

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2013-CA-001574-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE ANDREW SELF, JUDGE  
ACTION NO. 12-CR-00167

JESSIE L. GOSLYN

APPELLEE

OPINION  
REVERSING AND REMANDING

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BEFORE: DIXON, KRAMER, AND J. LAMBERT, JUDGES.

KRAMER, JUDGE: The Commonwealth of Kentucky appeals the Christian Circuit Court's order amending its prior order granting Jessie L. Goslyn's motion to suppress the statements she made while being interrogated on February 4, 2012.<sup>1</sup>

Following a thorough review of the record, we reverse and remand because the

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<sup>1</sup> The Commonwealth brings this interlocutory appeal pursuant to Kentucky Revised Statute (KRS) 22A.020(4).

circuit court erred in granting the motion to suppress and in amending the order granting the motion to suppress.

## I. FACTUAL AND PROCEDURAL BACKGROUND

Jessie Goslyn's husband, Vincent Goslyn, Jr., was shot and killed on February 3, 2012. Jessie was indicted on the charge of murder regarding his death.<sup>2</sup> During the proceedings in the circuit court, Jessie moved to suppress statements she made to law enforcement on February 4, 2012, on the basis that they were made during her interrogation by Detective Casey Greene and Special Agent Samuel Palmer, and the statements were "involuntary and in violation of her right to counsel . . . and her privilege against self-incrimination."

At the suppression hearing, Detective Chris Williams of the Christian County Sheriff's Department testified that on February 3, 2012, Jessie was brought to the sheriff's department for him to interview her. Jessie was driven there by a sheriff's deputy and brought in through the back door of the sheriff's department. She was then taken to an interview room that was near the back door. During the interview, Jessie was crying and dry-heaving. Detective Williams read Jessie her *Miranda*<sup>3</sup> rights, Jessie indicated that she understood her rights, and she allegedly signed a form acknowledging that she had been informed of her rights.<sup>4</sup> The

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<sup>2</sup> According to the Commonwealth's brief, Jarred Long, who the Commonwealth refers to as Jessie's "then boyfriend," was also charged with the murder of Vincent Goslyn in case number 12-CR-000169.

<sup>3</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

<sup>4</sup> It does not appear that the form was included in the record before us.

interview lasted about an hour, and breaks were taken during the hour. The interview concluded when Jessie told Detective Williams that he was not answering her questions about her husband's health and Jessie said that she wanted to speak with an attorney. Detective Williams did not answer Jessie's repeated questions about how her husband was doing until she stopped the interview, despite the fact that Detective Williams knew her husband was already dead.

Jessie's friend and neighbor, Kay Ray, also testified during the suppression hearing. Kay was babysitting Jessie's three children the night that Vincent was killed. Sometime after Vincent was attacked, Jessie called Kay to ask if she could babysit the kids longer. During that telephone call, Jessie told Kay that Vincent had been attacked and she had heard three shots fired. They ended the call. Approximately five minutes later, Kay called back and told Jessie she was coming to get her. During that call, Kay asked to speak to Vincent. Jessie handed the telephone to a sheriff's deputy instead. Kay told the sheriff's deputy that she was coming to get Jessie. According to Kay, the deputy responded, "no ma'am, you're not. This has to be investigated." Kay then asked if she could speak with Jessie again. The deputy informed her that Jessie was vomiting at that moment, so Kay told him to tell Jessie to call her.

Later that evening, Kay received a telephone call from a deputy asking her to go to Jessie's house to get her a complete change of clothes and bring them to her at the sheriff's department. Kay did not have access to Jessie's house, so she took her own clothes to Jessie. When she arrived at the sheriff's

department, a man she believed was the sheriff asked her if she had spoken with Jessie. She told him she had. The sheriff had her write a statement regarding what Jessie had said to her over the telephone. Kay then waited a while before they brought Jessie out to her and allowed Jessie to leave.

