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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,	Michigan Supreme Court No. 167391
Plaintiff-Appellee,	Court of Appeals No. 367926
v	Wayne County No. 23-000412-01-FC
DAREN DONELL FENDERSON,	
Defendant-Appellant.	

BRIEF OF AMICUS CURIAE THE INNOCENCE PROJECT

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INTERESTS OF AMICUS CURIAE[1]

Amicus curiae is the Innocence Project, Inc., a non-profit organization dedicated to providing pro bono legal services to incarcerated people whose innocence may be established through the development of a post-conviction record. The Innocence Project has served as counsel and provided assistance in hundreds of successful post-conviction exonerations of innocent persons nationwide. The Innocence Project also seeks to prevent wrongful convictions by researching the causes of wrongful conviction and pursuing legislative, administrative, and judicial reform initiatives designed to enhance the truth-seeking functions of the criminal legal system, and to prevent the admission of unreliable evidence in courts around the country. Such reforms include those designed to prevent the elicitation and evidentiary admission of false confessions—a leading cause of wrongful convictions.

This case calls upon the Court to determine the admissibility of a confession elicited from 24-year-old Daren Fenderson after police officers repeatedly lied to him about his right to an attorney and about evidence they purported to have against him. As documented in many of the known false confession cases and as demonstrated by decades of empirical research, the use of such deceptive tactics places innocent people, and particularly innocent adolescents and young adults, at significant risk of falsely incriminating themselves.

[1] No part of this brief was drafted by counsel for either party, nor did either party or their counsel contribute financially to its preparation. No entity contributed, financially or otherwise, to the preparation of this brief other than Amicus Curiae and counsel for Amicus Curiae.

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As leading advocates for the wrongfully convicted, *Amicus* has a compelling interest in advocating for evidentiary rules that deter officers from using deceptive tactics, like those used throughout the interrogation here, to secure a *Miranda* waiver or to elicit confessions. Drawing on decades of scientific study that explains the phenomenon of false confession, *Amicus* submits this brief to provide relevant research and argument regarding the dangers of police deception in interrogation, young people's vulnerability thereto, and the corresponding implications of the Court's ruling in this matter.

PRELIMINARY STATEMENT

False confession is a primary cause of wrongful conviction, contributing to approximately one-third of all convictions overturned using DNA evidence.[2] Police deception and, specifically, the "false evidence ploy"—confronting a suspect with false or fabricated evidence—has been "implicated in the vast majority of [all] documented police-induced false confessions." Saul M Kassin et al, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L & Hum Behav 3, 12 (2010). False confessions are particularly prevalent in cases like this one, where a young person under the age of 25 is interrogated.[3] In fact, well over *forty-percent* of the nation's proven false confession cases involved false confessions elicited from innocent young people under age 25, who were wrongfully accused of homicide.[4]

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[2] Innocence Project, *DNA Exonerations in the United States* <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/> (accessed October 3, 2025).

[3] Sixty-two percent of exonerations stemming from false confessions, documented in University of Michigan Law School's National Registry of Exonerations, were elicited from individuals under the age of 25.

[4] University of Michigan Law School, *The National Registry of Exonerations* <https://exonerationregistry.org> (accessed October 3, 2025). The total number of exonerations

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Here, after spending a night in police custody, Mr. Fenderson was brought into a small, windowless interrogation room to be questioned about a homicide offense involving a fatal "hit-and-run."[5] After waiving his *Miranda* rights, Mr. Fenderson was then subjected to a highly coercive, accusatory interrogation, during which he adamantly maintained his innocence. Daren Fenderson Video Interrogation Aug. 3, 2022 ("Int.") at 35:23 – 02:05:44; 04:49:59 – 05:27:10. After about one hour of interrogation without a confession, the detective began to lie to Mr. Fenderson, telling him, repeatedly, that there was video surveillance evidence that contradicted Mr. Fenderson's version of events and conclusively demonstrated his guilt. See, e.g., *Id.* at 01:44 – 2:04. No such video evidence existed.[6]

