: (Talking to person on the phone call.) Hey, when is the next time you can call back? When is the next time you can call back?

I'm kind of in the middle of something. Yeah, that's why I was asking when you can call back next. I don't know, when are you usually free or if something's not happening? Okay. I'm fine with either of those times. I will tell you then, but all I know is that I really wish I had you. I said, I'll tell you later. Huh? Not at the moment. Yeah, and I'll update you on what's going one. Love you too. All right.
Detective Lallatin: Who was that?
Elizabeth Keyes: That was him. I guess he finally found some free time to call.
Detective Lallatin: Who's him? Sean?
Elizabeth Keyes: Yeah.
Detective Lallatin: Oh, so does he know what's going on?
Elizabeth Keyes: He doesn't know yet, I'm going to tell him later.
Detective Lallatin: Oh, okay.
Elizabeth Keyes: He's my current partner and someone I kind of want to spend the rest of my life with, I'm going to tell him everything.
Detective Lallatin: Yeah, sure.
Elizabeth Keyes: One way or another.
Detective Lallatin: Um, so where's that box knife now? Is it in the garage or the bathroom or somewhere else? Or is it in a trash can? Do you remember?
Elizabeth Keyes: I think so.
Detective Lallatin: Okay. Can you tell me where you think it is? Please.
Elizabeth Keyes: How is stuff like this usually handled?
Detective Lallatin: I don't know yet. It depends.
Elizabeth Keyes: That's avery vague answer.
Detective Lallatin: Well, here, look at me. So you know, it is a vague answer because I don't know, okay? I think you need some help. I think you went through a really traumatic experience. I think this is a very serious situation.
Elizabeth Keyes: You do that were I can see. I'm talking about that follow up now.
Detective Lallatin: Yeah, and I don't know. I'm just the guy collecting the information. But I can tell you this, I think you're somebody who needs some help, okay, would you agree with that? Lizzy, wouldn't you agree with that?
Elizabeth Keyes: I guess so.
Detective Lallatin: Yeah, I know. Nobody likes to admit that they need help, but we all do at one time or another. Myself included.
Elizabeth Keyes: It's—I hate that they're struggling back there. I hate seeing them struggle because I'm struggling over it. That's the part that kills me the worst. And I know they care.
Detective Lallatin: The family? Yeah. Well, let me help you by getting my folks out of that house as soon as possible, okay? Where is the knife, Lizzy? (telephone interruption) That was my boss. We all have bosses.
Elizabeth Keyes: What is the situation looking like right now with everything going on?
Detective Lallatin: What's the situation?

Elizabeth Keyes: Yeah.
Detective Lallatin: Well, that depends on what you tell me, quite honestly.
Elizabeth Keyes: Well, you said a lot, that's why I was curious.
Detective Lallatin: I don't know. I don't know what happened completely. I think what happened based on what evidence I've seen is this, okay? Look at me so I know I'm connecting with you. I think that you had a baby this morning and you were shocked. And I think unfortunately that some bad things happened with that baby. And then I think you killed the baby. And you tried getting rid of it and disposing of the baby.
Why were you trying to cut the baby open? What were you thinking?
Elizabeth Keyes: I don't know.
Detective Lallatin: To get rid of it easier?
Elizabeth Keyes: I'm not sure.
Detective Lallatin: How come you stopped? Lizzy, how come you stopped?
Elizabeth Keyes: What do you mean?
Detective Lallatin: Well, you didn't finish cutting the baby, why did you stop?
Elizabeth Keyes: I guess I knew somewhere down, that I'm unaware of now, but I can't put—that I don't understand—I don't understand the reason. I think that's where it's so fuzzy is I don't know, but I don't know.
Detective Lallatin: So you don't know why you were doing it in the first place or you don't know why you stopped?
Elizabeth Keyes: One or the other, both.
Detective Lallatin: Okay. Was it because--
Elizabeth Keyes: Sounds like—what could be worst-case scenario, but I just—there's a lot of possibilities there it sounds like.
Detective Lallatin: Yeah. Lizzy, you're not a bad person, okay? Look at me. I know bad people, you're not a bad person.
Elizabeth Keyes: Is it something you know or picked up on? Two different things.
Detective Lallatin: Both. Both. You're not a bad person. You just had a bad thing happen. (Telephone interruption.)
Elizabeth Keyes: (Inaudible) outside of the family can pick that up.
Detective Lallatin: What's that?
Elizabeth Keyes: I guess, somebody else outside of it can pick that up.
Detective Lallatin: Yeah, I think.
Elizabeth Keyes: I just don't know what's going to happen to it and me. That's the part I'm worried about.
Detective Lallatin: (Telephone conversation) Hi, this is Ken. It is. And I'm actually talking to the mother right now. Okay. Thank you. Bye. Turn my phone off. I'm sorry. Do you need any water?
Elizabeth Keyes: No, I'm—

Tr. 35:13 – 44:3. Detective Lallatin and Lynn Acebedo ask a few questions to see if Keyes needed anything to make her more comfortable. Then, Detective Lallatin resumed.

Detective Lallatin: Well, did you use something to stop the baby from breathing first?
Elizabeth Keyes: I don't think so.
Detective Lallatin: You don't.
Elizabeth Keyes: Nope.
Detective Lallatin: Are you sure.
Elizabeth Keyes: I don't think so.
Detective Lallatin: You don't think so? Did you put anything around his neck?
Elizabeth Keyes: I don't know.
Detective Lallatin: Is it possible you did?
Elizabeth Keyes: Maybe.
Detective Lallatin: Okay.
Elizabeth Keyes: At this point, if—depending on how things go, other than getting really big help which I'm—for this, yeah, but I don't know what's going to happen after.
Detective Lallatin: I don't know. I will let you know though as soon as I do, okay? Where's the box knife now? Or the utility knife.
Elizabeth Keyes: It's flat and it's yellow.
Detective Lallatin: It's flat and its yellow?
Elizabeth Keyes: Yeah, the blade is flat, and it's yellow. It's one of those—and it slides.
Detective Lallatin: Where is it?
Elizabeth Keyes: In one of the drawers in the bathroom.
Detective Lallatin: Do you know which one?
Elizabeth Keyes: No.
Detective Lallatin: Where did you get it from?
Elizabeth Keyes: I assume one of the drawers. In a drawer.
Detective Lallatin: Okay. Did you know it was there?
Elizabeth Keyes: I don't think so. I don't try to go through other people's stuff.
Detective Lallatin: Okay.
Elizabeth Keyes: I don't go through—it's—I have a lot of respect for not…
Detective Lallatin: Yeah, how did you find it? Just looking for anything? (Telephone interruption.) (Interruption by the nurse.)
Detective Lallatin: Can you give us just a minute?
UF: (unidentified female) Sure.
Detective Lallatin: Thanks. Lizzy?
Elizabeth Keyes: Yeah.
Detective Lallatin: Do you remember when the baby stopped breathing?
Elizabeth Keyes: No.
Detective Lallatin: Do you know if the baby was alive when he was born?
Elizabeth Keyes: I—I don't know.
Detective Lallatin: No?
Elizabeth Keyes: I don't know.
Detective Lallatin: Were you trying to just maybe cut him up to dispose of him?
Elizabeth Keyes: I'm not sure.

Detective Lallatin: You're not sure?
Elizabeth Keyes: I'm not sure. If it sounds like it was only partially, I don't know.
Detective Lallatin: What did you do with it after you started cutting it, do you know? Where were you? Were you in the bathroom?
Elizabeth Keyes: In the bathroom.
Detective Lallatin: Or on the floor somewhere else?
Elizabeth Keyes: No, just in the sink.
Detective Lallatin: In the sink? Okay.
Elizabeth Keyes: But there's quite a few drawers, so I don't exactly remember which one it was in.
Detective Lallatin: So the baby was in the sink when you cut him?
Elizabeth Keyes: I think so, I don't know.
Detective Lallatin: Okay. What did you do with the baby after you did that? Did you leave it in the sink or did you take it with you somewhere?
Elizabeth Keyes: I don't know. All I remember is—all I know is I cleaned up my mess and now I have a huge guilt trip.
Detective Lallatin: Okay. So you cleaned up the mess in the bathroom?
Elizabeth Keyes: I cleaned it.
Detective Lallatin: What did you use? Like towels or paper towels? Do you know?
Elizabeth Keyes: No. All I know is that I cleaned it.
Detective Lallatin: Okay. Where was the baby at when you were doing this?
Elizabeth Keyes: I don't exactly remember where.
Detective Lallatin: Was it in the bathroom still?
Elizabeth Keyes: I don't remember where I put it.
Detective Lallatin: Did you put it in a garbage bag? Liz? Did you put it in the garbage, like, in a garbage bag?
Elizabeth Keyes: If I was taking out garbage, or—not—I'm not saying that it was garbage because that's just--
Detective Lallatin: No, no, I didn't take it that way. But did you put it—the body in a garbage bag? That would make sense.
Elizabeth Keyes: I would think so.
Detective Lallatin: Hmm?
Elizabeth Keyes: I said I would think so if I was cleaning the bathroom, picking up garbage and stuiff and picking up the mess.
Detective Lallatin: Uh-huh. So what did you do with it then, do you know?
Elizabeth Keyes: Huh-uh.
Detective Lallatin: Did you put it out in the garbage?
Elizabeth Keyes: I don't think so.
Detective Lallatin: You don't think so?
Elizabeth Keyes: No.
Detective Lallatin: Was it still in the—was it in the garage with you or did you leave it in the bathroom?
Elizabeth Keyes: I left it in the bathroom.
Detective Lallatin: You left it in the bathroom. In a garbage bag?
Elizabeth Keyes: I don't think so. I might have cleaned it.

Detective Lallatin: You cleaned the baby.
Elizabeth Keyes: Wait, are we—what are we still talking about?
Detective Lallatin: The baby.
Elizabeth Keyes: The baby. Um, now I'm all sorts of confused.
Detective Lallatin: Oh, okay. What were you talking?
Elizabeth Keyes: I didn't know we were still talking about the baby.
Detective Lallatin: What were you talking about?
Elizabeth Keyes: I thought we were still on the knife.
Detective Lallatin: Oh, you cleaned the knife?
Elizabeth Keyes: I didn't realize you were still talking about the baby.
Detective Lallatin: And you put the knife back in the drawer?
Elizabeth Keyes: Yeah, like I said, it's in one of the drawers somewhere.
Detective Lallatin: Okay.
Elizabeth Keyes: The baby, I don't know. I don't remember where I put it.
Detective Lallatin: Did the baby fall in the toilet at all?
Elizabeth Keyes: If I was squatting over it, possibility, without knowing—I don't know. I don't know.
Detective Lallatin: Okay. Do you remember the baby crying?
Elizabeth Keyes: I honestly really don't know.
Detective Lallatin: Okay.
Elizabeth Keyes: I feel like that's something if I remember that it would stick, or at least a little better because I don't think anyone can forget.
Detective Lallatin: Well, did you kill the baby?
Elizabeth Keyes: I don't know. Like I said, after this, I don't—depending on the outcome, I don't know, but I don't know what's going to happen after.
Detective Lallatin: Well, we'll know once the autopsy is done and all that, okay?
Elizabeth Keyes: Okay. I probably don't want to hear it, but I should.
Detective Lallatin: Do you really not know?
Elizabeth Keyes: I really don't know.
Detective Lallatin: You think you were just trying to get rid of the baby?
Elizabeth Keyes: Sounds like it, I guess.
Detective Lallatin: Okay. Okay. Let's take a break for a second okay? Are you all right? No.
Elizabeth Keyes: It's been a weird day. Let's take a break for a second. It's about 4:30. I know the nurse wants to come in and see you. And then we'll talk okay. (Break)

Tr. 44:18 – 50:23. This break began about 90 minutes into the interview. The break lasted 28 minutes. What was provided to the Court as Exhibit 1, the CD audio recording of the April 14, 2020, interview, only included the interview up to the 28 minute break. At all times up to that break, the conversation between Detective Lallatin and Keyes was non-confrontational, calm, very low speaking, usually lots of time between question and answer

and the next question. There is no reason to think Detective Lallatin changed his tone for the second part of that first interview, given the fact that the recording of the second interview displays Detective Lallatin's calm demeanor. The break in the April 14, 2020, interview seemed to be the result of (according to the transcript) an unidentified female asking if she could come in. Counsel for Keyes argues, "While the detective interrogated Elizabeth, a nurse came into the room to check on Elizabeth, Detective Lallatin instructed the nurse to return at a later time." Def.'s Br. In Supp. of Mot. to Suppress Evidence 4-5. That is not true. Detective Lallatin did not "instruct" the nurse to do anything. The transcript reads:

> Detective Lallatin: Can you give us just a minute?
> UF: (unidentified female) Sure.
> Detective Lallatin: Thanks.

April 14, 2020, interview, Tr. 46:4-10. That is simply a request by Detective Lallatin, which was agreed to by the nurse. And Detective Lallatin made good on his request "Can you give us just a minute?", as he took the break about four minutes later. After the 28-minute break, the last part of the interview is not included on audio recording of Exhibit 1. The rest of the interview is captured in the transcript, which is Exhibit 2. Detective Lallatin came back from the break and asked Keyes a lot of background questions about Keyes' family. Tr. 50:24 – 55:1. The following conversation then occurred.

> Elizabeth Keyes: I'm telling you, have fun. I got a big family.
> Detective Lallatin: That's good. That's good. So getting back to talking about some stuff we don't want to talk about, okay?
> Elizabeth Keyes: Uh-huh.
> Detective Lallatin: So I was talking with your sister-in law—or soon to be sister-in-law, and she said she found everything out on the front porch in a garbage bag, right?
> Elizabeth Keyes: Yeah.
> Detective Lallatin: Okay. Do you remember putting everything in the garbage bag?
> Elizabeth Keyes: Probably.
> Detective Lallatin: Okay. What all did you put in there, do you know?

Elizabeth Keyes: Probably the stuff that had—whatever came out of me and whatever needed to be cleaned in there.
Detective Lallatin: What did you use? Did you use the clothes that were on the floor to clean up?
Elizabeth Keyes: Huh-uh.
Detective Lallatin: Or towels?
Elizabeth Keyes: I think the towel that I might have used (inaudible) used probably toilet paper, tissue or whatever.
Detective Lallatin: And you put it in a –was it a white bag she said?
Elizabeth Keyes: Uh-huh.
Detective Lallatin: Okay. Like a garbage bag or like a—was it like from the grocery store, a grocery bag?
Elizabeth Keyes: Grocery bag.
Detective Lallatin: Like a Hefty bag?
Elizabeth Keyes: No.
Detective Lallatin: Do you know what kind?
Elizabeth Keyes: I don't know, it's white.
Detective Lallatin: You put it out on the front porch with the rest of the garbage?
Elizabeth Keyes: Yeah.
Detective Lallatin: Did you think of getting rid of it further or why did you put it on the porch?
Elizabeth Keyes: I wonder if I passed out after cleaning. Which something after that, I'm surprised I still had the energy to do.
Detective Lallatin: I am too.
Elizabeth Keyes: Does that say something?
Detective Lallatin: Yeah, a little bit, huh.
Elizabeth Keyes: I don't know if that's good or bad.
Detective Lallatin: It just is.
Elizabeth Keyes: I don't know. I pushed through something just to do that, like, I don't know.
Detective Lallatin: Why did you clean everything up? Did you not want anybody to know?
Elizabeth Keyes: I figured I was going to tell them eventually.
Detective Lallatin: Yeah.
Elizabeth Keyes: But I wasn't just going to leave a giant mess in the bathroom.
Detective Lallatin: Yeah. What were you going to tell them?
Elizabeth Keyes: Exactly what I told them today.
Detective Lallatin: Which is what?
Elizabeth Keyes: Everything that happened, or at least hurting my mother-in-law.
Detective Lallatin: What did you tell her?
Elizabeth Keyes: What I've told you guys and what happened and how I—I don't know. You guys know what I know at this point.
Detective Lallatin: Did you tell her that you used the box knife?
Elizabeth Keyes: No. I—I don't think she knows any details about that. I kind of want to keep ti that way. I don't want her to worry any more than

she does. If I was trying to, I don't want her to know that. Is that something I can keep private?
Detective Lallatin: No. Honestly, no.
Elizabeth Keyes: I'll tell her eventually then. Probably sometime today. I got to talk to my significant other eventually, soon too, so…
Detective Lallatin: One thing we have to figure out, which we will, but it would be helpful now is was the baby alive when it was born? Because it appears that it was.
Elizabeth Keyes: Sounds like it was, it was.
Detective Lallatin: Yeah.
Elizabeth Keyes: I mean, I'm not going to go off…
Detective Lallatin: So how did the baby die?
Elizabeth Keyes: I guess everything that's been answered.
Detective Lallatin: Things that you did to the baby?
Elizabeth Keyes: It sounds like it.
Detective Lallatin: Well, I don't want to—it's not what I'm saying. It's what happened, okay?
Elizabeth Keyes: Then, I guess, I just—from everything that's been talked about here that's—I guess it's how it—that still looks so bad on me, though.
Detective Lallatin: Well, it doesn't matter if it looks bad on you. It's—that's something you can deal with later as far as--
Elizabeth Keyes: I still have that burden over me, though. Knowing that I personally did it myself.
Detective Lallatin: That you personally killed the baby?
Elizabeth Keyes: (No audible response.)
Detective Lallatin: You just shook your head up and down?
Elizabeth Keyes: Yeah.
Detective Lallatin: Well, how did you kill the baby?
Elizabeth Keyes: With everything I've told you.
Detective Lallatin: From cutting it open?
Elizabeth Keyes: I guess so. Everything I've told you, it sounds like it, which is, at this point, serious. It sounds like it.
Detective Lallatin: But did you? Was the baby—did you stop it from breathing first or was it—it wasn't still alive when you cut it open, was it?
Elizabeth Keyes: I don't think so.
Detective Lallatin: You don't think so.?
Elizabeth Keyes: I don't think so.
Detective Lallatin: Why?
Elizabeth Keyes: Little bits and pieces I'm slowing discovering.
Detective Lallatin: Yeah. Did you smother the baby?
Elizabeth Keyes: Huh-uh, I don't think so.
Detective Lallatin: You don't think so?
Elizabeth Keyes: No.
Detective Lallatin: Did you choke the baby?
Elizabeth Keyes: Sounds like it's the only thing I would have possibly…
Detective Lallatin: Because the reason I ask this is because there are injuries to the baby's neck. Possible injuries. (Telephone interruption.)