Kay took Jessie home with her to Kay's house. There, Kay's husband gave Kay a card<sup>5</sup> for "CID"<sup>6</sup> and told her she had to contact the people from CID "now." When Kay called, Special Agent Samuel Palmer answered and informed her that she needed to go and talk to them or they were going to come to Kay's house to speak with her. Kay and her husband went to the CID office to talk with them and left Jessie at their house with their children and Jessie's. Kay asked Special Agent Palmer why she was there, and he said, "well, you know Mr. Goslyn was shot multiple times," to which Kay responded "no, sir, I did not know that."<sup>7</sup> Kay and her husband were interviewed at CID, and they were permitted to leave at approximately 5:00 the next morning.

Later on February 4th, Jessie asked Kay if the media was permitted to "come on post." Kay did not know the answer, but she said she could call Special Agent Palmer to get an answer. Kay called Special Agent Palmer and asked if media were allowed on post and he said they were not. He and Kay talked for a

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<sup>5</sup> We assume this was a business card.

<sup>6</sup> Criminal Investigation Division of the 31st MP Detachment at Fort Campbell, Kentucky. The victim in this case was in the military, based at Fort Campbell, and the Goslyns and the Rays lived "on post" at Fort Campbell.

<sup>7</sup> Kay testified that she knew that Vincent was dead, but she did not know how he died.

few minutes, then Special Agent Palmer said: “You need to try to get your friend to come in and talk with us because she did not cooperate with the sheriff’s department last night.” Kay responded, “okay, I’ll see what I can do.”

After finishing the telephone call, Kay said to Jessie:

Jessie, sweetie, they’re – all fingers are pointing at you. If you know anything, please, you need to go in and talk to Sergeant Palmer. He’s a nice guy. He’s very polite. He didn’t holler at us or anything or get ugly with us or scream at us or nothing. If you know anything, you need to go in and talk to him.

To this, Jessie responded, “okay, I will. I’ll go in and talk to him.” Kay then called Special Agent Palmer and told him Jessie was willing to come and speak with him. Kay clarified during the suppression hearing that Jessie did not direct her to call and set up the interview and Jessie also did not express any desire to have another interview; rather, the first mention of going back in for another interview came from Special Agent Palmer. Kay further testified that until Special Agent Palmer asked her to talk to Jessie about coming back in to talk with him because she had not cooperated with the sheriff’s department, she had not been planning to encourage Jessie to go back in to answer more questions. Kay attested that she only asked Jessie to do so because Special Agent Palmer asked her to ask Jessie to do so.

Kay testified that she and Jessie went to the CID office on Fort Campbell, which was a different location from where Kay had picked Jessie up the prior night. Kay was initially permitted to go into the interview room with Jessie,

Special Agent Palmer, and Detective Casey Greene. Kay was there when they read Jessie her rights. Kay was only permitted in the room for approximately ten minutes before Special Agent Palmer and Detective Greene asked her to leave the room. During the interview, which lasted more than five hours, Jessie made statements regarding the events of the evening in question that she now wants suppressed.

Detective Greene and Special Agent Palmer also testified at the suppression hearing in this case. Detective Greene attested that Kay was told during their interview with her that they wanted to catch the people who killed Vincent. However, they were unable to do so without more details, and Jessie was the only person who could provide those details. Detective Greene stated that Kay said she would talk to Jessie and she believed that Jessie just did not like Detective Williams. So, if Jessie wanted to talk to them, she would call Detective Greene or Special Agent Palmer.

Special Agent Palmer testified that he told Kay they would like Jessie's help with finding out what happened to Vincent, and Jessie might have information that would assist them in catching Vincent's killer. Special Agent Palmer attested that he asked Kay to tell Jessie that if she wanted to speak with them about it, he would meet her back at his office. So, he gave Kay his business card with his government-issued cellular telephone number on the back.