Officers referenced the nonexistent video evidence more than one dozen times, and then warned Mr. Fenderson of the impact that this (false) evidence would have on how the prosecution would be handled. *Id.* The detective said; "we got video of it happening, they are going to see it, they are going to say, 'Goddamn, that's fucked up.' " 02:04:34 – 02:04:38. In response to this deceptive threat, Mr. Fenderson then says "Alright, how about this? I'm going to tell y'all what y'all want to hear . . . can I have a lawyer first." *Id*. at 2:04:48-53.

Instead of honoring Mr. Fenderson's clear invocation of his right to counsel, a detective responded asking, "You're going to tell me what I want to hear?," *Id*. at

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stemming from false confessions in the database totaled 537. Of those 537 false confessions, 337 (62%) of those confessions were elicited from individuals under age 25. Of those 337 false confessions elicited from individuals under age 25, 235 (69.7%) were in homicide cases. *Id.* Therefore, nearly 44% (235 of 537) of the proven false confession were elicited from young suspects in homicide investigations. *Id.*

[5] *People v. Fenderson*, No. 367926, 2024 WL 2868673, at *1 (Mich. Ct. App. June 6, 2024)

[6] Based on the available record materials, *Amicus* understands that no video surveillance evidence was collected or entered into evidence at trial.

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2:04:53—suggesting that Mr. Fenderson's request for a lawyer was conditioned on his promise to cooperate and confess to the officer's version of events. When Mr. Fenderson agreed, the detective then told him that he was going to make a couple of phone calls to contact an attorney. *Id.* at 2:05:35-38.

Mr. Fenderson was then left alone in the interrogation room, where he was isolated for nearly three hours, and handcuffed for two of those hours. When the interrogating detective returned, a uniformed officer joined him and removed Mr. Fenderson's handcuffs. The uniformed officer then reached for a different pair of handcuffs and began placing them on Mr. Fenderson's hands behind his back. Mr. Fenderson looked at the detective who, hours earlier, said he would call for a lawyer, and asked "Where's my lawyer?" Int. at 4:50:28-30. The officer replied, "You don't got one." *Id.* at 4:50:31-34. Mr. Fenderson responds, "Wait, huh?" *Id.* at 4:50:34-36. The officer then told Mr. Fenderson that because the detective could not find an attorney and Mr. Fenderson could not pay for one, he would not get a lawyer. *Id.* at 4:50:37-50. After Mr. Fenderson said that he was "confused" *id.* at 4:51:12-13, and doesn't "know what's going on," *id.* at 4:51:14-25, the detective told Mr. Fenderson he would be taken back to the detention center and an arrest warrant would be submitted to the prosecutor. *Id.* at 4:51:26-38. In reply, Mr. Fenderson stated, "*I'm not sure what all that means*." *Id.* at 4:51:38-40.

Rather than clarifying the meaning of the warrant, the officer responded: "[i]f you request an attorney, I can't talk to you no more about the case." Int. at 4:51:41-55. Mr. Fenderson, still handcuffed, relented and, after stating four times that he

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"just wants to get this over with," agreed to speak to the detectives again. *Id.* 4:51:56 – 4:52:45. Only then were his handcuffs removed. *Id.* at 4:52:45-55. Mr. Fenderson, through tears, sat down as he said, among other things, "I didn't even do nothing." *Id.* at 4:53:22-4:54:50.