I'm sorry. Hold on one second.
Elizabeth Keyes: It's okay. I think I'm expecting a call soon anyways.
Detective Lallatin: (on telephone conversation) Hey, what's up? I'm back in with Mom. He was. I just talked to him.
Elizabeth Keyes: I don't like that term. I'm really uncomfortable with it.
Lynn Acebedo: Which term?
Detective Lallatin: (Telephone conversation.) I did, but you can call his cell.
Elizabeth Keyes: The one where I was the mother.
Detective Lallatin: (Telephone conversation.) Yeah, I'll send it to you. All right. Bye.
Laura Acebedo: You don't like the term knowing that you were a mother?
Elizabeth Keyes: It's uncomfortable. It's weird.
Detective Lallatin: Yeah, I'm sorry. I didn't think about that. Sorry, I'm juggling a lot of different things right now.
Elizabeth Keyes: No, it's fine. I think I'm expecting a call anyways. Got to let him know what's going on.
Detective Lallatin: Well, maybe we can hold off on that. You probably don't want to tell him just yet.
Elizabeth Keyes: All I want to say—I'm probably going to give the short story, and when the time is right give him the full whatever. I don't know really understand it.
Detective Lallatin: Well, so we were talking about—so the baby has what appears to be some injuries around his neck. Was that from putting your hands around him? Do you remember?
Elizabeth Keyes: It sounds like it. All I know is if something shows and it's a possibility then it's something you can't really…
Detective Lallatin: Dispute?
Elizabeth Keyes: Yeah.
Detective Lallatin: Yeah. Well, you do you think that you choked the baby?
Elizabeth Keyes: I don't know. I think so at this point.
Detective Lallatin: You think so?
Elizabeth Keyes: It sounds like it.
Detective Lallatin: Well, again, I don't want to put words in your mouth, so I'm trying to be really careful with that. And I don't want to put information in your head, okay? It's really important for me that I get nothing but truthful answers.
Elizabeth Keyes: I feel like if it shows then it's probably what happened.
Detective Lallatin: Okay. So you think that you choked the baby and then cut the baby?
Elizabeth Keyes: Yeah.
Detective Lallatin: And why were you cutting the baby? Were you thinking of disposing the baby?
Elizabeth Keyes: I haven't figured that one out, that one is a weird one.
Detective Lallatin: You're not sure?
Elizabeth Keyes: Nope.
Detective Lallatin: What was going through your mind when you were

doing that?
Elizabeth Keyes: I don't know.
Detective Lallatin: Did you think if you cut it—were you thinking of cutting the baby up in small pieces?
Elizabeth Keyes: No.
Detective Lallatin: No?
Elizabeth Keyes: I stopped crying—actually just finishing up breaking down before you guys got in. I'll probably break down again later.
Lynn Acebedo: We're here for you for that. We can help you through that.
Detective Lallatin: So why did you stop cutting on the baby?
Elizabeth Keyes: I don't know. I wonder if something clicked that I didn't realize. I really don't want to answer that one.
Detective Lallatin: Like maybe you realized what you were doing was not right and freaked yourself out?
Elizabeth Keyes: Probably. I don't know. Sounds like something I would do.
Detective Lallatin: Yeah. Was the baby dead at that point, though? Do you know?
Elizabeth Keyes: I have no idea. I don't know too much on that either. Feels like I got a lot of realization out of—I wonder from the sound of it if I finally realized what I was doing was still in that mind—that state of mind, I guess, if it makes any sense.
Detective Lallatin: Yeah.
Elizabeth Keyes: From what you guys are telling me and from whatever I know.
Detective Lallatin: Yeah, don't worry about--
Elizabeth Keyes: Piece this together.
Detective Lallatin: Don't worry about what I tell you, worry about what you know, okay?
Elizabeth Keyes: Well, you know what I know, and what—we're putting pieces together, so it helps. But it sounds like it. Now I'm curious to what made me stop. That realization of—I'm not saying that's good or bad, I'm just curious.
Detective Lallatin: Did you cut deep into the baby?
Elizabeth Keyes: I don't know.
Detective Lallatin: You don't know?
Laura Acebedo: Was the baby moving when you cut it?
Elizabeth Keyes: I have no idea.
Laura Acebedo: Was it crying?
Elizabeth Keyes: I don't know.
Laura Acebedo: You don't remember that part?
Elizabeth Keyes: I don't remember anything other than what I've told you guys. I don't know how to answer those questions and/or I don't know the answer.
Detective Lallatin: Yeah. You didn't use anything, though, to put around the baby's neck?
Elizabeth Keyes: I don't think so.

Detective Lallatin: Did you use your hands, is that all?
Elizabeth Keyes: I think so. It sounds like it.
Detective Lallatin: Well, it sounds like it or that's what happened?
Elizabeth Keyes: Well, it sounds like it is I guess what happened if it shows. If the evidence is there, I'm not going to…
Detective Lallatin: I'm just trying to figure out the sequence of things. So if the baby is born then in sounds like the baby was making noise when it was born. It was alive. And kind of based off injuries I looked at today, leads me to believe that the baby was bleeding when you cut it. Is that accurate?
Elizabeth Keyes: It sounds like it, if it's all there.
Detective Lallatin: Well--
Elizabeth Keyes: And from what I've given and what we've discussed.
Detective Lallatin: Then if the baby was bleeding when you cut it, that means there's a good chance the baby was still alive when you cut it. Is that true or false?
Elizabeth Keyes: I guess it's true. I mean, it's all there. Everything shows that it's--
Detective Lallatin: Yeah, but what happened first? Did you choke the baby before you cut it or did you cut the baby and then choke the baby?
Elizabeth Keyes: I don't know.
Detective Lallatin: You don't?
Elizabeth Keyes: I don't. It all sounds so terrible anyways.
Detective Lallatin: Did the baby grab your hair?
Elizabeth Keyes: Huh-uh.
Detective Lallatin: Are you sure? Because it looks like it had some of your hair in his hand—in his hand?
Elizabeth Keyes: I don't remember it being grabbed or know of it being grabbed. Why would you do that to me?
Detective Lallatin: Because I got to know and I know it's going to hurt.
Elizabeth Keyes: If it did, I wasn't aware of it.
Lynn Acebedo: Could you see him moving at any point? Do you think he could have grabbed your hair?
Elizabeth Keyes: It's a possibility.
Detective Lallatin: Okay.
Elizabeth Keyes: I mean, if he had my hair in his hand then I guess so. My hair in his hand. Are you sure?
Detective Lallatin: Well, I'm not sure of anything, but it looked like a long dark hair. How it got there, I don't know, that's why I'm asking.
Elizabeth Keyes: I don't know. But if it did that, that's like putting salt on something that's already there.
Lynn Acebedo: Lizzy, I think it's really important just to get everything out. Because the more you tell us the more you're going to know, and the better you're going to process all of that.
Elizabeth Keyes: I'm done crying.
Detective Lallatin: Huh?
Elizabeth Keyes: I'm done crying.
Detective Lallatin: You can cry. Nothing wrong with crying.

Elizabeth Keyes: There's nothing wrong with it, I'm just—I hate showing emotion. I really do.
Lynn Acebedo: Sometimes to get over it, you got to get through it, though, hon. You got to get through it. We all go to do this together right now.
Elizabeth Keyes: Doesn't sound good either way either.
Detective Lallatin: Yeah.
Lynn Acebedo: We don't have a lot of options. We just got to get through it together.
Elizabeth Keyes: It's like putting a salt on a wound.
Detective Lallatin: I'm sorry. Liz?
Elizabeth Keyes: Huh?
Detective Lallatin: I'm not trying to hurt you.
Elizabeth Keyes: I know.
Detective Lallatin: Just trying to get some answers. Trying to understand what happened.
Elizabeth Keyes: Wish I did, too.
Detective Lallatin: Is there anything you can think of that would be helpful that I haven't asked?
Elizabeth Keyes: I don't think so.
Detective Lallatin: Are you sure?
Elizabeth Keyes: Yeah.
Detective Lallatin: Was there anything that you'd like me to know?
Elizabeth Keyes: I don't know. Not that I know of. I think if I did I would have said something.

Tr. 55:1 – 67:13. From the break to this portion was about 22 minutes. The remainder of the interview took about 41 minutes, but from this point on there was only intermittent interrogation about what had happened. This last 41 minutes of the interview began with a discussion about Keyes' clothes she was wearing when she came in to the hospital, and the clothes that were in the room she was in (Tr. 67:14 – 68:19), then switched to a discussion about Keyes going to the Behavioral Health Unit for some help. Tr. 68:20 – 69:23. Detective Lallatin then asked Keyes what she did after the incident to clean herself up, and she said she went to sleep without showering. Tr. 70:7-18.

Detective Lallatin: Yeah. Did you call anyone or talk to anybody?
Elizabeth Keyes: I talked to my mother-in-law before I went to bed so that way she knew what was going on.
Detective Lallatin: Did you tell her?
Elizabeth Keyes: I told her.
Detective Lallatin: Did you tell her the baby was out on the porch?

Elizabeth Keyes: No.
Detective Lallatin: What did you tell her happened?
Elizabeth Keyes: I—she just knew something was up. I told her—I don't want her to worry too much, so I told her a little bit. And she knows a little bit and then from the sound of it, my sister-in-law knows a little bit more than she does from this point.
Detective Lallatin: What did you tell your mother-in-law?
Elizabeth Keyes: That I thought it was just—I don't think it clicked that it was an actual thing, so…
Detective Lallatin: An actual delivery?
Elizabeth Keyes: Yeah.
Detective Lallatin: Did you tell her you thought you had a miscarriage or?
Elizabeth Keyes: Sounds like it was a little too far to be a miscarriage at this point, but…
Detective Lallatin: Yeah, but what did you tell your--
Elizabeth Keyes: I think I just told her it was a miscarriage.
Detective Lallatin: Okay.
Lynn Acebedo: Do you know what time you think all of this started that actually gave birth?
Elizabeth Keyes: No. I can just give you guys the estimated time that was given.
Detective Lallatin: And what was that?
Elizabeth Keyes: Probably any where between 1:00 or 2:00.
Detective Lallatin: 1:00 or 2:00 in the morning, yeah?
Lynn Acebedo: Is there anything you think we should know or anything you want to share?
Elizabeth Keyes: No, I think this is it so far.

Tr. 70:19 – 72:3. Additional discussion was had about Keyes clothes. Tr. 72:7 – 74:2. Lynn Acebedo took some photographs of Keyes. Tr. 74:3 – 76:4. During those photographs, Keyes started an impromptu discussion about pizza by stating: "I don't know if you guys are looking for some wonderful deals on pizza right now." Tr. 78:5-6. Keyes is one of the managers at Domino's Pizza in Rathdrum, Idaho. Tr. 4:24 – 5:11. The discussion between Keyes and Lynn Acebedo about pizza went on for some time. Tr. 78:7 – 77:12. The discussion then turned to general information about Keyes (being right handed, age, when she graduated), her mother's name and information about her family. Tr. 77:12 – 83:20. Dr. Henneberg came into the room and had a discussion with Keyes where he recommended she stay in the Behavioral Health Unit for the night. Tr. 83:21 –

85:25. Detective Lallatin and Lynn Acebedo encouraged her to follow the doctor's recommendation. *Id.* Then, Detective Lallatin said:

> Detective Lallatin: So I think that's a good thing, okay? It's a good thing. Then there's going to be some legal issues that you're going to have to deal with, okay?
> Elizabeth Keyes: I'm not looking forward to those.
> Detective Lallatin: Nope. No. But you'll be all right.
> Lynn Acebedo: What are your concerns about that?
> Elizabeth Keyes: All of it.
> Lynn Acebedo: The legal side of it?
> Elizabeth Keyes: Yep.
> Lynn Acebedo: Okay. Explain that to us.
> Elizabeth Keyes: Little bit of everything, I guess.
> Detective Lallatin: Well, it's the unknown, right? The fear of the unknown because you don't know what's going to happen.
> Elizabeth Keyes: Pretty much.
> Detective Lallatin: Yeah. And I don't know either at this point. And that's something that we're going to have to deal with, but we don't have to deal with that right now. The most important thing we have to focus on is taking care of you right now, okay?
> Elizabeth Keyes: All right.
> Detective Lallatin: Right?
> Elizabeth Keyes: Yep.
> Detective Lallatin: The other stuff will work itself out.
> Elizabeth Keyes: I hope so.
> Detective Lallatin: It will. Everything always does. There may be some things that you're going to have to do that you're not going to want to, I don't know, okay?
> Elizabeth Keyes: All right. I'm not excited for that.
> Detective Lallatin: No, I know you're not.
> Lynn Acebedo: Just from my standpoint, I have to let you know what's going on. The baby will be going over for an autopsy, okay, and he's going to go to Spokane. That's where we do all our autopsies. He's going to do that tomorrow and then the baby will be brought back to the funeral home, okay?
> Elizabeth Keyes: Okay.
> Lynn Acebedo: When we—
> Elizabeth Keyes: It was a hunch, but—
> Lynn Acebedo: What's that?
> Elizabeth Keyes: --I guess it was confirmed that it's a male.
> Detective Lallatin: Yeah.
> Lynn Acebedo: When we get to the point that we're ready, we'll discuss that stuff further, okay?
> Elizabeth Keyes: Okay.
> Lynn Acebedo: Is there anything you think I should know about the baby before—so I can tell the medical examiner in Spokane? Is there anything

I need to know—
Elizabeth Keyes: No.
Lynn Acebedo:--that you have concerns about or that you think I just should know that or?
Elizabeth Keyes: Not that I know of.
Lynn Acebedo: Okay. And you do—and I know you said you didn't know you were pregnant, so you didn't feel any kicking or anything like that or? Any funny twinges or?
Elizabeth Keyes: It's a possibility, but I don't think it clicked as a pregnancy. I just thought stress with work and you know, stuff that could trigger—
Lynn Acebedo: Sure.
Elizabeth Keyes:--things like that.
Lynn Acebedo: Okay.
Detective Lallatin: What about the dad?
Elizabeth Keyes: I don't know about the dad. That's –that's the thing. I don't know who or--
Detective Lallatin: Do you have a possibility though?
Elizabeth Keyes: I--
Detective Lallatin: Because that's something we're probably going to have to tract some people down--
Elizabeth Keyes: I do, but…
Detective Lallatin: --and test them?
Elizabeth Keyes: They're not going to like it.
Detective Lallatin: Well, I'm sure they're—
Lynn Acebedo: Who's he?
Detective Lallatin: Who's he, though?
Elizabeth Keyes: Possibly might be my ex.
Detective Lallatin: Okay.
Elizabeth Keyes: But I want to talk to him first.
Detective Lallatin: Well, that's fine, but tell me who he is first.
Elizabeth Keyes: Travis.
Detective Lallatin: What's his last name?
Elizabeth Keyes: Barrett.
Detective Lallatin: Barrett? Where is he at?
Elizabeth Keyes: I think he is currently in Rathdrum also.
Detective Lallatin: How old is he?
Elizabeth Keyes: Couple years younger than I am.
Detective Lallatin: Okay. So, like, 20ish?
Elizabeth Keyes: Ish. 19, 20ish. Or 20 or 21, whatever. I don't know. He's a couple years younger than I am.
Detective Lallatin: Okay. Do you have his phone number?
Elizabeth Keyes: I don't.
Detective Lallatin: Okay. But you think he's probably the dad?
Elizabeth Keyes: I really don't know. If I would have had any other fling or anything along the lines, it's a possibility.
Detective Lallatin: How many others do you think there were?
Elizabeth Keyes: I don't know anyone else that would be a possibility.

Detective Lallatin: So you think he's the only one?
Elizabeth Keyes: Yeah.

Tr. 86:1 - p. 90:1. Detective Lallatin then asked Keyes for information about her phone and the interview ended about three hours and fifteen minutes after it started.