The circuit court granted Jessie's motion to suppress, finding that Jessie was in custody when she was interviewed at the sheriff's department on

February 3, 2012; that Jessie invoked her Fifth Amendment right to counsel during that custodial interrogation on February 3, 2012; and that Jessie did not initiate the subsequent communication with law enforcement, making any contact between Jessie and law enforcement prohibited. After entering its order granting Jessie's motion to suppress, the circuit court entered an order amending it to change the references to Jessie's "Fifth Amendment right to counsel" to state that it was her "Sixth Amendment right to counsel" at issue.<sup>8</sup>

The Commonwealth now brings this interlocutory appeal from both the order granting Jessie's motion to suppress and from the court's order amending its order granting the motion to suppress. The Commonwealth contends that the circuit court erred in granting Jessie's motion to suppress her February 4, 2012 statement because: (a) Jessie was not in custody when she was interviewed by Detective Williams on February 3, 2012; and (b) Special Agent Palmer did not use Kay as a third-party state actor to obtain Jessie's waiver of her prior invocation of the right to counsel.

## II. STANDARD OF REVIEW

In reviewing a trial court's decision on a motion to suppress, we first determine whether the trial court's findings of fact are supported by substantial evidence. If they are,

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<sup>8</sup> It appears the circuit court "erroneously confused the Sixth Amendment right to counsel, which applies to a criminal prosecution, with the Fifth Amendment right of an unrepresented person to counsel, if requested, at a custodial interrogation." *Linehan v. Commonwealth*, 878 S.W.2d 8, 10 (Ky. 1994). Jessie briefly mentions this in a footnote in her brief, but neither party brings a formal claim regarding this issue. Regardless, because we find the circuit court erred in amending its prior order, because Jessie was subjected to a custodial interrogation, rather than to a criminal prosecution during the times at issue in the present appeal, we reverse the circuit court's order amending its prior order granting the motion to suppress.

then they are conclusive. Based on those findings of fact, we must then conduct a *de novo* review of the trial

court's application of the law to those facts to determine whether its decision is correct as a matter of law.

*Commonwealth v. Neal*, 84 S.W.3d 920, 923 (Ky. App. 2002) (footnotes omitted).

### III. ANALYSIS

#### A. WAS JESSIE IN CUSTODY ON FEBRUARY 3, 2012?

The Commonwealth first argues that Jessie was not in custody when she was interviewed by Detective Williams on February 3, 2012. The circuit court found that Jessie was in custody when she was interviewed at the sheriff's department on that date. The court reasoned as follows:

[Jessie's] initial encounter with law enforcement occurred at the scene soon after her husband had been shot. When her friend, [Kay], told the deputy at the scene that she was going to come and get [Jessie], the deputy informed [Kay] that [Jessie] was not free to leave because the matter needed to be investigated.

[Jessie] was then transported to the sheriff's department by a deputy sheriff, where she was taken in through the back door and placed in the interview room. There is nothing in the record to indicate that [Jessie] had any other option for getting to the sheriff's department other than by being transported by the deputy. Further, she was not taken into the sheriff's department through the front door which is available for public access, but rather through a rear door which presumably has restricted access. She was then placed in a room where she was confronted by a detective who began asking her questions about what had happened, while not answering any of her questions.



At some point, [Kay] was called and asked to come to the sheriff's department to pick up [Jessie]. However, when [Kay] arrived at the sheriff's department, [Jessie] was not immediately allowed to leave. Only after some period of time, including an extended period of time after she had requested an attorney, was [Jessie] allowed to leave the sheriff's department with [Kay].

Taking into consideration the totality of the circumstances, a reasonable person would not have believed that [Jessie] was free to leave beginning when the deputy told [Kay] that she could not come to get [Jessie] because the matter needed to be investigated and then continuing throughout the evening until such time as [Jessie] was ultimately released to [Kay] after 1:00 a.m. on the morning of February 4, 2012.

The factual findings of the circuit court on this issue are supported by substantial evidence and are, therefore, conclusive. Thus, we must review the court's application of law to the facts *de novo*.

The Kentucky Supreme Court has stated:

*Miranda* warnings are only required when the suspect being questioned is "in custody."

Custodial interrogation has been defined as questioning initiated by law enforcement after a person has been taken into custody or otherwise deprived of freedom of action in any significant way. *Miranda* warnings are required only where there has been such a restriction on the freedom of an individual as to render him in custody. The inquiry for making a custodial determination is whether the person was under formal arrest or whether there was a restraint of his freedom or whether there was a restraint on freedom of movement to the degree associated with formal arrest.