At that point, a sergeant was brought in to read a *Miranda* waiver form to Mr. Fenderson again. Int. at 4:54:05-4:58:04. Despite invocation of his right to counsel and continued expressions of confusion, ultimately, a second *Miranda* waiver was signed. Following this second *Miranda* waiver, the officers interrogated Mr. Fenderson for another 25 minutes. When the conversation started, Mr. Fenderson continued to insist on his innocence. In response, the detectives raised their voices, banged on the table, cursed, insisted upon Mr. Fenderson's guilt, repeatedly called him a liar, and impliedly referenced the nonexistent video evidence.[7] *Id.* at 4:59:35-5:04:53. Mr. Fenderson broke down in tears at various points, which was met with the detectives yelling at him to "stop motherfucking crying." *Id.* at 5:04:39-45. Ultimately, after the use of various deceptive and coercive interrogation tactics, Mr. Fenderson told detectives that, after the decedent attempted to shoot him, he shot back and then fatally hit the decedent with his car, explaining that it was an act of self-defense. *Id.* at 5:05:07 - 5:08:58.

Mr. Fenderson's attorney moved to suppress the statements, asserting that his *Miranda* waiver was neither knowing nor voluntary, and that police improperly

[7] Officers told Mr. Fenderson: "Let me explain something to you. Earlier, I laid it all out to you. I told you everything." *Id.* at 5:02:15-22. Mr. Fenderson apparently understood this to be a reference to the (false) "proof" that the police purported to have against him. *Id.*

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resumed interrogation after he invoked his right to counsel. The trial court agreed, finding that officers used coercive and misleading "scare tactics" to elicit the *Miranda* waiver. *People v. Fenderson*, No. 367926, 2024 WL 2868673, at *2 (Mich App 2024). The State appealed. The Court of Appeals reversed the trial court's decision granting suppression. *Id.* This appeal followed.

As this Court has repeatedly recognized, there is ample "[r]esearch illustrating a strong correlation between the use of false evidence and an interrogee providing a false confession[.]" *People v Stewart*, 512 Mich 472, 496, n.9, (2023); see also *People v Lemons*, 514 Mich 485, 521, ("[S]uspects presented with seemingly incontrovertible physical evidence of their guilt may confess falsely to ameliorate their current conditions.") (citing *Stewart*, 512 Mich at 499). Given the scientifically-proven risks of false confession following police deception, *Amicus* urges this Court to hold that Mr. Fenderson's custodial statements, which were the product of deceptive tactics, must be suppressed and that: (1) any custodial statement elicited by police following lies about evidence should be deemed *per se* involuntary, and thus inadmissible at trial against the accused; and (2) *Miranda* waivers which are provided in response to police deception about the *Miranda* rights themselves (here, the right to counsel) should be deemed invalid and involuntary, and any confession that follows inadmissible in the prosecution's case-in-chief. At minimum, these protections must be afforded to young people under age 25, who are categorically more vulnerable to police deception in interrogation.

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ARGUMENT

I. DECEPTIVE INTERROGATION PRACTICES PLACE INNOCENT PEOPLE, AND ESPECIALLY INNOCENT YOUNG PEOPLE, AT RISK OF FALSELY CONFESSING AND, CONSEQUENTLY, WRONGFUL CONVICTION

a. False Confessions are a Leading Cause of Wrongful Convictions

False confessions have been "recognized as one of the leading sources of erroneous convictions of innocent individuals." Jessica R Klaver et al, *Effects of Personality, Interrogation Techniques and Plausibility in an Experimental False Confession Paradigm*, 13 Legal & Crim Psych 71, 72 (2008) (citations omitted). False confessions have been a contributing factor in the wrongful convictions of nearly one-third of all known DNA exonerations,[8] and have contributed to one in eight of all known wrongful convictions nationwide, as documented by the National Registry of Exonerations. See University of Michigan Law School, *The National Registry of Exonerations* <https://exonerationregistry.org> (accessed October 3, 2025) (identifying exonerations involving false confessions in the United States).[9] As noted, false confessions are especially prevalent in cases of young adults under the age of 25 who, like Mr. Fenderson, are accused of homicide offenses. See *supra* at 2*;* Steven A Drizin & Richard A Leo, *The Problem of False Confessions in the Post-DNA World*, 82 NC L Rev 891, 945 (2004) (discussing a study of 125 false confessions that found children under age 18 comprised approximately one-third of false confessors in the

[8] Innocence Project, *DNA Exonerations in the United States* <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/> (accessed October 3, 2025).