This Court now returns to the Supreme Judicial Court of Maine case of *State v. Jones*, mentioned above. In that case, the interview occurred in a hospital waiting room (55 A.3d at 435), in the present case it occurred in Labor and Delivery Room No. 2 at Kootenai Health hospital. Tr. 1:12-16. In *Jones*, there was one detective, dressed in plain clothes at the hospital (55 A.3d at 438), in the second interview at Jones' apartment, there was more than one detective, dressed in plain clothes. *Id.* at 439. In the present case Detective Lallatin was dressed in plain clothes (vest, long pants, gun not visible). August 31, 2020, hearing Tr. 194: 21 – 195:4. There is no testimony as to how Lynn Acebedo was dressed. Lynn Acebedo did not testify, and Detective Lallatin was not asked how she was dressed. Since Lynn Acebedo was with the Kootenai County Coronor's office, it is assumed she was not dressed in a law enforcement uniform. In *Jones*, the detective **asked** to speak with Jones rather than demanding to speak with him. 55 A.3d at 438. In the present case Detective Lallatin introduced himself and stated "I was hoping to visit with you." Tr. 1:19-24. Lynn Acebedo introduced herself by stating, "My name is Lynn Acebedo. I'm with the Kootenai County Coroner's Office, okay?" Tr. 2:1-2. To which Keyes responded "Okay." Tr. 2:3. Essentially, Detective Lallatin and Lynn Acebedo were **asking** Keyes if they could speak with her. They certainly never demanded to speak to her or demanded that she speak to them.

In *Jones*, the detective at the hospital gave Jones the option to have his mother in the room during questioning." 55 A.3d at 438. In the present case, Gardiner took Keyes to the hospital, was with Keyes during her stay in the emergency department, was with Keyes

when Dr. Henneberg was questioning her, and was with Keyes during her first few hours in the Labor and Delivery Unit. Then, Gardiner, while at the Labor and Delivery Unit, but outside Keyes' presence, was detained briefly by Detective Hook. After that brief detention, Gardiner was released. Gardiner was then interviewed by Detective Hook for at least part of the time that Detective Lallatin interviewed Keyes, if not the full time. While there is no record that Detective Lallatin asked Keyes if she wanted Gardiner to be in the room during the interview, which is what occurred in *Jones*, this Court does not find such to be a significant factor. First, in *Jones*, Jones was a minor, so there is more imperative to include his mother. Keyes is not a minor. Second, Gardiner is not Keyes' mother or anywhere similar in nature of closeness. Keyes stated Gardiner was like a sister-in-law to her, even though she was not yet married to Gardiner's brother, Sean Roland. Tr. 6:10 – 7:6; 22:6-15; 30:25 – 31:4; 55:6-14; 70:19 - 71:18. Due to these differences, this Court finds that the fact that Detective Lallatin did not ask Keyes if she wanted Gardiner present during his interview with Keyes, while a factor which is certainly considered by this Court, is not of much import. Aside from the fact already noted that Keyes was not a minor, and Gardiner was not her mother but was a sister-in-law-to-be perhaps, Keyes at all times during the interview with Detective Lallatin **had her cell phone with her**. She answered it twice during the interview. Detective Lallatin testified he allowed Keyes to use her phone and she did use her phone. August 31, 2020, hearing Tr. 196:12-22; 203:7 – 204:6. Had Keyes wished Gardiner to be present, she not only could have asked Detective Lallatin if he could bring her in, but she could have called Gardiner herself and asked her to come in. Listening to the recording of the interview it is very apparent that Keyes made the decision not to do that because she felt comfortable talking with Detective Lallatin and Lynn Acebedo without Gardiner being present. This is why this Court finds this factor, present in

Jones but absent in this case, to be of little importance.

The Supreme Judicial Court of Maine noted, "Throughout the interrogation, the detective never indicated to Jones that a crime had been committed, much less that there was probable cause to arrest. Instead, the detective emphasized the routine nature of the interrogation, and that the focus of the investigation was to aid the doctors in the baby's medical treatment." 55 A.3d at 439. In the present case, neither Detective Lallatin nor Lynn Acebedo ever directly indicated to Keyes that a specific crime had been committed, though they expressed their "thoughts" about what might have happened. They certainly did not indicate that there was probable cause to arrest her. While at the August 31, 2020, hearing on the motion to suppress, counsel for Keyes, Ann Taylor, asked the question of Detective Lallatin, "During the course of your conversation with her on April 14th you accused her of murdering the child, didn't you?" August 31, 2020, hearing Tr. 206:15-17. There is no basis for such a question by counsel. A review of the transcript of the April 14, 2020, interview shows that Detective Lallatin never mentioned the word "murder", let alone did he accuse Keyes of such. Detective Lallatin certainly asked a lot of questions about how the baby stopped breathing, but he never mentioned to Keyes that a crime had been committed. Detective Lallatin asked, "Did you strangle the baby first?", to which Keyes responded, "I don't know." April 14, 2020, interview, Tr. 30:10-11. Later in the interview, Detective Lallatin said, "And then I think you killed the baby. And you tried to get rid of it by disposing of the baby." Tr. 42:10-12. Detective Lallatin is telling Keyes what he "thinks", he did not accuse her of a crime. Later in the interview, Keyes made the statement, "I still have that burden over me, though. Knowing that I personally did it myself." To which Detective Lallatin asked, "That you personally killed the baby?" Tr. 58:2-22. Because he is asking a question clarifying Keyes' own statement, this is not an

accusation of a crime. Detective Lallatin asked a lot of questions about the cuts on the baby, but again, did not mention to Keyes that a crime had been committed. While choking a person to death is murder, while suffocating a person to death is murder, while strangling a person is a crime and strangling a person to death is murder, and while cutting a live human is a crime (and so is mutilation of a corpse), Detective Lallatin at no time "indicated to [Keyes] that a crime had been committed, much less indicated that there was probable cause to arrest", as set forth in *Jones*.

On April 15, 2020, when Detective Lallatin interviewed Keyes, he did not mention the word "murder." He did not tell Keyes that a crime had been committed. He did ask a clarifying question, "As far as after killing the baby?" (April 15, 2020, interview, Tr. 22:4-5) and "So you had a baby you didn't know you were carrying, and you killed it." Tr. 26:3-4. Before making those two statements, Detective Lallatin said, "You're going to have to deal with legal consequences when you're done." Tr. 20:14-15. The day before, Detective Lallatin had hinted to her that there would be legal consequences, even though he did not accuse her of a crime. Detective Lallatin said the following, at two occasions during that April 14, 2020, interview: "I think this is a very serious situation" (April 14, 2020, interview Tr. 40:25 – 41:1), "There's going to be some legal issues that you're going to have to deal with, okay?" Tr. 86:2-4. Detective Lallatin was not sugar coating Keyes' situation in order to try to get her to talk. **Detective Lallatin was up front with Keyes, and she still decided to talk, and kept talking**, for three hours on April 14, 2020, and another hour on April 15, 2020. Because Detective Lallatin was being so blunt with Keyes about what she may have done, both with choking and cutting the baby, and because Detective Lallatin was up front with Keyes about the seriousness of Keyes' situation, **yet Keyes kept talking without much emotion**, this Court finds these facts actually underscore the fact

that Keyes' perceived this as a non-custodial situation. While Keyes had difficulty with remembering what she did, both with the choking and especially with the cutting, she never stopped talking about that. There is no indication in Keyes' conduct during the interview that would cause this Court to believe she felt she was not free to leave, or that a reasonable person in her situation would feel that they were not free to leave. It is important to remember the standard is not "whether a reasonable person would believe they would be charged with a crime", the standard is "whether a reasonable person in Keyes' situation would feel she was free to leave." To determine that, the whole interview on both days must be read in complete context.

While the Supreme Judicial Court of Maine thought it important enough to note, "Throughout the interrogation, the detective never indicated to Jones that a crime had been committed, much less that there was probable cause to arrest" (55 A.3d at 439), from a legal standpoint, this Court finds that even if some of the statements mentioned in the paragraph immediately above were direct indications to Keyes that a crime had been committed, from a legal standpoint, such does not turn the interview into a custodial interrogation. Again, this is but one of many factors to be included in the "totality of the circumstances" analysis by the Court. *Langford,* 136 Idaho at 339, 33 P.3d at 572. In *State v. Portigue*, 125 N.H. 352, 481 A.2d 534 (N.H. 1984), the defendant Portigue was told "that if he did not disclose the complete story surrounding the child's condition, the defendant 'could probably be into some problems.'" 125 N.H. at 356, 481 A.2d at 537. The Supreme Court of New Hampshire held:

> Moreover, Officer Cook's admitted threat of future prosecution did not vitiate the defendant's consent and also was constitutionally permissible under the due process clause. The record indicates that Officer Cook's statement, that if the defendant did not disclose the complete story surrounding the child's condition he "could probably be into some problems" with the Rochester police, did not overbear the

> defendant's free will. *See United States v. Brandon,* 633 F.2d 773, 777 (9th Cir.1980).
>
> Further, it was quite proper, in view of federal case law, for Officer Cook in the course of the interview to succinctly describe the situation the defendant faced. *See id.* Officer Cook's threat of future prosecution does not rise to the constitutionally impermissible level, for instance, of federal agents threatening a mother that if she failed to cooperate she might not see her two-year-old child "for a while," *United States v. Tingle,* 658 F.2d 1332, 1336 (9th Cir.1981), or of local detectives refusing to allow a suspect to call his wife until he confessed, *Haynes v. Washington,* 373 U.S. 503, 514, 83 S.Ct. 1336, 1343, 10 L.Ed.2d 513 (1963).
>
> We conclude that the defendant's statement to Officer Cook was induced neither by coercion nor by an unconstitutional threat of future prosecution.

125 N.H. at 364-65, 481 A.2d at 542-43. In *Brandon*, cited in *Portigue*, the Ninth Circuit Court of Appeals held: "Nor do we agree that a realistic description of an accused's predicament created by his violation of the criminal law, called to his attention to obtain his cooperation with Government agents, will vitiate his consent. See *United States v. Snyder,* 428 F.2d 520, 521-22 (9th Cir.), cert. denied, 400 U.S. 903, 91 S.Ct. 139, 27 L.Ed.2d 139 (1970); *Fernandez-Delgado v. United States*, 368 F.2d 34, 35-36 (9th Cir. 1966)" *United States v. Brandon*, 633 F.2d 773, 777 (9th Cir. 1980). Thus, this Court finds that while Detective Lallatin did not specifically and directly accuse Keyes of a crime, if he had, it would not have the effect of turning the interview into a custodial interview. At most, that would be a factor in the "totality of the circumstances" analysis. According to these cases, that factor should not be given a great deal of weight. The facts of Keyes are much less compelling than those presented in *Portigue* and *Brandon*, as far as any possible coercion by Detective Lallatin as to the import of Keyes' actions. Thus, even if it can be found that Detective Lallatin accused Keyes of a crime, such is accorded little weight in the overall "totality of the circumstances" analysis.

As mentioned above, in *Jones*, "the focus of the investigation was to aid the doctors in the baby's medical treatment." 55 A.3d at 439. For much of the interrogation, the focus

of the purpose of the questioning was to try to help law enforcement who would be out at Keyes' residence, to know what to look for and where so as to minimize the amount of time they would be out there, thus minimizing the inconvenience to Keyes' mother-in-law. April 14, 2020, interview, Tr. 34:11-25; 35:22 - 36:4. Detective Lallatin asked:

> You've been through a very traumatic experience. But, hey, right now, just because there's kind of a time issue, and I'd like to get my guys out of that house as quickly as I can before your mother-in-law goes really—gets really upset, okay, can you help me with that, please? Help your mother-in-law. Help yourself. What are my guys looking for? Lizzy?

Tr. 35:22 - 26:4. Whether the reason in *Jones* was true or not, or whether the reason given Keyes was true or not, does not really matter. It seems to this Court that the point the Supreme Judicial Court of Maine was making was there was some reason for asking these questions ***other*** than a criminal investigation, and that such factor would make the interrogation less likely to be custodial. If that was the purpose of Supreme Judicial Court of Maine making the point, then that same factor exists in the present case.

In *Jones*, the Supreme Judicial Court of Maine noted, "And although the detectives indicated to Jones that they believed Jones was not being truthful about his role in the baby's injuries, given the totality of the circumstances, a reasonable person in Jones's position would have felt free to leave." 55 A.3d at 438. Neither Detective Lallatin nor Lynn Acebedo ever indicated to Keyes that they thought she was not being truthful. Keyes' answers were at times confusing, and at times inconsistent with earlier answers, so Detective Lallatin (and to some extent Lynn Acebedo) asked a lot of clarifying questions, but neither of them questioned Keyes' credibility or challenged what she was saying. In this Court's opinion, this is a huge point. Obviously, the Supreme Judicial Court of Maine felt that telling a person being interrogated that they were not being truthful was ***a factor*** in determining whether they felt they were free to leave, but also felt that in the totality of the

circumstances of that case, such fact did not tip the scales over toward "a reasonable person would have felt they were not free to leave." It seems to this Court that if a person, after being interrogated by law enforcement for three hours, were told at any point that law enforcement thought they were not being truthful, that would be a big factor for finding that a reasonable person would no longer feel they were free to leave. But in any event, **that factor is not present in this case**. And, even if it were, this Court finds that given the totality of the circumstances in the present case, those facts are less likely than those present in *Jones*, to lead a reasonable person to believe that they were not free to leave.

This Court finds that the April 14, 2020, interview in the present case, as compared to what occurred in *Jones,* which again was about the same three-hour length, was even more non-custodial. In other words, a reasonable person in Keyes' position would have felt greater freedom to leave, as compared to a reasonable person in Jones' position in the *Jones* case. This is because: 1) Jones was a minor (and Keyes is not); 2) because the detectives in *Jones* indicated to Jones they believed he was not being truthful (and no such indication or even hint thereof was made to Keyes), and 3) because the last part of Jones' interrogation occurred at the police station, where all of Keyes' interrogation occurred in Labor and Delivery Room 2. All other factors are comparable between the two cases, including the duration of the interrogation.

There is an additional factor which would indicate that a reasonable person in Keyes' position would have felt as if she were free to leave. This factor is not present in any other case this Court has reviewed. Keyes had her cell phone with her during the entire interview. This Court gives that factor a great deal of weight. Having her phone with her was Keyes' freedom. She could call anyone she wanted. She was allowed to use her phone and did use her phone. Detective Lallatin so testified. August 31, 2020,

hearing Tr. 196:12-22; 203:7 – 204:6. Keyes took a call during the middle of her April 14, 2020, interview with Detective Lallatin. April 14, 2020, interview, Tr. 39:5-24. The phone conversation was with "Sean" (Tr. 40:3) whom Keyes described as her "current partner and someone I wasn't to spend the rest of my life with." Tr. 40:8-9. That conversation lasted about a minute and Detective Lallatin did not try to cut short the conversation Keyes was having.

Finally, an important factor for this Court in finding that Keyes' will was not overborne, and that a reasonable person in Keyes' position would have felt they were free to leave, is the tenor of the interview. This is likely the most important factor to this Court in the "totality of the circumstances" analysis. This is hard to grasp from reading the transcript, but listening to the audio portion of the interview which was provided to the Court, Detective Lallatin and Lynn Acebedo are kind, slow and patient with Keyes. They are considerate of how she is feeling. The interview is never adversarial or accusatorial. Detective Lallatin and Lynn Acebdo never acted like they did not believe what Keyes was telling them. Even though the interview is long, Keyes never acts impatient or afraid. Keyes never sounds tired, weary or exhausted. A lengthy break was taken. Keyes actually seemed to appreciate the conversation as a way for her to work through what had happened. Keyes seemed so comfortable with her interviewers that she brought up the subject of Domino's Pizza at some length. The tenor of the interview certainly negates the length of the interview as a factor tending to show a custodial interrogation.

While not a factor in *Jones*, much of the August 31, 2020, hearing involved the testimony of security personnel at Kootenai Health on April 14, 2020. There is simply no evidence that Keyes at any time saw a security person with the hospital, let alone connected that person's presence with her and her circumstances. There were security

personnel that were present when Keyes arrived at the emergency department driven by Gardiner. However, those people were present as a matter of course, as part of doing their job; not *because of* Keyes' presence. Jordan Munson, lead security officer with Kootenai Health (August 31, 2020, hearing Tr. 66:12-18) testified he was standing outside of the emergency room entrance in the valet lane when Gardiner pulled in with Keyes and the deceased baby. Tr. 67:4-15. "Just like I do with every vehicle that pulls up, I asked them if they needed help, and the driver got out and explained to me what was going on." Tr. 67:16-19. Cody Wright, lead security officer that day (Tr. 75:10 – 76:5) testified that he arrived in the area after Jordan Munson called him on the radio, and he remained in the vicinity as Gardiner and Keyes got out of the vehicle. Tr. 76:19 – 77:19. Later, he was posted outside the room where Detective Lallatin was interviewing Keyes, he was located "at a nursing desk physically separate from the patient's room" though he did not go in that room. Tr. 79:13 – 80:7. Dr. Magajna testified that he saw no security in the emergency department when he was taking care of Keyes for 40 minutes. Tr. 103:4-6; 104:14-17. Security Officer Terry Hoggatt testified when he came on shift at 2:00 p.m. on April 14, 2020, he was assigned by his supervisor to watch the Labor and Delivery Unit door and let staff know if anyone left or entered the Labor and Delivery Unit room, but that he never entered the room and never had any contact with the patient, Keyes. Tr. 128:22 – 129:9; 129:10 – 130:7; 130: 11-14; 130:24 – 131:1. He never had to stop anyone from leaving the room. Tr. 130:8-10. While he was there, the door to the room he was watching remained closed (Tr. 132:7-10), so it would not have been possible for Keyes to have seen him. While he was there, Keyes never tried to leave. Tr. 131:14-16. Supervisor for the Security Department Bob Reynolds testified that he never saw Keyes. Tr. 143:3-24. He was posted outside her room for a time, but never saw anyone other than hospital staff

go in Keyes' room and never saw Keyes. Tr. 150:7 – 151:2. Keyes argues: "Throughout this time [on April 14, 2020], Ms. Gardiner accompanied Elizabeth; however, once Elizabeth arrived in the FBC [Family Birthing Center], Ms. Gardiner wanted to leave the room but could not because at least 1 hospital security guard was posted at the door." Def.'s Br. In Supp. of Mot. to Suppress Evidence 4. There is absolutely no evidence that Keyes was aware of any security personnel. There is absolutely no evidence to support this claim by Keyes that she ever wanted to leave room two at the Labor and Delivery Unit. Keyes did not testify at the hearing on her motion to suppress. The transcript of Detective Lallatin's interview shows Keyes made no request that she be allowed to leave. In fact, just the opposite is shown as Dr. Henneberg had to persuade her to get her to decide for an admission at the Behavioral Health Unit. Dr. Henneberg testified:

> Q. [Linda Payne] All right. Was -- how long was she under your care? Elizabeth I mean.
> A. [Dr. Henneberg] Yes. She was transferred to the behavioral health unit at around 6:00 that evening.
> Q. And why was she transferred there?
> A. **I asked her if she would like that. I thought it'd be safer for her, and she thought that if I recommended it, she would be willing to do that.**

August 31, 2020, hearing Tr. 117:4-15. (bold added).