Custody does not occur until police, by some form of physical force or show of authority, have restrained the liberty of an individual. The test is whether, considering

the surrounding circumstances, a reasonable person would have believed he or she was free to leave. The United States Supreme Court has identified factors that suggest a seizure has occurred and that a suspect is in custody: the threatening presence of several officers; the display of a weapon by an officer; the physical touching of the suspect; and the use of tone of voice or language that would indicate that compliance with the officer's request would be compelled. Other factors which have been used to determine custody for *Miranda* purposes include: (1) the purpose of the questioning; (2) whether the place of the questioning was hostile or coercive; (3) the length of the questioning; and (4) other indicia of custody such as whether the suspect was informed at the time that the questioning was voluntary or that the suspect was free to leave or to request officers to do so, whether the suspect possessed unrestrained freedom of movement during questioning, and whether the suspect initiated contact with the police or voluntarily . . . acquiesced to their requests to answer some questions.

*Smith v. Commonwealth*, 312 S.W.3d 353, 358-59 (Ky. 2010) (internal quotation marks and citations omitted).

In the present case, Jessie was driven to the sheriff's department on February 3, 2012, by a sheriff's deputy and taken into the sheriff's department through the back door. Once in the interview room, Detective Williams read her *Miranda* rights to her. A suspect is only required to be informed of her *Miranda* rights when the suspect to be questioned is "in custody." Jessie was asked to sign a form acknowledging that she had been read her rights, and she allegedly signed it. During the interview, Jessie asked Detective Williams many times to find out how her husband was doing. He kept telling her he would ask later, despite the fact that he already knew her husband was dead. Detective Williams interviewed Jessie for

approximately an hour, for the purpose of investigating the events surrounding the death of Jessie's husband. The interview ended when Jessie stated that she wanted to speak with an attorney. Interestingly, this is exactly what is required to occur in a custodial interrogation when the suspect invokes her right to counsel, yet the Commonwealth persists in arguing that Jessie was not "in custody" during the interview. Jessie still was not permitted to leave the sheriff's department for a while after the interview was concluded, even after Kay was there to take her home with her. Jessie had to leave the clothes she was wearing at the sheriff's department. According to the transcript of the video of the interview, Detective Williams never told Jessie that she was free to leave at any time. Further, the Commonwealth does not contend that Jessie voluntarily went to the sheriff's department for questioning. It appears based on the fact that she was driven there by a sheriff's deputy and brought in through a back door that she was not there voluntarily. Therefore, the circuit court did not err in finding that Jessie was "in custody" during the interrogation of February 3, 2012.<sup>9</sup>

## **B. WAS KAY USED AS A THIRD-PARTY STATE ACTOR?**

The Commonwealth next contends that Special Agent Palmer did not use Kay as a third-party state actor to obtain Jessie's waiver of her prior invocation of the right to counsel. The circuit court found that Jessie invoked her right to

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<sup>9</sup> We further note that a sheriff's deputy told Kay over Jessie's cellular telephone that Kay was not permitted to take Jessie home at that time because the incident needed to be investigated. However, we do not rely upon this fact to support our conclusion that Jessie was "in custody," because we do not know if Jessie actually overheard the sheriff's deputy tell Kay this. Rather, there were myriad other facts in this case which amply support our conclusion that she was "in custody," as previously discussed.

counsel when she told Detective Williams that she wanted to speak with an attorney, and the Commonwealth does not challenge this finding. However, the Commonwealth does challenge the circuit court's finding that Kay was used as a third-party state actor to get Jessie to waive her right to counsel.

The circuit court found that Special Agent Palmer twice asked Kay to persuade Jessie to speak with him about the investigation: once at the conclusion of Kay and her husband's meeting with Special Agent Palmer at the CID office at Fort Campbell; and, once when Kay called Special Agent Palmer to ask if media would be allowed on post. However, we did not find any evidence in the record that Special Agent Palmer asked Kay during the meeting with Kay and her husband at the CID office to persuade Jessie to speak with him. Therefore, that finding was in error. Regardless, we did find substantial evidence to support the circuit court's finding that Special Agent Palmer asked Kay to encourage Jessie to speak with him about the investigation when Kay called (of her own volition) to ask if media would be allowed on post.