[9] The National Registry of Exonerations is a well-recognized source of reliable data concerning wrongful convictions that has been cited in more than 30 court cases, as well as by a Justice of the U.S. Supreme Court, see *Jordan v Mississippi*, 585 US 1039, 1043 (2018) (Breyer, J, dissenting from the denial of certiorari); *Glossip v Gross*, 576 US 863, 911 (2015) (Breyer, J, dissenting).

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sample considered, and another 27% of innocent confessors were between 18 and 24 years old).

These proven false confessions represent only a fraction of the actual number of innocent young people who were coerced into "confessing" and who, consequently, were wrongfully convicted. Experts agree that the known dataset necessarily excludes many "false confessions that are disproved before trial, many that result in guilty pleas, those in which DNA evidence is not available, those given to minor crimes that receive no post-conviction scrutiny, and those in juvenile proceedings that contain confidentiality provisions." Kassin et al, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L & Hum Behav at 3. Accordingly, the documented cases of false confessions "most surely represent the tip of an iceberg." *Id.*

Once a false confession is elicited, the innocent "confessor" is at grave risk of wrongful conviction because false confessions have an overwhelming impact on factfinders, even in the face of compelling evidence of innocence. Sara C Appleby & Saul M Kassin, *When Self-Report Trumps Science: Effects of Confessions, DNA, and Prosecutorial Theories on Perceptions of Guilt*, 22 Psych Pub Policy & L 127, 127-29 (2016) (discussing the "unequivocal" evidence that "confessions have more impact on verdicts" than most other forms of evidence, including eyewitness identification evidence); see also *State v LH*, 215 A3d 516, 519 (NJ 2019) ("No piece of evidence may have greater sway over a jury than a defendant's confession."). Social scientists have explained that "people do not adequately discount confessions—even when they are retracted and judged to be the result of coercion." Saul M Kassin, *Why Confessions*

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Trump Innocence, 67 Am Psych Ass'n 431, 433-434 (2012) (internal citations omitted). In fact, 22% of exonerees whose wrongful convictions were based on confession evidence later determined to be false were convicted *despite the availability of exculpatory DNA evidence at the time of trial*. Innocence Project, *DNA Exonerations in the United States* <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/> (last visited October 3, 2025) (hereinafter *DNA Exonerations*); see also Appleby & Kassin, *When Self-Report Trumps Science*, *supra*, at 127-128 (analyzing 19 cases in which innocent confessors to rape and/or murder were tried and convicted despite having been exculpated by DNA tests).

The inclination of factfinders to credit confession evidence not only makes wrongful convictions of innocent confessors highly likely, it may also allow the actual perpetrators to remain at large without accountability. Richard A Leo et al, *Promoting Accuracy in the Use of Confession Evidence: An Argument For Pretrial Reliability Assessments to Prevent Wrongful Convictions*, 86 Temp L Rev 759, 771-73 (2013); see *DNA Exonerations*, <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/> (last visited October 3, 2025) (noting that, since the first DNA exoneration in 1989, there were 48 additional crimes, including 25 murders, that were committed by the true perpetrators of crimes for which innocent false confessors were wrongfully convicted). The elicitation of false confessions thus presents a high risk of injustice not only for innocent suspects, but also for crime victims and the local community. Accordingly, a critical step forward in the path to preventing wrongful convictions caused by false confessions and the tragic miscarriages of justice that

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follow, is deterring the use of the interrogation tactics that are known to compel false confessions.

b. Hundreds of Wrongful Convictions and Decades of Scientific Research Demonstrate that Police Deception Places the Innocent at Significant Risk of Falsely Confessing