Also not a factor in *Jones*, but discussed more than once by counsel for Keyes, is the fact that Keyes was not wearing clothes that would allow her to leave the hospital, thus she was not free to leave. Keyes argues, "In the FBC/postpartum department, Elizabeth was given a hospital gown, and instructed to strip naked and medical professionals examined her." Def.'s Br. In Supp. of Mot. to Suppress Evidence 4. "Only the two of them and Elizabeth remained in the room with the door closed or mostly closed. Elizabeth was in a hospital bed, still unclothed under the open back hospital gown." *Id.* "[S]he was alone, she was unclothed under her hospital gown, she couldn't leave her room." *Id.* at

16. The problem with Keyes' argument is that her being in a hospital gown is simply not a circumstance of law enforcement's making, as per the discussion above by the New Mexico Court of Appeals in *LaCouture*, 146 N.M. at 653-54, 213 P.3d at 803-04.

Also not a factor in *Jones*, but made an issue in the present case, is Keyes' argument that Detective Lallatin was controlling of both Keyes and the staff at the Labor and Delivery unit. Keyes argues, "While the detective interrogated Elizabeth, a nurse came into the room to check on Elizabeth, Detective Lallatin instructed the nurse to return at a later time." Def.'s Br. In Supp. of Mot. to Suppress Evidence 4-5. That is not true. Detective Lallatin did not "instruct" the nurse to do anything. The transcript reads:

> Detective Lallatin: Can you give us just a minute?
> UF: (unidentified female) Sure.
> Detective Lallatin: Thanks.

April 14, 2020, interview, Tr. 46:4-10. Keyes argues, "…in Elizabeth's eyes, Detective Lallatin had to appear as an extremely powerful individual with control over her environment." Def.'s Br. In Supp. of Mot. to Suppress Evidence 12. If one listens to the audio recording of both interviews, "an extremely powerful individual" is the last phrase on earth that would come to one's mind to describe Detective Lallatin. Listening to Detective Lallatin is similar to listening to Fred Rogers; his voice is soothing, he is kind, calm and patient. Also, Keyes had just as much control over her environment as Detective Lallatin, maybe more. Keep in mind that Keyes chose to answer her cell phone, even though Detective Lallatin suggested she wait to answer. And then, she had a fairly lengthy conversation with Sean Roland. April 14, 2020, interview, Tr. 39:5 – 40:4. On this issue of "control", Keyes also argues that, "Elizabeth's phone rang but Detective Lallatin instructed her to take the call later." *Id.* at 4. We know from the transcript above that this is not really true. Keyes was not "instructed" by Detective Lallatin to do anything.

Detective Lallatin was asking a question when Keyes phone rang:

> Detective Lallatin: It's about that big around and it's got the handle on top that you push the blade out? (telephone interruption) Can you wait a minute?
> Elizabeth Keyes: I apologize, let me make sure he calls later.
> Detective Lallatin: Yeah. Will you let him know what we're looking for?
> Elizabeth Keyes: (Talking to person on the phone call.) Hey, when is the next time you can call back? When is the next time you can call back? I'm kind of in the middle of something. Yeah, that's why I was asking when you can call back next. I don't know, when are you usually free or if something's not happening? Okay. I'm fine with either of those times. I will tell you then, but all I know is that I really wish I had you. I said, I'll tell you later. Huh? Not at the moment. Yeah, and I'll update you on what's going one. Love you too. All right.
> Detective Lallatin: Who was that?
> Elizabeth Keyes: That was him. I guess he finally found some free time to call.
> Detective Lallatin: Who's him? Sean?
> Elizabeth Keyes: Yeah.

April 14, 2020, interview, Tr. 39:5 – 40:4. Detective Lallatin **asked** Keyes if she could wait a minute to answer her phone, he did not "instruct" her to as argued by Keyes. Not only that, but Keyes refused Detective Lallatin's request…she answered her own phone anyway. Then she had a fairly lengthy conversation with Sean Roland, her fiancée. Keyes efforts to paint Detective Lallatin as a controlling interrogator are in vain. At all times Detective Lallatin was pleasant, patient, and understanding to Keyes. Counsel for Keyes claims, "Instead of a situation where Elizabeth provided the narrative of events, Lallatin provided the narrative. (Interrogation 1 pages 23-25)." Def.'s Br. In Supp. of Mot. to Suppress Evidence 12. This Court finds that Keyes' claims that Detective Lallatin was "controlling" are entirely without merit. Thus, this Court finds such an unsupported claim cannot be part of the "totality of the circumstances" that contributed to Keyes' will becoming "overborne" under *Langford.* 136 Idaho at 339, 33 P.3d at 572.

Counsel for Keyes makes an argument that "Detective Lallatin asked accusatory questions about the baby, and told her he had talked to her doctor. (Interrogation 1 page

10)." Def.'s Br. In Supp. of Mot. to Suppress Evidence 12. There is absolutely no statement or question made by Detective Lallatin at page ten of the transcript of the April 14, 2020, interview, which can be construed to be accusatory. Also, there is no mention by Detective Lallatin to Keyes that he had spoken to Dr. Henneberg at that point.

Finally, counsel for Keyes seem to take umbrage that Detective Lallatin referred to Keyes as "Liz", "Lizzy" and "Hon." "Detective Lallatin called her pet names such as "Hon" and "Lizzy". (Interrogation 1 pages 31; 32; 66)." Def.'s Br. In Supp. of Mot. to Suppress Evidence 13. Detective Lallatin did use the names "Liz" and "Lizzie", but he used those names **because Keyes asked him to**:

> Detective Lallatin: Okay. Is it Elizabeth? Do you mind if I jot down some information? Is it Elizabeth?
> Elizabeth Keyes: Liz.
> Detective Lallatin: It's Liz? Is that what you go by, or --
> Elizabeth Keyes: Nickname, yeah.
> Detective Lallatin: Okay.
> Elizabeth Keyes: Feel that Elizabeth is too formal.
> Detective Lallatin: So you go by Liz?
> Elizabeth Keyes: Liz or Lizzie.

3:13-22. The Court has read through the transcript of the April 14, 2020, interview, and cannot find one occasion where Detective Lallatin referred to Keyes as "Hon." The transcript does show that on one occasion, Lynn Acebedo referred to Keyes as "Hon." In context, that conversation was as follows:

> Detective Lallatin: You can cry. Nothing wrong with crying.
> Elizabeth Keyes: There's nothing wrong with it, I'm just—I hate showing emotion. I really do.
> Lynn Acebedo: Sometimes to get over it, you got to get through it, though, hon. You got to get through it. We all go to do this together right now.

Tr. 66:13-18. This Court is unable to find that Detective Lallatin's use of the identifiers "Liz" and "Lizzie" are in any way a factor, or any part of the "totality of the circumstances", that contributed to Keyes' will becoming "overborne" under *Langford.* 136 Idaho at 339, 33

P.3d at 572. This Court is also unable to find that the use of the moniker "hon" one time over the course of a three hour interview was in any way a factor or any part of the "totality of the circumstances" that contributed to Keyes' will becoming "overborne." *Id.* This Court finds that given the "totality of the circumstances", Keyes' will was at no time overborne during the April 14, 2020, interview.

The most extensive list of factors found by this Court which weigh on the determination of custodial interrogation, is in *Effland v. People of Colorado*, 240 P.3d 868 (Colo. 2010). The Supreme Court of Colorado, *en banc*, held:

> We find the custody determination in the present case to be a close one. The facts that weigh against a finding of custody are as follows: (1) Petitioner was informed that he was not in police custody and had not been charged with a crime; (2) the investigating officers were dressed in civilian clothes; (3) Petitioner was not handcuffed or restrained by law enforcement; (4) Petitioner's mobility was limited for medical reasons unrelated to police conduct; and (5) the interrogation was conducted in a conversational tone.
>
> Conversely, the facts that weigh in favor of finding that Petitioner was in custody are as follows: (1) Petitioner was handcuffed when he was removed from his home; (2) Petitioner was accompanied to the hospital by a police officer; (3) a uniformed police officer was stationed outside of Petitioner's hospital room and the evidence presented at trial supports a conclusion that Petitioner knew of the officer's presence; (4) Petitioner repeatedly informed the investigating officers that he did not wish to speak with them; (5) Petitioner repeatedly stated that he wished to consult with an attorney prior to speaking with the investigating officers; (6) the investigating officers continued to ask questions after Petitioner informed them him he did not wish to speak with them; (7) the investigating officers informed Petitioner that he was not entitled to an attorney; (8) the investigating officers closed the door during the interrogation; (9) the investigating officers sat in very close proximity to Petitioner, one near his head and the other near his feet; (10) the police officers sat between Petitioner and the closed door; (11) Petitioner was emotionally distraught and was crying throughout the interrogation; (12) there were two police officers present, while Petitioner's daughter had been excluded from the interrogation; (13) the purpose of the interrogation was to elicit information from Petitioner related to the deaths of Denise and Brenna Effland for use in a criminal investigation into Petitioner's role in the deaths; (14) the interrogation consisted of questioning and short answers from Petitioner and did not proceed in narrative form; and (15) while Petitioner was confined to the hospital for medical reasons, Petitioner was unable to

leave the premises and was connected to an intravenous line.

After reviewing the totality of the circumstances, we find that a reasonable person in Petitioner's circumstances would consider himself to be deprived of his freedom of action to a degree associated with formal arrest and would not consider himself free to terminate the communication and leave. *Keohane,* 516 U.S. at 112, 116 S.Ct. 457. Although factually distinguishable, we find *Minjarez* to be instructive in reaching this conclusion. As in *Minjarez,* here, Petitioner was questioned in a small room with the door closed. Although it may not have been the intent of the officers to separate Petitioner from the door, Officers Sheets and Hodgkin placed themselves between Petitioner and the room's only exit. *Minjarez,* 81 P.3d at 356 (the investigating officers, "intentionally or not, physically separated defendant from the door"). Petitioner was emotionally distraught and visibly crying. *Id.* at 356 (defendant was "visibly emotionally distraught" both at the outset and throughout the interview); *cf. Matheny,* 46 P.3d at 467 (defendant relaxed throughout interrogation). The interrogating officer's questions provided all of the details of the incident and were designed to elicit agreement from Petitioner. *Minjarez,* 81 P.3d at 356; *cf. Matheny,* 46 P.3d at 467 (defendant made statements in narrative form). The interrogating officer confronted Petitioner with the evidence against him, including a belief that Petitioner shot his wife. *Minjarez,* 81 P.3d at 356 (interrogating officer confronted defendant with the evidence against him).

In addition to the facts similar to those presented in *Minjarez,* of particular significance in this case is the fact that Petitioner's expressed desire not to speak with the investigating officers until after he had spoken with an attorney went unheeded. At two different times during the interrogation, Petitioner attempted to terminate the encounter. However, Officers Sheets and Hodgkin disregarded these requests and proceeded with questioning. While it has been established that Petitioner could likely not leave the area of the interrogation for medical reasons unrelated to police conduct, Petitioner attempted to do what he could to terminate the communication. However, his attempts were disregarded. This fact would lead a reasonable person in Petitioner's position to feel that he is not free to terminate the communication. *Keohane,* 516 U.S. at 112, 116 S.Ct. 457 (custody inquiry is whether "a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave"). The present case is distinct from other hospital bed interrogations that we have found to be non-custodial. In *People v. Milhollin,* 751 P.2d 43, 50 (Colo.1988), this court held that "confinement to [a] hospital bed is insufficient alone to constitute custody." However, here, in determining that Petitioner was in custody, we do not rely only on the fact that Petitioner was confined to a hospital bed. Rather, we rely on a number of facts, outlined above, to come to the conclusion that, under the totality of the circumstances, a reasonable person in Petitioner's position would feel that his freedom of action was curtailed to a degree associated with formal arrest and not feel free to terminate the interrogation and leave. *Cf. People v. Miller,* 829 P.2d 443, 445 (Colo.App.1991) (no custody where

> only fact weighing in favor of custody determination was fact that defendant was confined to hospital); *People v. DeBoer,* 829 P.2d 447, 448 (Colo.App.1991) ("Although the defendant was confined to her hospital bed during the interview, the court found that there were no physical restraints on defendant at the time of the interview nor did the actions of the officers restrain defendant in any way.").
>
> Accordingly, while we recognize that Petitioner was in the hospital in a largely immobile state for medical reasons unrelated to police conduct, and that Petitioner was informed that he was not under arrest, we nonetheless conclude that Petitioner was in custody at the time of the interrogation. *Minjarez,* 81 P.3d at 357 (fact interrogating officers informed the defendant that he was free to leave, when "all external circumstances appear[ed] to the contrary," did not render the interrogation non-custodial). Accordingly, we reverse the court of appeals' determination that Petitioner was not in custody for *Miranda* purposes at the time of the interrogation.

240 P.3d 875-76. If it was a "close one" in *Effland*, that is that it was a close call that Effland was in custody, then comparing the facts in *Effland* to the facts in Keyes' case, it is not even in the realm of being a "'close one" in Keyes. There were more than 20 factors considered in *Effland*. Comparing the five factors which went against custody in *Effland*, to the facts of Keyes: (1) Keyes was not told that she was not in police custody (it was not discussed) and she was not told she had not been charged with a crime (again, not discussed); (2) the investigating officers were dressed in civilian clothes; (3) Keyes was not handcuffed or restrained by law enforcement; (4) Keyes' mobility was limited for medical reasons unrelated to police conduct (if it was limited at all); and (5) the interrogation was conducted in a conversational tone. Comparing the fifteen factors which indicated custody in *Effland* to the facts of Keyes: (1) Keyes was never handcuffed where Effland was when he was removed from his home; (2) Keyes went to the hospital with a friend, where Effland was accompanied to the hospital by a police officer; (3) a uniformed police officer was stationed outside of Effland's hospital room and the evidence presented at trial supports a conclusion that he knew of the officer's presence, where security guards were in the vicinity of Keyes' Labor and Delivery Unit room, but there is no evidence Keyes ever saw one of

them or knew they were there; (4) Effland repeatedly informed the investigating officers that he did not wish to speak with them, where Keyes on only one occasion on the second interview on April 15, 2020, stated as to one question, "I don't want to respond to that"; (5) Effland repeatedly stated that he wished to consult with an attorney prior to speaking with the investigating officers, where Keyes never made that request at any time, either on April 14, 2020, or on April 15, 2020; (6) the investigating officers continued to ask questions after Effland informed them him he did not wish to speak with them, where Keyes' statement on April 15, 2020, that "I don't want to respond to that" is specific to that question; (7) the investigating officers informed Effland that he was not entitled to an attorney, where no such discussion was had with Keyes; (8) the investigating officers closed the door during the interrogation, which are the facts with Keyes, but there were interruptions in Keyes' case, people came into the room, and Keyes was allowed to and did use her cell phone; (9) the investigating officers sat in very close proximity to Effland, one near his head and the other near his feet, where Detective Lallatin testified Keyes was "A normal conversation distance. I'd say three to five feet." (August 31, 2020, hearing Tr. 196:9-11); (10) the police officers sat between Effland and the closed door; where Detective Lallatin testified Keyes was closer to the door than he and Lynn Acebedo were (August 31, 2020, hearing Tr. 195:25 – 196:13; 202:9 – 203:2); (11) Effland was emotionally distraught and was crying throughout the interrogation, where Keyes was neither emotionally distraught nor crying; (12) there were two police officers present, while Effland's daughter had been excluded from the interrogation, where a detective and a coroner interviewed Keyes and while Keyes' friend Gardiner was not in the room during the interview, there is no evidence she was excluded from the room or taken from the room in Keyes' presence; (13) the purpose of the interrogation was to elicit information from Effland

related to the deaths of Denise and Brenna Effland for use in a criminal investigation into Effland's role in the deaths, and the purpose in Keyes was similar; (14) the interrogation consisted of questioning and short answers from Effland and did not proceed in narrative form, which was the case for the most part with Keyes; and (15) while Effland was confined to the hospital for medical reasons, he was unable to leave the premises and was connected to an intravenous line, while Keyes was not on an intravenous line. In comparison, nearly all the factors weighing against a custodial interrogation found in *Effland* are present in Keyes, and only two of the factors weighing in favor of a custodial interrogation in *Effland* are present in Keyes. Keep in mind, the Colorado Supreme Court called the facts in Effland, a "close one", meaning it almost found the interview was non-custodial. Comparing the *Effland* facts to those in Keyes' case, then this is not "a close one." Using *Effland* as a template, viewing the "totality of the circumstances" of the facts in the present case, this Court finds Keyes' will was not overborne; a reasonable person in her situation would have felt she was free to leave.