The circuit court held that, due to Special Agent Palmer's act of asking Kay to persuade Jessie to talk with him about the investigation and Kay's act of herself deciding to call him to ask if the media would be allowed on post, it could not "be said that [Jessie] waived her previously invoked right to counsel or that she initiated contact with law enforcement evidencing a willingness and a desire for a generalized discussion about the investigation." The court reasoned that

[n]ot only did [Jessie] not initiate or make any contact directly or indirectly with Agent Palmer about the investigation, she did not ask [Kay] to do so on her behalf either. Furthermore, and very importantly, the scope of the inquiry made by [Kay] was for the limited purpose of determining the media's access to post. [Kay] did not make any statements, representations, or ask any questions about the investigation, nor did she suggest or imply in any way that [Jessie] was willing to waive her right to counsel.

The circuit court further found that it was

Agent Palmer who broached the topic of speaking with [Jessie]. It is important to note that Agent Palmer knew or should have known that [Jessie] invoked her right to counsel when interviewed the night before at the Christian County Sheriff's Department. Based on his statement to [Kay] that [Jessie] did not cooperate with the sheriff's department[,] it appears that Agent Palmer had actual knowledge that [Jessie] had invoked her right to counsel.

As a result, his suggestion, . . . that [Kay] persuade [Jessie] to speak with him bears close scrutiny. . . . [When Kay called Special Agent Palmer to ask whether media would be allowed on post], he cranked up the pressure. As soon as [Kay] got off the phone with Agent Palmer, she told [Jessie] that all fingers [were] pointing at her and that if she knew anything[,] she needed to go in to talk to Agent Palmer. She further enticed [Jessie] by characterizing Agent Palmer as a nice guy, who was very polite, and who did not get ugly with or scream at [Kay and her husband] or anything along those lines.

Although Agent Palmer did not directly initiate contact with [Jessie], there is no question that he utilized, and intended to utilize, [Kay] as an agent on his behalf to persuade [Jessie] to resume a custodial interrogation that she had previously terminated by invoking her right to counsel. While it is abundantly clear that [Jessie] did not initiate any contact with Agent Palmer, there is also

nothing in the record to indicate that she had any intention or desire to reinitiate contact with law enforcement until [Kay] approached her about the subject at the request of Agent Palmer.

There is substantial evidence in the record to support the circuit court's findings that: Special Agent Palmer was the person who broached the subject of speaking with Jessie when he asked Kay to encourage Jessie to speak with him about the investigation; it appears Special Agent Palmer knew that Jessie had invoked her right to counsel when she was at the sheriff's department because he told Kay that Jessie had not cooperated with the sheriff's department during their interview of Jessie; Kay only called Special Agent Palmer to ask if media would be allowed on post, and she called him of her own volition; and after Special Agent Palmer asked Kay to encourage Jessie to speak with him, Kay increased the pressure on Jessie to talk to him by saying that all fingers were pointing at Jessie, that if Jessie knew anything, she needed to talk to Special Agent Palmer, and that Special Agent Palmer was nice and polite and he did not scream at Kay or her husband. The record also supports the circuit court's factual findings that Jessie did not initiate contact with Special Agent Palmer and that Jessie did not indicate any desire to reinitiate contact with law enforcement *until* Kay encouraged her to talk to Special Agent Palmer. We must now conduct a *de novo* review of the circuit court's application of the law to the facts.

The United States Supreme Court has held:

[A]fter initially being advised of his *Miranda* rights, the accused may himself validly waive his rights and respond

to interrogation, [but] the Court has strongly indicated that additional safeguards are necessary when the accused asks for counsel; and . . . when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. . . . [A]n accused, . . . having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.

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[I]t is inconsistent with *Miranda* and its progeny for the authorities, at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel.

*Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S.Ct. 1880, 1884-85, 68 L.Ed.2d 378 (1981).