A significant majority of proven false confessions were elicited in response to deceptive interrogation tactics, like the "false evidence ploy" and others used against twenty-four-year-old Appellant, Daren Fenderson.[10] Kassin et al, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L & Hum Behav at 12. The "false evidence ploy" involves lying to the suspect about evidence that does not exist. Examples of false evidence ploys include fabricating a positive eyewitness identification, inventing inculpatory forensic evidence or, as here, insisting that there is video evidence that inculpates the accused, when in fact no such video evidence exists. *Id.*

The presentation of false evidence in interrogation typically places a suspect into a state of "despair" in which they feel "trapped" based on the perceived "inevitability of evidence against them." *Id*. at 7, 28. As a result, innocent suspects may view confession—regardless of guilt—as the only, or best, option available to

[10] See also, e.g., Miriam S Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 Fordham Urb L J 791, 791-793 (2006) (describing the use of false evidence ploys to extract confessions in the Central Park Five case); Brandon L Garrett, *The Substance of False Confessions*, 62 Stan L Rev 1051, 1097-1099 (2010) (describing various additional cases of innocent people falsely confessing in response to the false evidence ploy); Eidam, Lindemann & Ransiek, eds, *Interrogation, Confession, and Truth: Comparative Studies in Criminal Procedure* (Baden-Baden: Nomos Verlagsgesellschaft, 2020), Leo, *Structural Police Deception in American Police Interrogation: A Closer Look at Minimization and Maximization*, at 183-184 (detailing the case of Martin Tankleff, an innocent teenager who was lied to by interrogating officers and, as a result, confessed, was wrongfully convicted, and spent nearly two decades in prison before he was ultimately exonerated and released).

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them. *Id.* at 28. Notably, the presentation of false evidence can even produce a "coerced-internalized" false confession—an incriminating admission by an innocent suspect who, *persuaded* by the interrogators' misrepresentation of the evidence, begins to doubt their memory of the event and wrongfully believe in their own guilt. *Id.* at 15; see also Jennifer T Perillo & Saul M Kassin, *Inside Interrogation: The Lie, The Bluff, & False Confessions*, 35 L & Hum Behav 327, 328 (2011) (describing the results of a laboratory study in which misinformation "increased the number [of participants] who internalized guilt, from 12[%] to 55%").

Psychologists have long understood that "presentations of false information" can "substantially alter subjects' visual judgments, beliefs, perceptions of other people, behaviors toward other people, emotional states, . . . self-assessments, memories for observed and experienced events, and even certain medical outcomes, as seen in studies of the placebo effect." Kassin et al, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L & Hum Behav at 17 (citing 11 "highly recognized [classic studies] in the field" that "revealed that misinformation renders people vulnerable to manipulation"); Saul M. Kassin et al, *On the General Acceptance of Confessions Research*, *Opinions of the Scientific Community*, 73 Am Psych at 70 (Misinformation "can alter a person's memory for that event."). In more recent decades, laboratory experiments have repeatedly confirmed that the false-evidence ploy—even in isolation and without the use of other coercive tactics—can and does induce innocent people to falsely confess to crimes or other misconduct, including, "cheating, in violation of a university honor code[,] . . . stealing money from the 'bank'

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in a computerized gambling experiment . . . and recalling past transgressions, including acts of violence." Brent Snook et al, *Urgent Issues and Prospects in Reforming Interrogation Practices*, 26 L & Crim Psych 1, 10 (citations omitted).

In 2018, the world's leading experts in false confessions were surveyed, resulting in the near unanimous agreement that "presentations of false incriminating evidence during interrogation increase the risk that an innocent suspect would confess to a crime he or she did not commit." Kassin et al, *On the General Acceptance of Confessions Research*, 73 Am Psychologist at 70-72 (finding that 94% of experts surveyed agree this proposition is supported by reliable scientific evidence). Relying on decades of relevant scientific study, these experts agreed that the false evidence ploy is so dangerously manipulative, to a suspect of any age, that it is "equally perilous" as to the use of "explicit promises of leniency, threats of harm or punishment," and even *torture*. *Id.* at 75; see also Snook et al, *Urgent Issues and Prospects in Reforming Interrogation Practices in the United States and Canada*, 26 L & Crim Psych at 10 (2021) (noting that "the scientific community is in agreement regarding the risk of false evidence" in interrogation because it is "clear that misinformation renders people vulnerable to manipulation" and "[n]umerous laboratory experiments specifically demonstrate the false evidence effect").