Detective Lallatin's interview with Keyes lasted just over three hours, including a 28 minute break, during which break Keyes was seen by medical staff for a fundal rub by Labor and Delivery Nurse Danielle Clarkson. August 31, 2020, hearing Tr. 155:1-7. This Court has considered the factors set forth in *Langford*, *Effland* and *Jones*, and determines there is no way Keyes' will was overborne such that a reasonable person would have felt she was not free to leave. The length of the interview was justified by Keyes' inconsistent answers to Detective Lallatin's questions about what happened earlier that morning vis-à-vis her baby. Keyes was unclear whether the baby was alive when born or stillborn. Keyes told Dr. Magajna that, "her chief complaint was a spontaneous abortion" (Tr. 101:6-9), meaning that "her chief complaint was a failed pregnancy", "it's not a live birth and it's not—

spontaneous meaning it's not done surgically." Tr. 102:23 – 103:3. At times in her interview with Detective Latallin, Keyes claimed it was something like a miscarriage or a spontaneous abortion, while at other times she admitted responsibility for the choking and to some extent the cutting. Because of those inconsistencies, the interview on April 14, 2020, lasted about three hours. The length of the interview is a factor, but it is more than offset by the factor of the overall tone of the interview and Keyes' willingness to answer questions throughout the interview. This Court finds that at no point during this April 14, 2020, interview was Keyes' will overborne such that a reasonable person would have felt she was not free to leave.

3. Detective Lallitan's interrogation of Keyes at Kootenai Health on April 15, 2020, was not unlawful.

Regarding both interviews of Keyes by Detecive Lallatin, Keyes argues, "Throughout the hours between the first and second interrogation Elizabeth had security guards posted, watching over her. Elizabeth still had not had any opportunity to speak with any loved ones or friends since Raeanna left Elizabeth in the FBC room the day before." Def.'s Br. In Supp. of Mot. to Suppress Evidence 5. Neither one of these two propositions are supported by any evidence. The testimony given on August 31, 2020, by various Kootenai Health staff (Dan Guerrero, Jordan Munson, Cody Wright, Kimberly Jordan, Kaitlyn Weatherly, Dr. Magajna, Sarah Lyon, Dr. Henneberg, Terry Hoggatt, Bob Reynolds, and Danielle Clarkson), and all of them only discussed security being present outside of Keyes' view on April 14, 2020, through and including her interview with Detective Lallatin. Not one of those witnesses testified about what happened to Keyes after Detective Lallatin's interview. The only witness who testified about what they observed regarding Keyes' hospitalization after that point was Dr. Kirby, who testified that his initial evaluation of Keyes was on April 15, 2020, and that he saw her two times on

April 16, 2020, **the day she was discharged from the hospital**. August 31, 2020, hearing, Tr. 173:4-9. Dr. Kirby was not even asked about any "security guards posted, watching over her." Def.'s Br. In Supp. of Mot. to Suppress Evidence 5. Dr. Kirby did testify that while Keyes was at the Behavioral Health Unit, her room was across from the nursing station, and that she was checked on by staff every fifteen minutes, **as is the case with all the patients there**. Tr. 181:3-13. There is no evidence that there were any such security guards ever watching over Keyes. We know for a fact that Elizabeth Keyes had her personal cell phone during Detective Lallatin's interview on April 14, 2020, and that she used it to receive a call from Sean Rolan whom she intended to marry. There is no evidence in the record that she did anything other than keep that phone after that interview concluded**.** The only evidence is that the day **after** Detective Lallatin's second interview of April 15, 2020, Keyes was discharged. A review of the court file shows the warrant for her arrest was issued April 16, 2020, and served on Keyes at 18:05 (6:05 p.m.) on April 16, 2020. It appears from Dr. Kirby's testimony that the arrest warrant was served on Keyes at the hospital. August 31, 2020, hearing, Tr. 175:20-21. Assuming that is when Keyes was taken into custody, that would be the first, and only time Keyes was detained or in any way had her freedom curtailed at the hospital. There is no evidence that there was any sort of security detail on Keyes up to that point. Even if there were evidence, there is absolutely no evidence that Keyes knew of the presence of such security.

Keyes argues that she was in custody and provided *Miranda* warnings prior to her interrogation on April 15, 2020, but the warning was not meaningful. Def.'s Closing Arg. for the Mot. to Suppress 5. To this point, Keyes' argument, in its entirety, is as follows:

> On April 15, 2020, Detective Lallatin returned to Kootenai Health, Behavioral Health unit to interrogate Elizabeth. He correctly stated he

needed to read Elizabeth her rights under Miranda. However, Miranda warnings must be a meaningful advisement of rights. *Coyote v. U.S.*, 380 F.2d 305, 308 (10th Cir.1967). Detective Lallatin asked Elizabeth if she knew what her Miranda rights were; she said she would need to go back over them. He then downplayed their importance by telling her they were very basic and very simple. Detective Lallatin then asked her if she understood her rights and she audibly answered affirmatively and he asked her to sign her [sic] a paper saying she understood. She signed a waiver of Miranda but gave no audible waiver on the recording. There was no further explanation of rights.

Detective Lallatin had reason to know she did not know and understand the important rights guaranteed to her. When he began interrogating her he asked her if she knew what a placenta was and she said no. He further noted that she dissociated. He informed her she needed to work with the doctor at Behavioral Health.

Elizabeth Keyes' Miranda advisement was ineffective [and] not meaningful. For example, Elizabeth did not know she could stop the interrogation. She did not want to answer questions but Detective Lallatin pressed Elizabeth to answer anyway. (See interrogation 2 page 17) The interrogation continued and she was pressed when she said she did not know an answer or did not want to answer. Not only did Elizabeth lack an understanding of her rights under Miranda, to or during questioning, Detective Lallatin did not treat Elizabeth's Miranda rights with any meaning. Detective Lallatin should have stopped interrogating Elizabeth when she said she did not want to answer. *State v. Harms*, 137 Idaho 891, 894, 55 P.3d 884, 887 (Ct. App. 2002). During the course of the one-hour interrogation Elizabeth declined to answer questions and she was pressed to answer. She stated she did not want to answer; the interrogation should have stopped but Detective Lallatin pressed her and pressed on.

Elizabeth's statements on April 15th must be suppressed because they are fruit of the poisonous tree. The interrogation on April 14th was illegally obtained, as the interrogation was a custodial un-mirandized interrogation. During the second interrogation, Detective Lallatin referred to the interrogation from April 14th. He did so to obtain the same kinds of information and statement from Elizabeth.

Elizabeth remained in Kootenai Health, just a different division. She remained dressed in hospital issued clothing. Hospital personnel had observed her overnight. She had had no access to her phone and no access to her loved ones. The same cop who referred to the interrogation the day prior interrogated her. *State v. Harms*, 137 Idaho 891, 894, 55 P.3d 884, 887 (Ct. App. 2002)[.]

Id. at 5-6. To which plaintiff responds, in its entirety:

The Defendant's interview on April 15, 2020 took place at Kootenai Behavioral Health. Prior to questioning the Defendant, Sgt. Lallatin advised her of her Miranda rights. The setting had changed and Sgt.

> Lallatin was no longer merely on a fact-finding mission. The Plaintiff admitted a copy of Exhibit 5 at the MTS and set forth testimony from Sgt. Lallatin that the Defendant was advised of her rights and signed her name to the Miranda waiver contained in the exhibit. The waiver was knowingly and voluntarily waived. The numerous witnesses who testified at the MTS demonstrated the Defendant was able to communicate effectively—she was able to understand and appropriately answer questions posed of her and she appeared calm and in no acute distress. The Defendant paints herself in a very different light— a fragile person who is emotionally and mentally unstable, just having undergone significant trauma. The testimony and exhibits admitted at the MTS demonstrate the opposite. The Defendant delivered a baby at home, strangled it to death and slit it open with a box-cutter, placed it in a bag and put it out on the front porch with the trash. She went to bed, only to be woken up by Ms. Gardiner inquiring of her well-being. The testimony showed the Defendant was not in acute distress—she was not in hysterics, hyperventilating, or crying uncontrollably upon her arrival or at any point during her stay at the hospital. She was in good physical condition following the delivery of baby boy Keyes and did not suffer any significant injuries that required medical care. She was able to effectively communicate with medical personnel and Sgt. Lallatin. She relayed information regarding her name, date of birth, residence, employment, education, personal relationships, etc., without issue. Despite the Defendant's flat affect and quiet demeanor, she did not have a difficult time understanding what she was asked and responded appropriately. Furthermore, the second interview with the Defendant was after she got a night of sleep and indicated she was fed and feeling better. The interview only lasted approximately on [sic "one]" hour. Evaluating the totality of the circumstances, it is clear that the Defendant's statements made to Sgt. Lallatin were not the result of her will being overborne and thus were voluntary in nature and should be admissible at trial.

Pl.'s Closing Arg. Following Mot. to Suppress [unnumbered] 4-5. Keyes' rebuttal argument adds a new argument, which reads:

> Detective Lallatin indicated that Elizabeth was able to appropriately understand and answer questions, with no sign of emotional distress. When Dr. James Kirby met with Elizabeth, he testified that she seemed to be employing pathological defenses of repression and denial (MTS page: 172). She was not outwardly showing signs of distress because she was actively repressing them. Dr. Kirby indicated that this is something he worked with her on, and would have continued had she not been taken into custody.

Def.'s Rebuttal Closing Arg. for the Mot. to Suppress 4. The Court finds this to be an accurate summary of what Dr. Kirby testified to at that point in the transcript. However, that

summary is not quite complete. Dr. Kirby at that point also testified that, "there's very little evidence for current or recent psychosis." August 31, 2020, hearing, Tr. 173:1-2. With that omission, the inference by Keyes seems to be that Keyes was repressing her memories and needed to continue to work on that, and that such is synonymous with Keyes did not being capable of knowing what she was doing, and thus her interview with Detective Lallatin was not voluntary. This Court notes that at no time did Dr. Kirby state that Keyes did not know what she was doing.

As a preliminary matter, the "fruit of the poisonous tree" doctrine has no merit since the Court above has found Detective Lallatin's interview of Keyes on April 14, 2020, to not have overborne Keyes' will such that a reasonable person would have felt she was not free to leave. Since the tree (the April 14, 2020, interview) is not poisonous, neither is the fruit, the April 15, 2020, interview.

The Court has read the transcript of the April 15, 2020, interview of Keyes by Detective Lallatin, Exhibit 4. The Court has also listened to the audio recording of that interview, Exhibit 3. The interview started at about 2:30 p.m. April 15, 2020, interview, Tr. 1:8-13. The room was dark but Keyes was obviously awake as Keyes said "No, I got it" when Detective Lallatin asked if he could turn on the lights. Tr. 1:14-6. Detective Lallatin asked Keyes, "How are you holding up today?", to which Keyes responded, "Better." Tr. 1:17-18. They spend about eight minutes visiting. Tr.1:19 – 8:8. Listening to the recording, Keyes seems happy to have Detective Lallatin come to visit her. Then, Detective Lallatin asked:

> Detective Lallatin: So, Liz, there's some stuff I want to talk to you about specifically, today, okay?
> Elizabeth Keyes: All right.
> Detective Lallatin: But because you're in here, it's a little different setting than yesterday, right?
> Elizabeth Keyes: Yeah.

Detective Lallatin: And because of that, because some of the things that we're going to talk about, you know, have to do with what happened with the baby and with your childhood, I'm going to advise you of some rights, okay? I think it's important for you to listen to those.
Elizabeth Keyes: Okay.
Detective Lallatin: And if you have any questions, I want to talk to you about it, okay?
Elizabeth Keyes: All right.
Detective Lallatin: Okay. So I'm sure you've heard of your Miranda rights?
Elizabeth Keyes: Yeah.
Detective Lallatin: Have you ever heard them before?
Elizabeth Keyes: Um, I've been—I know they're there. I haven't fully like—it's something I need to re-go back over kind of thing.
Detective Keyes: Well, they're pretty basic. Very simple. It just says, You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him or her present with you while you're being questioned. If you cannot afford to hire an attorney or a lawyer, one will be appointed to represent you before any questioning, if you so wish one. You can decide at any time to exercise these rights and not answer any questions or make any statements.

So if there's something you don't want to talk about, you don't have to talk about it.
Elizabeth Keyes: Okay.
Detective Lallatin: Okay. Do you understand those?
Elizabeth Keyes: Yeah.
Detective Lallatin: Okay. If you understand those, if you would for me, Liz, just sign right there. That just acknowledges that you understand them. This chair is a little more comfortable than yesterday, but different. Then the next one—it's the 15th.
Elizabeth Keyes: The 15th?
Detective Lallatin: Yeah.
Elizabeth Keyes: I'm a day ahead for some reason.
Detective Lallatin: Yeah. And right below that is, Having those rights in mind, do you agree to talk with me today?

Tr. 8:9 – 10:8. No audible answer was given by Keyes to that last answer, but none was really needed, because in context, Detective Lallatin was simply covering the *Miranda* Warning Form (Exhibit 5) with Keyes, line by line. After which, Keyes signed on the YES line and dated that, just below the line which reads, "Having these rights in mind, do you wish to talk to me now?" The context is, Detective Lallatin said, "And right below that is, Having those rights in mind, do you agree to talk with me today?" Tr. 10:7-8. Even the

Court Reporter has put these words in the correct context, by capitalizing the word, "Having." When Keyes makes the argument, "She signed a waiver of Miranda but gave no audible waiver on the record" (Def.'s Closing Arg. for the Mot. to Suppress 5), Keyes presents a context not supported by the record. It is clear that at this precise point, Detective Lallatin is not having a question and answer session with Keyes, he is merely reading the question on the form to her and she signed off on the form. Detective Lallatin was not expecting Keyes to respond because he was not asking a question.

This Court finds Keyes' arguments unpersuasive. Keyes argues, "He [Detective Lallatin] then downplayed their importance by telling her they were very basic and very simple." Def.'s Closing Arg. for the Mot. to Suppress 5. At the outset, Detective Lallatin told Keyes, "I think it's important for you to listen to those." April 15, 2020, interview, Tr. 8:19-20. Detective Lallatin then said, "Well, they're pretty basic. Very simple." Tr. 9:7. Detective Lallatin then read the *Miranda* warning, word for word. Tr. 9:8-19. This Court finds Detective Lallatin did not downplay the importance of the *Miranda* warnings at all. After focusing Keyes on the importance of the *Miranda* warning, he stated the warning itself was "pretty basic, very simple." In doing so, Detective Lallatin spoke the truth; the *Miranda* warning is basic, and it is simple. Ninety-eight words, five sentences, three concepts, 1) the right to remain silent, 2) if you do talk anything you say can be used in court, and 3) the right to a lawyer. That is basic and simple. Keyes then argues, "She signed a waiver of Miranda but gave no audible waiver on the recording. There was no further explanation of rights." Def.'s Closing Arg. for the Mot. to Suppress 5. As to the first statement, that is explained by this Court in the above paragraph, Detective Lallatin was not asking a question which anticipated an answer by Keyes, he was clearly reading the form…so no answer would have been expected. As to the second statement, there is no

further explanation of rights to be given. The language of *Miranda* is straightforward and clear. As soon as an officer deviates from that script by elaboration or improvisation, he or she is treading on thin ice. This Court finds there was no further explanation to be given Keyes by Detective Lallatin.

Next, Keyes argues, "Detective Lallatin had reason to know she did not know and understand the important rights guaranteed to her. When Detective Lallatin began interrogating Keyes, he asked her if she knew what a placenta was and she said "no." *Id.* While it is true Keyes did not know what a placenta was (April 15, 2020, interview, Tr. 11:11-13), this is an absurd argument by Keyes. **Keyes not knowing what a placenta was has nothing to do with whether she understood her *Miranda* rights.** The two simply have no connection. Keyes specifically and unequivocally told Detective Lallatin she understood those rights.

> Detective Lallatin: Okay. Do you understand those?
> Elizabeth Keyes: Yeah.