Thus, once a suspect asks to speak with an attorney, the interrogation must stop until an attorney is present. *Maryland v. Shatzer*, 559 U.S. 98, 104, 130 S.Ct. 1213, 1219, 175 L.Ed.2d 1045 (2010). The reason for this is that “any subsequent waiver [of the right to counsel] that has come at the authorities’ behest, and not at the suspect’s own instigation, is itself the product of the inherently compelling pressures and not the purely voluntary choice of the suspect.” *Id.*, 559 U.S. at 104-05, 130 S.Ct. at 1219 (internal quotation marks omitted).

“[O]nly ‘state action’ implicates a defendant’s rights under the Fifth and Sixth Amendments of the United States Constitution and Section Eleven of the

Constitution of Kentucky. . . .” *Adkins v. Commonwealth*, 96 S.W.3d 779, 790

(Ky. 2003). In *Adkins*, the alleged “state action” at issue involved a party who was not a law enforcement officer conducting a custodial interrogation of a suspect.

The Court held:

Questioning by a party who is not a law enforcement officer may constitute a “custodial interrogation” (which entails state action) in two primary circumstances. The first is when the private entity is operating in accordance with a court order or governmental regulation and is thereby properly viewed as a “state actor.” . . .

The second circumstance occurs when the government otherwise exercised such coercive power or such significant encouragement that it is responsible for [the private party’s] conduct.

*Adkins*, 96 S.W.3d at 791 (internal quotation marks omitted).

In *Roberson v. Commonwealth*, 185 S.W.3d 634 (Ky. 2006), the suspect’s mother convinced the suspect to speak with law enforcement after he had invoked his right to remain silent until he had the opportunity to speak with a lawyer. The Kentucky Supreme Court found that Roberson

[u]nequivocally invoked his right to have counsel present at his interrogation and to remain silent until a lawyer was provided to him. Testimony revealed, however, that his mother convinced him to speak to the police without the assistance of an attorney. Furthermore, the record show[ed] that the police in no way coerced [his mother] to speak with [Roberson] and likewise made no promises to her in allowing her to speak with him. [A detective] testified that, when [Roberson’s mother] requested to speak with [Roberson], the detective told her that she could not be asked to act on behalf of the police in speaking with [Roberson]. Moreover, now-Judge Steve Wilson testified that he told [Roberson’s mother] there



was nothing she could do, and she should go home. However, despite these statements, [Roberson's mother] spoke to [Roberson], noting that she had seen these types of cases "on TV" and felt that if she could get [Roberson] to talk to the police, it would inure to his benefit.

After speaking with [Roberson], his mother informed the police that he wished to make a statement. Testimony presented at the supplemental suppression hearing shows that the police again read [him] his *Miranda* rights, which [he] waived in making the incriminating statements to the police.

Further testimony, highlighted in the order of the Warren Circuit Court denying [Roberson's] supplemental suppression motion, revealed no scheme or covert attempt on the part of the police to obtain a confession from [Roberson] in taking him to the police station or in allowing his mother to speak with him. [Roberson] failed to convince the trial court otherwise.

*Roberson*, 185 S.W.3d at 638.

Pursuant to *Edwards*, a suspect re-initiates discussion with the police after invoking the right to counsel "when, without influence by the authorities, the suspect shows a willingness and a desire to talk generally about his case." *United States v. Whaley*, 13 F.3d 963, 967 (6th Cir. 1994).

To determine, pursuant to *Edwards*, if the accused has waived the right to counsel after initiating conversation, the court must determine whether (1) the inquiries or statements were intended to initiate a conversation with authorities and (2) there was a waiver of the right to counsel which was voluntary, knowing, and intelligent given the totality of the circumstances. *Oregon v. Bradshaw*, 462 U.S. 1039, 1045–1046, 103 S.Ct. 2830, 2835, 77 L.Ed.2d 405 (1983).

*Cummings v. Commonwealth*, 226 S.W.3d 62, 66 (Ky. 2007).

“Exclusion of statements or confessions by virtue of our common law tradition which condemns confessions obtained by severe duress or physical force is limited and statements or confessions should be excluded on such grounds only in compelling circumstances.” *Commonwealth v. Cooper*, 899 S.W.2d 75, 79 (Ky. 1995).