Today, in light of the abundant research and hundreds of real-world examples, it is more clear than ever before that "false evidence dramatically increases the risk of false confession[.]" Saul M Kassin, et al, *Police-Induced Confessions, 2.0: Risk Factors and Recommendations*, 49 L & Hum Behav 7, 16 (2025).

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c. Young People Under the Age of 25, Like Mr. Fenderson, are Particularly Susceptible to Deceptive Interrogation techniques and, thus, at an Increased Risk of False Confession

The powerful impact of deceptive police interrogation tactics is magnified when those tactics are used against adolescents, late adolescents, and young adults—like Mr. Fenderson. See Catherine Insel et al, Center for Law, Brain & Behavior at Massachusetts General Hospital, *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys, and Policy Makers* (January 27, 2022), at 32, available at <https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/> (accessed January 26, 2026) (hereinafter "*White Paper on the Science of Late Adolescence*").[11] Although adults—including adults without any cognitive, developmental, or mental health issues—can and do falsely confess in the face of coercive or deceptive police tactics, young people under age 25 constitute the majority of known false confessors.

Modern neuroscience helps to explain the disproportionate number of innocent adolescents who succumb to interrogative pressures and falsely confess. Scientists explain that the areas and systems of the brain that are responsible for future planning, judgment, and decision making—the prefrontal cortex and other regions that make up the "cognitive-control networks"—are not fully developed until a

[11] While there is some disagreement in the field as to what precisely constitutes adolescence and adulthood, since brain development does "not rigidly conform to chronological boundaries," leading experts define adolescents as those aged 10 to 17, late adolescents as those aged 18 to 21, and young adults as those aged 22 to 25. *Id*. at 46 n. 242. "Developmental researchers . . . agree that a broad conceptualization of adolescence that accounts or all legally relevant capacities generally compromises ages 10 to 25 years." Saul M Kassin, et al, *Police-Induced Confessions, 2.0: Risk Factors and Recommendations*, 49 L & Hum Behav 7, 15 (2025). In fact, "it would be 'developmentally arbitrary … to draw a cut-off line at 18'." *Id.* (citing to National Academies of Sciences, Engineering, and Medicine, *The promise of adolescence: Realizing opportunity for all youth*, p 22 (2019)).

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person's early to mid-twenties, resulting in diminished cognitive capacities in young people under age 25. See Laurence Steinberg, *Risk taking in adolescence: New Perspectives from Brain and Behavioral Science*, 16 Curr Dir Psychol Sci 55, 55-99 (2007); *White Paper on the Science of Late Adolescence*, 27-35; at Appendix A, p.49 (discussing the "dramatic" changes that occur in the prefrontal cortex until age twenty-six); see also *People v Taylor*, 2025WL1085247, *4, *6 (Mich 2025) (recognizing that individuals 25 and younger are vulnerable because "the prefrontal cortex—the last region of the brain to develop, and the region responsible for risk-weighing and understanding consequences—is not fully developed until age 25.").

As this Court has recognized, the neurological and psycho-social differences between adolescents and adults have profound implications for innocent young peoples' ability to withstand interrogative coercion. *Stewart*, 512 Mich at 491 (noting that an adolescent "interrogee [may] prioritize immediate benefits over long-term consequences—resulting in behaviors such as falsely confessing in exchange for release[.]"). And, when adolescents are under stress—as they invariably are during police interrogation, which is "stress-inducing by design"[12]—they are "vulnerable to *further* distortion[]" of their "already skewed cost-benefit analyses[.]" Jessica Owen-Kostelnik et al, *Testimony and Interrogation of Minors: Assumptions About Maturity and Morality*, 61 Am Psychol 286, 295 (2006) (emphasis added).[13]

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[12] Kassin et al, *Police-Induced Confessions*, 34 L and Hum Behav at 7; see also *Corley v United States,* 556 U.S. 303, 320–21 (2009) ("Custodial police interrogation, by its very nature, isolates and pressures the individual," and there is "empirical evidence that these pressures can induce a frighteningly high percentage of people to confess to crimes they never committed.").