Tr. 9:21-22. Thus, Keyes' argument that "Detective Lallatin had reason to know she did not know and understand" the importance of those rights is baseless. Keyes has a high school education. Keyes graduated about four years before the events of April 14, 2020. Tr. 18:14-25. Keyes unequivocally stated she understood those very simple and basic rights

Next, Keyes argues, "He [Detective Lallatin] further noted that she dissociated. He informed her she needed to work with the doctor at Behavioral Health." Def.'s Closing Arg. for the Mot. to Suppress 5. Tying these two sentences together, the implication by Keyes is Keyes has a psychological problem (dissociation) which she needs to work on with a professional, Dr. Kirby, a psychiatrist at the Behavioral Health Unit. The Court finds Keyes is trying to make this implication because these two sentences follow, and were

meant to support her argument that, "Detective Lallatin had reason to know she did not know and understand the important rights guaranteed to her." *Id.* While both of these statements are true relative to the April 15, 2020, interview as a whole, these two statements were not made in conjunction with each other during the interview, and Keyes has taken these two statements entirely out of context. Detective Lallatin told Keyes at the beginning of the April 15, 2020, interview that he had spoken with "your doctor, Dr. Kirby. He seems like a nice guy. Do you like him?" April 15, 2020, interview Tr. 2:12-14. Keyes responded, "So far." Tr. 2:15. Detective Lallatin asked, "Good. Do you trust him? You're working on it", to which Keyes responded, "We're getting there." Tr. 2:16-17. Detective Lallatin stated, "Yeah, Well, he seems like he's a pretty decent guy. So I think you're in pretty good hands.", to which Keyes said, "I don't know, I've gotten to know him today so I think so." Tr. 2:18-21. Detective Lallatin asked, "Well good. So are you glad that you took the advice and you came here?", to which Keyes said, "Um, it's helped a little bit and I'm seeing how the rest of the day goes." Tr: 2:22-25. Then, about six minutes later, arising completely out of the context of working with Dr. Kirby, Detective Lallatin "further noted she dissociated." Tr. 5:6 – 6:6. Without coming out and saying it, the implication by Keyes in this argument seems to be that Keyes disassociated to the point she had no understanding of her *Miranda* warnings, and/or that any statements she made were not knowing and voluntary and/or that any memories she had were not real. The implication being made by Keyes is that she suffered from dissociative disorder, "the essential feature" of which "is a disruption in the usually integrated functions of the consciousness, memory, identity, or perception of the environment." American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, 477 (1994). However, the conversation about dissociation came up in the interview when Keyes told Detective

Lallatin that, "I would like to throw myself back into work." April 15, 2020, interview, Tr. 5:4-5. To which Detective Lallatin responded, "Yeah". In other words, Detective Lallatin made no "diagnosis" of dissociation. Their conversation proceeded:

> Elizabeth Keyes: Which I discovered today that—like, I knew it before, but I wanted to really—if things get hard, tough, or just not like deal with it at the moment, I'll throw work first.
> Detective Lallatin: Yeah, so you don't have to talk about it?
> Elizabeth Keyes: Yeah, it gives me something to do.
> Detective Lallatin: Yeah?
> Elizabeth Keys: In between time that I'm not doing anything.
> Detective Lallatin: You strike me as the type of person through life, you probably—I don't know if you had a tough background, but you seem to be able to compartmentalize things. Do you know what that means?
> Elizabeth Keyes: (No audible response.)
> Detective Lallatin: Well, it's a—like what you just talked about where you have a difficult time. Say something bad happens in your life, right, that you don't like to think about.
> Elizabeth Keyes: I also in a–I knew I pushed emotion, and the physical, it's just—it's like a follow-up with the emotion, so…
> Detective Lallatin: You're able to disassociate yourself from things.
> Elizabeth Keyes: Uh-huh.
> Detective Lallatin: Yeah.
> Elizabeth Keyes: And deal with them later.

Tr. 5:6 – 6:6. Keyes' statement, "and deal with them later" is the essence of dissociating. Dissociate means "to separate from association or union with another, disconnect." Webster's Ninth New Collegiate Dictionary, 366 (1983). That is how Keyes correctly described the word that Detective Lallatin used. This Court finds Keyes' argument that "Detective Lallatin had reason to know she did not know and understand the important rights guaranteed to her", which is based on 1) the fact Keyes did not know what a placenta is, and 2) a wholly unsupported claim of dissociation, is without merit.

Keyes' next argument is, "Elizabeth Keyes' Miranda advisement was ineffective [and] not meaningful. For example, Elizabeth did not know she could stop the interrogation." Def.'s Closing Arg. for the Mot. to Suppress 5. This is absolutely false. As set forth above, Detective Lallatin told Keyes: "You can decide at any time to exercise

these rights and not answer any questions or make any statements. So if there's something you don't want to talk about, you don't have to talk about it.", to which Keyes responded, "Okay." April 15, 2020, interview, Tr. 9:15-19.

Keyes' next argument is, "She did not want to answer questions but Detective Lallatin pressed Elizabeth to answer anyway. (See interrogation 2 page 17)" Def.'s Closing Arg. for the Mot. to Suppress 5. Keyes continues, "The interrogation continued and she was pressed when she said she did not know an answer or did not want to answer." This argument by Keyes has some merit. Keyes' argument is based on page 17 of the transcript, which (beginning just before page 17) reads:

> Detective Lallatin: But you're sure that you used your hands and not anything else, right, choking the baby?
> Elizabeth Keyes: I don't want to respond to that.
> Detective Lallatin: You don't know how to respond to that?
> Elizabeth Keyes: I don't want to respond to that. I don't know how
> Detective Lallatin: With the truth. I mean, did you use something or did you just use your hands?
> Elizabeth Keyes: I don't want to respond to that.
> Detective Lallatin: Can I ask why?
> Elizabeth Keyes: I don't know how and I don't know how the response will turn out.
> Detective Lallatin: How it would make you look?
> Elizabeth Keyes: Oh, this whole thing makes me look bad anyways, so…
> Detective Lallatin: Well, you're not the first person to have this happen to, right?
> Elizabeth Keyes: That doesn't help.
> Detective Lallatin: I know it doesn't help. I mean, I can't take it away, Lizzy, you know, I can't change it.
> Elizabeth Keyes: What's been done is done. It just means I got to live with the consequences.

Tr. 16:24 – 17:19. The Idaho Court of Appeals in *Harms* cited *State v. Rhoades*. In *Rhoades*, the Idaho Supreme Court stated:

> *Miranda* teaches that "[o]nce warnings have been given, the subsequent procedures are clear. If the individual indicates in any manner, at any time, prior to or during questioning, that he wishes to remain silent, the interrogation must cease." *Miranda,* 384 U.S. at 473–74, 86 S.Ct. at 1627.

> In this case, based on the record before us, Rhoades did not assert his right to remain silent. If he had, Shaw's comment, properly found by the trial court to be "the functional equivalent of interrogation," would have been improper and the second statement would not have been admissible. The requirement that interrogation must cease comes into play when the accused indicates in any manner that he or she does not desire to converse with the police, or that the presence of an attorney is desired. After rights are read to and acknowledged by the detainee, and until the right to silence or counsel is asserted, the police may initiate questioning.

121 Idaho at 74, 822 P.2d at 971. The Idaho Supreme Court found Rhodes did not assert his right to remain silent by simply shaking his head negatively. *Id.* Here, Keyes unambiguously and unequivocally twice stated, "I don't want to respond to that." Tr. 17:2, 6. *Miranda*, *Harm* and *Rhodes* instruct that the interview needed to end at that point, **if this was a custodial interrogation** on April 15, 2020. This Court finds that given the "totality of the circumstances", it was not a custodial interrogation.

Keyes argues, "Detective Lallatin should have stopped interrogating Elizabeth when she said she did not want to answer. *State v. Harms*, 137 Idaho 891, 894, 55 P.3d 884, 887 (Ct. App. 2002)." Def.'s Closing Arg. for the Mot. to Suppress 5-6. This is indeed what the Idaho Court of Appeals in *Harms* held: "If the individual indicates in any manner, at any time prior to or during questioning, that he or she wishes to remain silent, the interrogation must cease. *Miranda*, 384 U.S. at 473–74, 86 S.Ct. at 1627–28, 16 L.Ed.2d at 722–23, *State v. Rhoades*, 121 Idaho 63, 74, 822 P.2d 960, 971 (1991)." 137 Idaho at 894, 55 P.3d at 887. An important fact in *Harms* is that Harms was being asked by his probation officer, while he was in jail, to sign a property invoice, which apparently listed a gun that was found. "Instead, the probation officer approached Harms in his jail cell, *one day after he was arrested and booked into the jail,* consulted an attorney and invoked his right to remain silent. Moreover, the probation officer made the request knowing that the prosecuting attorney was preparing to charge Harms with being a felon in unlawful

possession of a firearm—information which the probation officer never shared with Harms." 137 Idaho at 894-95, 55 P.3d at 887-88. (italics in original). The interview in *Harms* was obviously custodial. This Court finds the April 15, 2020, interview in the present case was not custodial.

At first glance, at least to this Court, it seemed the April 15, 2020, interview must certainly be a custodial interrogation. But this Court initially made that assumption due to the fact that Detective Lallatin read Keyes her *Miranda* warning and had her acknowledge such in writing. Ex. 5. The initial assumption was, "Why would a detective read *Miranda* warnings if the person wasn't in custody?" But in actuality, little had changed from the interview the day before, and this Court has above found that interview the day before was non-custodial. On April 15, 2020, the only aspects that changed from the day before is the fact that Keyes is now in the Behavioral Health Unit (and has had food and a good night's sleep, April 15, 2020, interview, Tr. 1:22-23), and the fact that autopsy had been performed and Detective Lallatin informed Keyes of that fact. Tr. 10:21 – 11:5. Detective Lallatin told Keyes what the autopsy concluded:

> Detective Lallatin: You don't know? That's okay. That's okay. Do you remember—did you have to pull the baby out when it was coming out?
> Elizabeth Keyes: Mmm, no.
> Detective Lallatin: You didn't have to reach down and pull at all?
> Elizabeth Keyes: Huh-uh.
> Detective Lallatin: You didn't? So the baby just came right out?
> Elizabeth Keyes: I don't remember too much about it.
> Detective Lallatin: Yeah. Well, so the autopsy confirmed that the baby was alive, okay? But you know that, right?
> Elizabeth Keyes: (Inaudible) cool.
> Detective Lallatin: What's that?
> Elizabeth Keyes: So it does confirm it, cool.

Tr. 12:3-15. Given Keyes' odd reaction to the news that the autopsy showed the baby was alive, the Court cannot conclude that she felt that she was not free to leave or that her will was overborne, or that a reasonable person would have felt that way. She might not have

connected all the dots, but she was no more in custody at this point than she was the day before. The interview remained low key, calm, quiet, for the approximately one-hour duration. Even though Detective Lallatin asked tough questions, the interview ended on a light note, with Keyes actually happy Detective Lallatin had visited her. Given the totality of the circumstances, this Court cannot find that Keyes' will was overborne any more than the day before, and there is no additional basis for her to feel that she was not free to leave. As to the changed factor that Keyes was now in the Behavioral Health Unit, she was still free to leave that facility, though likely that would have been against medical advice (which would not have been the making of law enforcement under *LaCouture*). More importantly, Keyes clearly understood that she needed the help that the Behavioral Health Unit had to provide…she was staying there by choice. As to the changed factor of the autopsy, that really seemed to cause Keyes little if any pause. Based on these factors, this Court finds given the totality of the circumstances, that the April 15, 2020, interview was also non-custodial. However, there are two additional questions which this Court feels must be addressed.

The first question that occurs to this Court is whether the giving of *Miranda* warnings converts this non-custodial interrogation into a custodial interrogation. This Court finds that *Miranda* warnings given during an otherwise non-custodial interrogation do not have the effect of transforming a non-custodial interrogation into a custodial interrogation. In *State v. Hamlin*, 156 Idaho 307, 324 P.3d 1006 (Ct. App. 2014), the Idaho Court of Appeals addressed whether *Miranda* Warnings given during a non-custodial interrogation have an effect on transforming a non-custodial interrogation into a custodial interrogation. That court held:

> The last factor that Hamlin contends demonstrates that he was in custody is the fact that *Miranda* warnings were read to him. The presence

> or absence of *Miranda* warnings is not a factor that has been identified by the United States Supreme Court as relevant to the custody question. Although the federal authorities are not uniform regarding the import of the administration of *Miranda* warnings in an otherwise noncustodial interview, most hold either that the *Miranda* warnings are irrelevant to the nature of the interrogation or hold that it is merely one factor to be considered in the custody determination. *United States v. Harris,* 221 F.3d 1048, 1051 (8th Cir.2000) (collecting cases concerning the impact of giving unnecessary *Miranda* warnings); *United States v. Bautista,* 145 F.3d 1140, 1148–1151 (10th Cir.1998) (holding that giving *Miranda* warnings does not, of itself, convert an otherwise noncustodial interview into a custodial interrogation, but is a factor to be considered by the court); *Sprosty v. Buchler,* 79 F.3d 635, 642 (7th Cir.1996) (holding the warning is relevant but not dispositive to custody); *Davis v. Allsbrooks,* 778 F.2d 168, 172 (4th Cir.1985) (rejecting the argument that giving unnecessary *Miranda* warnings automatically renders an encounter custodial); *United States v. Charles,* 738 F.2d 686, 693 n. 6 (5th Cir.1984) (rejecting the view "that the giving of *Miranda* warnings is evidence that the person questioned is under formal arrest or restraint of freedom of movement of the degree associated with formal arrest"), *overruled on unrelated grounds by United States v. Crawford,* 52 F.3d 1303, 1307 n. 4 (5th Cir.1995); *United States v. Lewis,* 556 F.2d 446, 449 (6th Cir.1977) (rejecting the argument that "the very giving of *Miranda* rights helped produce a custodial interrogation"). We conclude that if the administration of *Miranda* warnings is relevant at all in determining whether an interview was custodial, it is a factor of little weight when considering the totality of the circumstances as directed by the Supreme Court in *Thompson.* To hold that the reading of *Miranda* warnings is a heavy indicator that the interviewee was in custody would give officers a disincentive to provide warnings that will be of benefit to interviewees regardless of their custodial status. The use of *Miranda* warnings should be encouraged, not deterred, as they both benefit interviewees and protect law enforcement from later allegations of *Miranda* violations.

Hamlin, 156 Idaho at 314, 324 P.3d at 1013. Keyes was read her *Miranda* rights toward the beginning of the second interrogation that took place on April 15, 2020. Based on the reasoning of *Hamlin*, and the federal authorities cited by *Hamlin*, the fact that Keyes was read *Miranda* warnings during the otherwise non-custodial second interrogation is not dispositive in transforming the non-custodial interrogation into a custodial interrogation. *Id.* At most, the reading of *Miranda* warnings can be analyzed as a factor by the Court, along with the other factors, in determining whether the totality of circumstances surrounding the

April 15, 2020, interrogation amounted to a custodial or non-custodial interrogation. *Id*. Critically, the Idaho Court of Appeals in *Hamlin* found, "that if the administration of *Miranda* warnings is relevant at all in determining whether an interview was custodial, it is a factor of little weight when considering the totality of the circumstances…" *Id*. Given that Keyes was nonplussed when Detective Lallatin covered the *Miranda* warnings, this Court finds that the mere reading of *Miranda* warnings did not have the effect of transforming the April 15, 2020, interrogation of Keyes into a custodial interrogation. This Court notes that by inference, *Hurst* and *Leonard* discussed immediately below, support this conclusion that the giving of *Miranda* warnings does not create a custodial interrogation. This takes the Court to the second issue this Court feels it must address.

Keyes said, "I don't want to respond to that." Tr. 17:1. The second question this Court feels it must address is whether Keyes' invocation of her right to remain silent as to one question requires a termination of this non-custodial interrogation. This Court finds that it does not. The Idaho Supreme Court has not dealt squarely with the issue of whether police must terminate a non-custodial interrogation if a suspect invokes their Fifth Amendment right to remain silent. The Idaho Court of Appeals has dealt with an analogous subject of non-custodial interrogations where defendants invoked their Fifth Amendment **right to counsel** (not right to remain silent) in *State v. Hurst*, 151 Idaho 430, 435–36, 258 P.3d 950, 955–56 (Ct. App. 2011), as well as *Leonard v. State*, No. 39067, 2013 WL 5488729, at *7 (Idaho Ct. App. July 2, 2013). As far as the right to counsel (*Hurst*) vs. right to remain silent distinction (in Keyes), that is likely a distinction without a difference, as the Idaho Court of Appeals has held that in a custodial interrogation, invocations of the right to remain silent should be treated similarly to invocations of the right to counsel when determining whether a defendant's invocation was clear and unequivocal. *State v. Law*, 136

Idaho 721, 724–25, 39 P.3d 661, 664–65 (Ct. App. 2002). In that case, the Idaho Court of Appeals held:

> After a suspect has been advised of the right to remain silent and the right to counsel pursuant to *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), police may not proceed with questioning if the suspect indicates a desire to remain silent. *Id.* at 473–74, 86 S.Ct. at 1627–28, 16 L.Ed.2d at 722–23; *State v. Rhoades,* 119 Idaho 594, 602, 809 P.2d 455, 463 (1991). An individual's right to cut off questioning is grounded in the Fifth Amendment and must be "scrupulously honored." *Michigan v. Mosley,* 423 U.S. 96, 103, 96 S.Ct. 321, 326, 46 L.Ed.2d 313, 321 (1975).
>
> Nevertheless, police officers are not required to cease questioning unless the invocation of *Miranda* rights is clear and unequivocal. In *Davis v. United States,* 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994), the United States Supreme Court held that in order to effectively invoke the right to counsel, a suspect must " articulate his 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.... If the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him." *Id.* at 459–60, 114 S.Ct. at 2355, 129 L.Ed.2d at 371–72. Several federal courts of appeal have held that the same standard should be applied to a suspect's references to the right to cut off questioning or the right to silence. *United States v. Banks,* 78 F.3d 1190, 1197 (7th Cir.1996); *United States v. Johnson,* 56 F.3d 947, 955 (8th Cir.1995) (relying heavily on pre-*Davis* circuit law); *Coleman v. Singletary,* 30 F.3d 1420, 1424 (11th Cir.1994). We also implicitly deemed the *Davis* rule applicable to an assertion of the right to silence in *State v. Whipple,* 134 Idaho 498, 502–04, 5 P.3d 478, 482–484 (Ct.App.2000). Thus, a suspect's ambiguous or equivocal comment that does not plainly express a desire to remain silent or to terminate the interview will not obligate police to cease questioning.