In the present case after previously invoking her right to counsel and after Kay encouraged her to speak with Special Agent Palmer, Jessie voluntarily went to speak with Special Agent Palmer and Detective Greene about her husband’s death. We believe it is important to note that at the time when Kay encouraged Jessie to tell authorities what she knew, Jessie was not in any type of custodial setting at all and was free to do whatever she wanted. Moreover, there is nothing before us to suggest that Kay was in any type of a special relationship such that she would be in a position to put undue influence or coercion on Jessie to cause Jessie to speak to the authorities against her will. And, there is absolutely no evidence in the record to show that Jessie’s statements to Special Agent Palmer and Detective Greene were the result of severe duress or physical force. Therefore, the circumstances present in this case were not compelling enough to be deemed “coercive.” Further, Kay testified that she was present when they read Jessie her *Miranda* rights before they began speaking with her. Given the totality of the circumstances, we find that Jessie’s waiver of her right to counsel was voluntary, knowing, and intelligent. Consequently, the circuit court erred when it suppressed Jessie’s statements to Special Agent Palmer and Detective Greene.

Accordingly, the orders of the Christian Circuit Court granting the motion to suppress and amending its order granting the motion to suppress are reversed and the case is remanded for further proceedings.

J. LAMBERT, JUDGE, CONCURS.

DIXON, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

DIXON, JUDGE, DISSENTING: While I agree with the majority on the issue of custodial interrogation, I must dissent to its further conclusion requiring reversal of the circuit court's order of suppression. As the majority concedes, there is substantial evidence to support the circuit court's findings that it was Agent Palmer who initiated additional interrogation of Jessie after she had specifically asked for legal counsel; something of which Agent Palmer was clearly aware when he encouraged Jessie (through Kay) to continue to speak with a governmental authority. Nevertheless, the majority determined that Jessie voluntarily resumed her interrogation so that she effectively waived her right to counsel. I disagree.

The majority references the seminal decision, *Edwards v. Arizona, supra*. As duly noted, the United States Supreme Court set forth the basic principle that once a suspect invokes his or her right to counsel further interrogation must cease *unless* the suspect "initiates" further communication. The reason for this rule has been succinctly stated by the Sixth Circuit:

Subsequent decisions have established *Edwards* as a vital part of constitutional law that is designed to protect an accused in police custody from being badgered by police officers into waiving previously asserted *Miranda* rights. See, e.g., [\*Minnick v. Mississippi\*, 498 U.S. 146, 151–54, 111 S.Ct.](#)

486, 490–91, 112 L.Ed.2d 489 (1990) (holding that police cannot reinitiate interrogation even where defendant has consulted with counsel in the interim); *Arizona v. Roberson*, 486 U.S. 675, 682–83, 108 S.Ct. 2093, 2098–99, 100 L.Ed.2d 704 (1988) (holding that the *Edwards* rule applies even when the suspect's request for the cessation of questioning occurs in a separate criminal investigation).

*U.S. v. Whaley*, 13 F.3d 963, 966 (1994). While the issue of “initiation” can be problematic, what is clear is that investigating authorities cannot influence a suspect’s decision to resume interrogation. *Id.*

In the case before us, and as recognized by the trial court, Jessie’s further communication with Agent Palmer came about solely due to his additional influence on Jessie, through Kay. Apart from this influence there is no evidence to support any argument that Jessie would have spoken to the authorities subsequent to her invocation of her right to counsel. The majority’s reliance on both *Adkins* and *Roberson* is misplaced as in each case family members influenced a suspect to resume interrogation, without any influence of the authorities, after having first requested counsel. Moreover, any discussion as to coercion or duress is irrelevant. *Commonwealth v. Cooper, supra.*, dealt with a third-party influenced confession wherein the defendant argued his statement should be suppressed because it was coerced. *Cooper* dealt not at all with an invocation of right to counsel and is therefore inapplicable.

Quite simply, once Jessie invoked her right to an attorney under the Fifth Amendment, Agent Palmer was without authority to suggest, imply or in any way communicate to Jessie—either directly or through Jessie’s friend, Kay—that she

should resume the interrogation Jessie had stopped by the invocation of that right.

Therefore, I would affirm the trial court in all respects.

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