State v. Law, 136 Idaho at 724–25, 39 P.3d at 664–65.

In *State v. Hurst*, the defendant, Hurst, declined an invitation to come to the Sheriff's office for an interview regarding an accusation that Hurst had sexually molested his stepdaughter. *Hurst*, 151 Idaho at 432, 258 P.3d at 952. Hurst responded to this invitation by stating "Not without my lawyer." *Id*. Hurst was placed under arrest and transported to the sheriff's office where he was read his *Miranda* rights, interrogated, and confessed to the crime. *Id*. Hurst later sought to suppress the confession contending that prior to the arrest, "he had effectively invoked his Fifth Amendment right to an attorney, and therefore the

detective was prohibited from later interrogating him at the sheriff's office without the presence of Hurst's attorney." *Id*. The Idaho Supreme Court in *Hurst* found that:

> The Supreme Court has never directly held that a person *cannot* invoke his *Miranda* rights anticipatorily outside the context of custodial interrogation. However, many lower courts, while generally recognizing that the Supreme Court's statements in *McNeil* and *Montejo* are dicta, have followed those pronouncements and held that an effort to invoke *Miranda* rights outside the context of custodial interrogation will not be effective to restrain police interrogation. *See Burket v. Angelone,* 208 F.3d 172, 197 (4th Cir.2000) (holding that the defendant's invocation was ineffective "because he was not 'in custody' at the time"); *United States v. Wyatt,* 179 F.3d 532, 537 (7th Cir.1999) ("The Fifth Amendment right to counsel safeguarded by *Miranda* cannot be invoked when a suspect is not in custody."); *United States v. Bautista,* 145 F.3d 1140, 1149 (10th Cir.1998) ("If Bautista was not in custody ... during the questioning, then his attempts to invoke his right to remain silent and his *Miranda* right to counsel were ineffective."); *United States v. Hines,* 963 F.2d 255, 256 (9th Cir.1992) ("[I]f Hines was not in custody during the first interview, the reference to his lawyer at that time cannot be considered an invocation of *Miranda* rights."); *Marr v. State,* 134 Md.App. 152, 759 A.2d 327, 340 (2000) ("Because appellant's purported invocation, through his attorney, occurred before appellant was in custody, it could not operate to invoke his Fifth Amendment right to counsel."); *State v. Warness,* 77 Wash.App. 636, 893 P.2d 665, 668 (1995) ("[T]he Fifth Amendment right to counsel cannot be invoked by a person who is not in custody.").
>
> The rationale given for this bright-line rule varies among the courts, but we think that the Illinois Supreme Court was persuasive when it said:
>
> > It is not surprising that virtually every Supreme Court opinion involving *Miranda* has used the phrase "custodial interrogation." It is custodial interrogation with which *Miranda* was concerned. It is the right to an attorney *during custodial interrogation* that *Miranda* and its progeny protects. That right does not exist outside the context of custodial interrogation. One cannot invoke a right that does not yet exist.
>
> *People v. Villalobos,* 193 Ill.2d 229, 250 Ill.Dec. 17, 737 N.E.2d 639, 645 (2000). We likewise hold that a person may not invoke a Fifth Amendment right to counsel, with the prophylactic effect of cutting off questioning without an attorney present, if the person is not in custody.

State v. Hurst, 151 Idaho at 435–36, 258 P.3d at 955–56.

In *Leonard v. State*, the Idaho Court of Appeals again dealt with the issue of whether a defendant's invocation of their right to counsel in a non-custodial interrogation necessitated ending the interrogation. No. 39067, 2013 WL 5488729, at *7 (Idaho Ct. App. July 2, 2013).

A principle difference between *Hurst* and *Leonard* is the fact that Leonard was informed of his *Miranda* rights during the course of his non-custodial interrogation and Leonard contended that this fact allowed him to cut off the interrogation upon his invocation of his right to counsel. The Court in *Leonard* held that:

> In the alternative, Leonard contends that, even if no *Miranda* warnings would have been required in these circumstances (because he was not in custody), the rule this Court announced in *Hurst,* 151 Idaho at 436, 258 P.3d at 956, that a person must be in custody to invoke their right to counsel, "should not be extended to circumstances such as these where the suspect was actually informed he has the right to counsel and then invoked that right when in a highly coercive environment." Leonard argues *Hurst* is distinguishable because, in this case, the detectives informed Leonard he had the right to an attorney prior to interrogation and the interrogation proceeded under allegedly coercive circumstances, while in *Hurst,* we found the defendant was not in custody where police approached him in the lobby of his workplace and without the officers informing him of his *Miranda* rights, he indicated he would not speak to them without counsel present. *Hurst,* 151 Idaho 437, 258 P.3d at 957. Given the different circumstances, Leonard argues, it "cannot be said that [he] had no right to invoke the right police informed him that he had, even if the circumstances were not coercive enough to trigger the requirement that the [*Miranda*] warnings be given." However, that the facts of *Hurst* are distinguishable to a degree from those in this case has no effect on the fact that in *Hurst* we announced a "bright-line rule" that "a person may not invoke a Fifth Amendment right to counsel, with the prophylactic effect of cutting off questioning without an attorney present, if the person is *not in custody.*" *Hurst,* 151Idaho at 436, 258 P.3d at 956 (emphasis added). We decline Leonard's invitation to depart from this clear and unequivocal statement of law in regard to a defendant's invocation of *Miranda* rights.

Leonard v. State, No. 39067, 2013 WL 5488729, at *7 (Idaho Ct. App. July 2, 2013). Keyes stated, "I don't want to respond to that." Tr. 17:1. Is that an unambiguous and unequivocal invocation of her right to remain silent (as in, "I don't want to talk any more" or "I'm done answering questions"), or is it an unambiguous and unequivocal statement that "I don't want to answer that question." It is clear to this Court that it was the latter. But, even if it was the former, a clear and unequivocal invocation by Keyes of her right to remain silent (below, this Court finds that it was not), this Court finds that the holdings in *Hurst* and *Leonard* (even though they specifically regard the Fifth Amendment right to counsel) largely inform this Court

on how it should rule on the similar circumstance of Keyes' invocation of her Fifth Amendment right to remain silent. *Hurst* established a bright line rule that "a person may not invoke a Fifth Amendment right to counsel, with the prophylactic effect of cutting off questioning without an attorney present, if the person is not in custody." *Hurst*, 151 Idaho at 435–36, 258 P.2d at 955-56. This Court finds that Keyes was not in custody during the April 15, 2020 interrogation, and therefore, Keyes' invocation of her right to remain silent during the interrogation did not require termination of that line of questioning by Detective Lallatin.

In this case, much like in *Leonard*, Keyes was informed of her *Miranda* rights prior to the non-custodial interrogation. As shown in *Leonard*, this fact does not destroy the bright line rule of *Hurst*. As described above, *Hamlin* has informed this Court that the reading of *Miranda* rights during a non-custodial interrogation is not dispositive in transforming a non-custodial interrogation into a custodial interrogation and can only be considered as "a factor of little weight when considering the totality of the circumstances…" *Hurst*, 151 Idaho at 435–36, 258 P.2d at 955-56. For these reasons, Keyes' statement, "I don't want to respond to that" (Tr. 17:1), even if it is an unambiguous and unequivocal invocation of her right to remain silent, does not result in Detective Lallatin needing to end the interview at that point, nor does it result in suppression of the rest of the interview. When reading *Hamlin*, *Hurst*, *Leonard*, and *Law* together, it becomes apparent that because this Court finds that the April 15, 2020, interrogation is non-custodial, then Keyes' statement that "I don't want to respond to that" does not require Detective Lallatin to end the interrogation, nor does it preclude Detective Lallatin from continuing to pursue topic specific or question specific lines of questioning.

Next, this Court finds that Keyes' statement, "I don't want to respond to that" (Tr. 17:1) is an ambiguous invocation of her right to remain silent. That being the case, even if the April 15, 2020, interrogation were a custodial interrogation, Keyes' statement, "I don't want to

respond to that" would not be considered a true invocation of her right to remain silent.

First, it was a specific response to a specific question, after which Keyes kept talking and answering questions. Second, such is the result indicated by *Berghius v. Thompkins*, 130 S.Ct. 2250, 560 U.S. 370, (2010), even though that case concerned a custodial interrogation. The United States Supreme court held that if the accused makes an "ambiguous or equivocal" statement or no statement, the police are not required to end the interrogation. The syllabus notes, "Had Thompkins said that he wanted to remain silent or that he did not want to talk, he would have invoked his right to end the questioning. He did neither. Pp. 2259 – 2260." 130 S.Ct. at 2254, citing. *Davis v. United States,* 512 U.S. 452, 458-59, 114 S.Ct. 2350, 129 L.Ed.2d 362.

> There is good reason to require an accused who wants to invoke his or her right to remain silent to do so unambiguously. A requirement of an unambiguous invocation of *Miranda* rights results in an objective inquiry that "avoid[s] difficulties of proof and ... provide[s] guidance to officers" on how to proceed in the face of ambiguity. *Davis,* 512 U.S., at 458–459, 114 S.Ct. 2350. If an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused's unclear intent and face the consequence of suppression "if they guess wrong." *Id.,* at 461, 114 S.Ct. 2350. Suppression of a voluntary confession in these circumstances would place a significant burden on society's interest in prosecuting criminal activity. See *id.,* at 459–461, 114 S.Ct. 2350; *Moran v. Burbine,* 475 U.S. 412, 427, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986). Treating an ambiguous or equivocal act, omission, or statement as an invocation of *Miranda* rights "might add marginally to *Miranda* 's goal of dispelling the compulsion inherent in custodial interrogation." *Burbine,* 475 U.S., at 425, 106 S.Ct. 1135. But "as *Miranda* holds, full comprehension of the rights to remain silent and request an attorney are sufficient to dispel whatever coercion is inherent in the interrogation process." *Id.,* at 427, 106 S.Ct. 1135; see *Davis, supra,* at 460, 114 S.Ct. 2350.

130 S.Ct. at 2260. Keyes' statement "I don't want to respond to that" is at best an unequivocal invocation of selective silence on a specific question. Idaho Courts have not dealt directly with the issue of what effect selective silence on specific question has on halting the interrogation, but the Federal Circuit Courts of Appeal appear to be in agreement that

invocations of selective silence on specific questions, does not halt the interrogation even regarding topic specific or question specific lines of questioning. The Ninth Circuit Court of Appeals found that:

> A suspect may remain selectively silent by answering some questions and then refusing to answer others without taking the risk that his silence may be used against him at trial. *Id.*
>
> Furthermore, the Supreme Court's decision in *Thompkins* does not alter its holdings in *Miranda* or *Doyle. Thompkins* makes clear that a criminal defendant must affirmatively and unambiguously invoke his right to remain silent if he wishes to cut off police interrogation. *See* 130 S.Ct. at 2260. When a suspect remains "largely silent" in response to officers' questions, the interrogation does not automatically have to cease. *Id.* At the same time, when a defendant remains silent or refuses to answer a question posed by police, that silence or refusal is inadmissible. As the Court held in *Doyle,* a defendant's silence in response to a question is ambiguous because it may be no more than a reliance on the right to silence. 426 U.S. at 618–19, 96 S.Ct. 2240. That silence may not require police to end their interrogation, but it also does not allow prosecutors to use silence as affirmative evidence of guilt at trial. *Thompkins* stands for the proposition that a voluntary confession should not be suppressed just because a defendant has refrained from answering other questions. *See* 130 S.Ct. at 2262–63. It does not alter the fundamental principle that a suspect's silence in the face of questioning cannot be used as evidence against him at trial, whether that silence would constitute a valid invocation of the "right to cut off questioning" or not. *See id.* (quoting *Mosley,* 423 U.S. at 103, 96 S.Ct. 321 (internal quotation marks omitted)).

Hurd v. Terhune, 619 F.3d 1080, 1087-1088 (9th Cir. 2010) (footnote omitted). Keyes' statement, "I don't want to respond to that", is a selective refusal to answer a specific question. As found in *Hurd*, this does not act as a true invocation of the Fifth Amendment right to remain silent. *Id*. Therefore, the questioning can continue. The only thing Keyes' selective refusal to answer the question does is bar the introduction of the evidence of her refusal, and the silence itself, regarding this question. *Id*. This concludes the analysis of the two questions raised by this Court.

Keyes next argues *Coyote v. U.S.*, 380 F.2d 305, 308 (10th Cir.1967) stands for the proposition that "Miranda warnings must be a meaningful advisement of rights." Def.'s Closing Arg. for the Mot. to Suppress 5. *Coyote* dealt with a fairly tortured interpretation of

a *Miranda* warning which was given:

> The specific complaint here is that the mandate of *Miranda v. State of Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, 10 A.L.R.3d 974, was not observed because the clause in the written statement that '* * * I can talk to a lawyer or anyone before saying anything, and that the judge will get me a lawyer if I am broke' reflects that appellant was not informed with sufficient clarity of his right to a court appointed attorney at the time the statement was made. Thus he seems to say in effect that at most the Agent advised him only that he could talk to a lawyer before making the statement if he could afford to hire one, and that the judge would appoint a lawyer when he came to trial if he could not afford one.
>
> When in the trial of the case objection was made to the statement, the jury was excused and Judge Bratton conducted an admissibility hearing. The Agent who took the statement testified that after going over it with appellant, he asked, 'Do you understand this, Mr. Coyote?' Appellant replied, 'Does this mean the judge will get me a lawyer if I am broke?', to which the Agent replied, 'Yes'. Appellant admitted the Agent told him he had a right to counsel before he made a statement but testified that the Agent told him he could have a court appointed lawyer only when he came to trial in Albuquerque. The Agent expressly denied saying anything at all about Albuquerque because he '* * * didn't tell Mr. Coyote he was under arrest. Albuquerque had no part in my interview with him.' On cross-examination appellant admitted there was nothing in the statement about getting a lawyer in Albuquerque and that he had read the statement before signing it.
>
> Counsel for appellant argued in the trial court, as here, that the wording and punctuation of the written statement itself supports his client's understanding of the advice given to him by the Agent. Specifically he says that the comma preceding the phrase 'and the judge will get me a lawyer if I am broke' renders the sentence susceptible of the interpretation that court appointed counsel would be available only after appellant had been before the judge.
>
> The trial court, after considering the testimony and the signed, written statement, rejected appellant's contention concluding that '* * * it was a matter of semantics. I don't know how you can put these things down in words where you cannot argue about the meaning of them. To me I think the statement was perfectly clear that the man had a right to a lawyer and a court appointed lawyer before he made a statement to the agent, or didn't have to make a statement of any kind.' The statement was thereupon admitted.
>
> Surely Miranda is not a ritual of words to be recited by rote according to didactic niceties. What Miranda does require is meaningful advice to the unlettered and unlearned in language which he can comprehend and on which he can knowingly act. We will not indulge semantical debates between counsel over the particular words used to inform an individual of his rights. The crucial test is whether the words in the context used, considering the age, background and intelligence of the

> individual being interrogated, impart a clear, understandable warning of all of his rights.
>
> It is, of course, always open to an accused to subjectively deny that he understood the precautionary warning and advice with respect to the assistance of counsel. When the issue is raised in an admissibility hearing, i.e. see *McHenry v. United States*, 10 Cir., 308 F.2d 700, it is for the court to objectively determine whether in the circumstances of the case the words used were sufficient to convey the required warning.

380 F.2d at 307-08. In the present case, the argument is made by Keyes that she did not understand "the precautionary warning and advice with respect to the assistance of counsel." 380 F.2d at 308. However, counsel for Keyes produced no evidence to support such a claim. Keyes has not testified. There is nothing in her lengthy interviews which would indicate she has any difficulty understanding complex words. Again, Keyes graduated high school four years earlier. Tr. 18:14-25. There was no way that the *Miranda* warning given by Detective Lallatin was capable of two meanings, even if one of them was a tortured construction as was foisted on the trial judge in *Coyote*. Under *Coyote*, "What *Miranda* does require is meaningful advice to the unlettered and unlearned in language which he can comprehend and on which he can knowingly act." 380 F.2d at 308. That requirement has been met in Keyes' case. Detective Lallatin's warning was clear and direct. *Coyote* continues, "The crucial test is whether the words in the context used, considering the age, background and intelligence of the individual being interrogated, impart a clear, understandable warning of all of his rights." *Id.* That requirement has also been met in Keyes' case. Keyes graduated from high school and at no point during the recorded interviews either day did she have any difficulty understanding any words that were being used.

This Court finds that given the "totality of the circumstances", at no point during this April 15, 2020, interview was Keyes' will overborne such that a reasonable person would have felt she was not free to leave. Were this to be found to be a custodial interrogation,

Miranda warnings were given, and nothing was incorrect about those warnings. Keyes' statement "I don't want to respond to that" is an equivocal waiver, and the interview need not stop at that point, nor will the evidence be suppressed from that point.

4. Keyes' statements on both the April 14, 2020, interview and the April 15, 2020, interview, were voluntary.

Keyes argues that as to both the April 14, 2020, interview and the April 15, 2020, interview, that her statements "were not voluntary." Def.'s Closing Arg. for the Mot. to Suppress 6-8. That argument, in its entirety, is as follows:

> Elizabeth Keyes' statements on April 14 and April 15, 2020 were not voluntary statements. Elizabeth was mentally, intellectually and emotionally unstable when she was interrogated. From the moment she arrived, and continuing through her last session with Dr. Kirby, Elizabeth's mental health condition was quite fragile. Medical professionals that saw Elizabeth on April 14, 2020 made observations related to her mental functionality. Elizabeth was reluctant to get medical care upon arrival at the hospital. Elizabeth's physical appearance at the hospital was such that it stood out to many people that saw her. She presented with dried blood down her legs and with blood saturated clothing. (MTS pages: 63, 94). She had a flat affect. (MTS pages: 94; 103; 121; 157) She was quiet, and lacked good eye contact. (MTS pages 63; 86; 157) Dr. Henneberg was concerned about Elizabeth's mental state and knew she needed mental Health help and a psychiatric evaluation. (MTS pages: 120; 121; 122). Dr. Henneberg recommended Elizabeth admit into the Behavioral Health Unit and she did so.
>
> Dr. Kirby took over care of Elizabeth once she was in Behavioral Health Unit. He is a psychiatrist with 30 years of experience with the last 11 at Kootenai Health. His admitting diagnosis was adjustment disorder and could not rule out depression, dissociative disorder, psychotic disorder or personality disorder. (MTS pages 165-166). He met with Elizabeth for nearly 2 hours and did not find her to be deceptive but that she was flat, dissociated, detached and lacked memory. Further, he noted that she might be suffering with a form of repression or denial that could have reached back into her pregnancy. (MTS pages: 167, 171; 172; 173) Dr. Kirby noted that upon meeting her, Elizabeth was very dissociated and disconnected. (MTS page 176) She had not improved at the last session on April 16, 2020. (MTS page 173).
>
> Detective Lallatin's interrogations demonstrate Elizabeth's dissociative, disconnected state. She had a lack of focus; he had to draw her attention back into the interrogation repeatedly on both April 14, and April 15, 2020. Detective Lallatin recognized Elizabeth needed help. He told her he would get her help. He wanted her to go to Behavioral Health

to get help. Even equipped with that knowledge continued interrogating Elizabeth. Lallatin called her names other than Elizabeth; and he did so to get her to talk to him and trust him. Lallatin applied emotional pressure to Elizabeth to get her to give him information. He did this particularly with regard to the family she lived with and having cops at their house ready to search. Elizabeth was not mentally or emotionally stable and did not voluntarily make statements.

Oregon v Elstad 470 U.S. 298, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985) states the lack Miranda is a factor creates a presumption of compulsion. The lack of Miranda in these circumstances matters. Elizabeth had given birth less than 24 hours before the interrogation. She was alone in her hospital bed for hours before the interrogation. She had no means of transportation away from the hospital; Raeanna was gone and did not return. She was interrogated in a private setting, without Miranda.

Looking at the totality of circumstances that occurred prior to and during Elizabeth's interrogation demonstrate that her statements were not voluntary. Elizabeth was in a fragile state with a significant mental health component. She was being monitored, because things can physically go wrong for a woman who after delivering a child. She was subject to a huge hormonal shift post birth. Medical professionals noted her physical appearance; Elizabeth arrived at the hospital, reluctant to receive help, and with dried blood n her legs and with a flat affect.

State v. Cherry, 139 Idaho 579, P.3d 123, (Ct. App. 2003) instructs that when an accused person raises a lack of voluntariness the state must prove the statements were voluntary. Detective Lallatin's words and actions during the interrogation do not assist the State in overcoming Elizabeth's raised lack of voluntariness. Throughout the interrogation, Detective Lallatin recognized that Elizabeth needed help. He watched her drift off during the interrogation. Most importantly he and Dr. Henneberg talked to Elizabeth and recommended Elizabeth go to the Behavioral Health Unit.

That was a correct recommendation. Dr. Kirby took over care of Elizabeth in the evening hours of April 14, 2020. He said she was fragile — dissociating or psychotic. He was working, as he is trained and experienced to do, in helping her open up and talk. He was concerned that pushing too hard for her description of what happened, would push the memories down and lock them away forever. He was unable to complete that work. 24-48 hours after the interrogation Elizabeth was still not in a state of mind to voluntarily speak about what happened during the birthing process and thereafter.

Statements attributed to Elizabeth Keyes during the April 15, 2020 interrogation must be suppressed because Miranda was not properly given and waived; statements were taken after Elizabeth stated she did not want to answer and her statements were not voluntary statements. Further, any statement made on April 15, 2020 was fruit of the poisonous tree and must be suppressed.

Elizabeth's statements were the result of pressure and not

> voluntary. She remained in a fragile situation. She had been in the Behavioral Unit overnight and had been observed all night. Lallatin noted she dissociated herself and redirected her to look at him and stay with him repeatedly throughout the interrogation. The pressure shows the lack of voluntariness of her answers, as well as showing Detective Lallatin was going to stop at nothing to get answers. As previously argued, Elizabeth was in the process of work with Dr. Kirby. He was trying to assist her in recovering memory and his work was small steps at a time. He stated pressure would lock memory away forever. Detective Lallatin applied pressure to Elizabeth to remember things. Words spoken as a result of pressure applied may or may not be Elizabeth's memory, but are the product of pressure and her will being overborn.

Def.'s Closing Arg. for the Mot. to Suppress 6-8. Much of this argument is not supported by the evidence. The argument will be discussed in the sequence presented by Keyes.

First, the Court notes that in the entire argument, Keyes never set forth what "voluntariness" means. Keyes cites *Cherry*, but only for the proposition that it is the State's burden to prove Keyes' statements were statements were voluntary. Def.'s Closing Arg. for the Mot. to Suppress 8. Keyes is correct, the Idaho Court of Appeals in *Cherry* held:

> When a defendant seeks suppression of a confession as having been involuntarily given, it is the prosecution's burden to prove by a preponderance of the evidence that the confession was voluntary. *Lego v. Twomey,* 404 U.S. 477, 481, 92 S.Ct. 619, 622–23, 30 L.Ed.2d 618, 622–23 (1972); *State v. Dillon,* 93 Idaho 698, 710, 471 P.2d 553, 565 (1970); *State v. Rounsville,* 136 Idaho 869, 874, 42 P.3d 100, 105 (Ct.App.2002); *State v. Fabeny,* 132 Idaho 917, 922, 980 P.2d 581, 586 (Ct.App.1999).

State v. Cherry, 139 Idaho 579, 582, 83 P.3d 123 (Ct. App. 2004). The Idaho Court of Appeals in *Cherry* also set forth the **test** for determining voluntariness:

> In determining the voluntariness of statements made by a defendant to police officers, the court must look to the "totality of the circumstances." *State v. Radford,* 134 Idaho 187, 191, 998 P.2d 80, 84 (2000); *State v. Fabeny,* 132 Idaho 917, 922, 980 P.2d 581, 586 (Ct.App.1999); *State v. McLean,* 123 Idaho 108, 111, 844 P.2d 1358, 1361 (Ct.App.1992). A statement will be deemed involuntary if the defendant's will was overborne by police coercion or overreaching. *Arizona v. Fulminante,* 499 U.S. 279, 287–88, 111 S.Ct. 1246, 1252–53, 113 L.Ed.2d 302, 316–17 (1991); *Radford,* 134 Idaho at 191, 998 P.2d at 84; *State v. Langford,* 136 Idaho 334, 339, 33 P.3d 567, 572

(Ct.App.2001). When reviewing the trial court's determination on a voluntariness issue, we defer to the factual findings that are supported by substantial evidence, but we independently determine whether those facts demonstrate a violation of constitutional rights. *State v. Weber,* 116 Idaho 449, 452, 776 P.2d 458, 461 (1989); *State v. Whiteley,* 124 Idaho 261, 264, 858 P.2d 800, 803 (Ct.App.1993).

In the instant case, the district court found that during each interview Cherry was in pain, under medication and hospitalized. The court also found, however, that he "knew who he was, knew who was interviewing him, knew his birth date, his social security number, his and his daughter's telephone numbers." The court concluded that in the absence of evidence of threats or badgering by the police or evidence that Cherry's statements were not of his own volition, the statements were voluntary and admissible for impeachment.

139 Idaho at 582-83, 83 P.3d at 126-27. So the standard in determining voluntariness is whether "the defendant's will was overborne by police coercion or overreaching." Again, the "totality of the circumstances" must be considered. The United State Supreme Court case cited by the Idaho Court of Appeals for that holding is *Arizona v. Fulminante,* 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991). *Fulminante* holds:

We normally give great deference to the factual findings of the state court. *Davis v. North Carolina,* 384 U.S. 737, 741, 86 S.Ct. 1761, 1764, 16 L.Ed.2d 895 (1966); *Haynes v. Washington,* 373 U.S. 503, 515, 83 S.Ct. 1336, 1344, 10 L.Ed.2d 513 (1963); *Culombe v. Connecticut,* 367 U.S. 568, 603–604, 81 S.Ct. 1860, 1879–1880, 6 L.Ed.2d 1037 (1961). Nevertheless, "the ultimate issue of 'voluntariness' is a legal question requiring independent federal determination." *Miller v. Fenton,* 474 U.S. 104, 110, 106 S.Ct. 445, 449, 88 L.Ed.2d 405 (1985). *See also Mincey v. Arizona,* 437 U.S. 385, 398, 98 S.Ct. 2408, 2416, 57 L.Ed.2d 290 (1978); *Davis, supra,* 384 U.S., at 741–742, 86 S.Ct., at 1764–1765; *Haynes, supra,* 373 U.S., at 515, 83 S.Ct., at 1344; *Chambers v. Florida,* 309 U.S. 227, 228–229, 60 S.Ct. 472, 473, 84 L.Ed. 716 (1940).

Although the question is a close one, we agree with the Arizona Supreme Court's conclusion that Fulminante's confession was coerced.[3] [n.3 Our prior cases have used the terms "coerced confession" and "involuntary confession" interchangeably "by way of convenient shorthand." *Blackburn v. Alabama,* 361 U.S. 199, 207, 80 S.Ct. 274, 280, 4 L.Ed.2d 242 (1960). We use the former term throughout this opinion, as that is the term used by the Arizona Supreme Court.] The Arizona Supreme Court found a credible threat of physical violence unless Fulminante confessed. Our cases have made clear that a finding of coercion need not depend upon actual violence by a government agent; a credible threat is sufficient. As we have said, "coercion can be mental

> as well as physical, and ... the blood of the accused is not the only hallmark of an unconstitutional inquisition." *Blackburn v. Alabama,* 361 U.S. 199, 206, 80 S.Ct. 274, 279, 4 L.Ed.2d 242 (1960). *See also Culombe, supra,* 367 U.S., at 584, 81 S.Ct., at 1869; *Reck v. Pate,* 367 U.S. 433, 440–441, 81 S.Ct. 1541, 1546–1547, 6 L.Ed.2d 948 (1961); *Rogers v. Richmond,* 365 U.S. 534, 540, 81 S.Ct. 735, 739, 5 L.Ed.2d 760 (1961); *Payne v. Arkansas,* 356 U.S. 560, 561, 78 S.Ct. 844, 846, 2 L.Ed.2d 975 1958); *Watts v. Indiana,* 338 U.S. 49, 52, 69 S.Ct. 1347, 1349, 93 L.Ed. 1801 (1949). As in *Payne,* where the Court found that a confession was coerced because the interrogating police officer had promised that if the accused confessed, the officer would protect the accused from an angry mob outside the jailhouse door, 356 U.S., at 564–565, 567, 78 S.Ct., at 848–849, 850, so too here, the Arizona Supreme Court found that it was fear of physical violence, absent protection from his friend (and Government agent) Sarivola, which motivated Fulminante to confess. Accepting the Arizona court's finding, permissible on this record, that there was a credible threat of physical violence, we agree with its conclusion that Fulminante's will was overborne in such a way as to render his confession the product of coercion.

499 U.S. at 287–88, 111 S.Ct. at 1252–53 (footnote three included, footnote four omitted).

There is simply no way for this Court to conclude that Keyes' will was overborne by law enforcement conduct in such a way as to render any confession she made the product of coercion. There certainly was no physical coercion involved with Keyes, nor can this Court find that there was any mental coercion. As was found by the trial court in *Cherry*, and affirmed by the Idaho Court of Appeals, Keyes "knew who [s]he was, knew who was interviewing [her], knew [her] birth date, [her] social security number" and knew the phone numbers of the people important to her (or at least had her cell phone with those numbers accessible within such phone). 139 Idaho at 83, 83 P.3d at 27. Just as in *Cherry*, there was no threats or badgering by the police. *Id.* Just as in *Cherry*, there is no "evidence that [Keys'] statements were not of [her] own volition." *Id.*

It is clear from both *Cherry* and *Fulminante*, that while mental status of the defendant is relevant to an extent in determining voluntariness, it is the investigator's conduct that impinges (or not) on the determining voluntariness and whether (or not) any

confession was coerced. Keyes' arguments listed above relate primarily to Keyes' emotional condition, and little discussion of Detective Lallatin's conduct. In each of these descriptions of Keyes' emotional condition, Keyes' arguments are not supported by the evidence.

Keyes argues, "Elizabeth was mentally, intellectually and emotionally unstable when she was interrogated. From the moment she arrived, and continuing through her last session with Dr. Kirby, Elizabeth's mental health condition was quite fragile." Def.'s Closing Arg. for the Mot. to Suppress 6. Keyes argues, "Elizabeth was in a fragile state with a significant mental health component." (*Id.* at 7). "She remained in a fragile situation." *Id.* at 8. Repetition does not make such a claim true. There is absolutely no evidence of such fragility. Kimberly Jordan was doing emergency room screening when Keyes arrived. August 31, 2020, hearing Tr. 85:11-16. She testified Keyes, "Did not appear to be in any acute distress." Tr. 86:10-20. Dr. Kirby testified and never used the term "fragile." No witness who testified on August 31, 2020, used the term "fragile." The only medication Dr. Kirby prescribed for Keyes was Trazadone to help her sleep. Tr. 168:10-15. Thus, no medications were given to Keyes for a mental health condition. While Dr. Kirby testified that Keyes, "didn't show much emotion at all" (Tr. 168:5), he prescribed no mental health medication for Keyes. Most importantly, at no point did Dr. Keyes or Dr. Henneberg, or any other witness who testified on August 31, 2020, testify that Keyes had any difficulty understanding what was going on. While there were observations that Keyes was "flat, dissociated, detached and lacked memory" (Def.'s Closing Arg. for the Mot. to Suppress 7), none of those descriptors have any bearing on whether or not Keyes understood what was going on during Detective Lallatin's interview. There is nothing about Keyes' answers to Detective Lallatin's questions, her demeanor as caught on the recording, or the way she

answered questions, that would cause this Court to even remotely believe that Keyes was "fragile." Such a claim is not supported by the evidence.

Keyes argues, "*Oregon v Elstad* 470 U.S. 298, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985) states the lack Miranda is a factor creates a presumption of compulsion. The lack of Miranda in these circumstances matters." Def.'s Closing Arg. for the Mot. to Suppress 7. That is certainly a fair reading of Elstad, but ignores the fact that such a presumption resulting from a lack of *Miranda* warnings only applies to custodial interrogations (470 U.S. at 304-05, 105 S. Ct. at 1290-91), and this Court finds that neither the April 14, 2020, interview nor the April 15, 2020, interview of Keyes was custodial. This Court specifically finds that Keyes' answers to Detective Lallatin's questions asked in both interviews were made voluntarily. There was no coercion and thus, there is no way Keyes' will was overborne as a result of coercion.

5. The search of Keyes' journal will not be analyzed.

Given that the plaintiff has stated it will not seek to admit any evidence of Keyes' journal (Pls.' Br. In Opp'n to Def.s' Mot. to Supp. 11), the Court will not address this issue.

IV. CONCLUSION AND ORDER.

Based on the above, Keyes' Motion to Suppress must be denied.

IT IS HEREBY ORDERED THAT ELIZABETH BRITIANY KEYES's Motion to Suppress is **DENIED** in all aspects.

DATED this 10th day of November, 2020.

Signed: 11/10/2020 01:27 PM

JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of November, 2020 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney – Linda Payne, Ann Taylor
Prosecuting Attorney – Art Verharen, Laura McClinton

Signed: 11/10/2020 01:37 PM
CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY
BY: Tiffany Burton
Deputy