[13] See also Hayley M D Cleary, *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations: New Directions for Research, Policy, and Practice,* 23 Psych Pub Policy, & L 118, 120-121 (2017) (citing Alexandra O Cohen et al., *When is an adolescent an adult? Assessing*

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Additionally, adolescents prioritize immediate over long-term consequences. This is known as "temporal discounting" and impacts young people "during adolescence and through young adulthood," as they continue to develop a capacity to consider long-term consequences of their present decisions. *White Paper on the Science of Late Adolescence*, at 28. These difficulties with "future orientation" may also result in adolescents' distorted perception of the duration of an interrogation, so that even a relatively short period of interrogation may be perceived by a young person as endless, adding to the pressure on the young suspect to adopt interrogators' narratives, regardless of guilt. Hayley M D Cleary, *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations: New Directions for Research, Policy, and Practice,* 23 Psych Pub Policy & L 118, 120 (2017).

Significantly, these "neurologically based age differences in cognitive, social, emotional, and behavioral functioning" also negatively impact *Miranda* comprehension. Naomi E S Goldstein et al, *Evaluation of Miranda Waiver Capacity*, in APA Handbook of Psychol and Juvenile Justice 467, 475 (2016). Even for adolescents who do have the intellectual ability to comprehend the literal meaning of *Miranda* warnings provided, they may not comprehend the warnings' "relevance to the situation they are in," nor appreciate that they could actually *exercise* their rights in the face of a police officer's request for compliance.[14] Kassin et al, *Police-Induced*

cognitive control in emotional and nonemotional contexts, Psychol Sci 27, 549–562 (2016) (surveying neuroimaging of teenagers and concluding that teens "demonstrated less cognitive control than adults under threatening conditions . . . in both brief and prolonged states of negative emotional arousal").

[14] For example, in one study, "76% [of young people who had been interrogated] did not believe that they had access to a lawyer even though they remembered the police telling them that they had the right to 'retain and instruct counsel without delay'." Goldstein et al, *supra*, at 475. And, another study revealed that young people have difficulty understanding the benefit of a lawyer, as the majority had

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Confessions, 34 L and Hum Behav at 6; Barry C Feld, *Police Interrogation of Juveniles An Empirical Study*, 97 J of Crim L and Criminology 219, 229 (2006) (noting that young people "have greater difficulty [than adults] conceiving of a right as an absolute entitlement that they can exercise without adverse consequences."). Accordingly, young people are less likely to comprehend or invoke *Miranda,* leaving them without adequate "protect[ion] against the coercion that can occur when a citizen is suddenly engulfed in a police-dominated environment."[15]

Despite the overwhelming scientific consensus that adolescents, late adolescents, and young adults are less likely to comprehend *Miranda* and are ill-equipped to respond rationally to police interrogation, most police "[i]nterrogation manuals recommend that police use the same techniques" with children and adolescents as with adults. Feld, *Police Interrogation of Juveniles An Empirical Study*, 97 J of Crim L and Criminology at 222 (2006). Thus, an innocent young person under the age of 25—vulnerable to interrogation coercion and unlikely to fully grasp the functional meaning of their *Miranda* rights—is at grave risk of false confession when police employ deceptive tactics to elicit a *Miranda* waiver and then lie about evidence during the interrogation that follows.

misconceptions about the attorney-client privilege, and instead thought that "the lawyer could relate information to the police," the judge, or to the young person's parents. *Id.*

[15] *People v Cortez*, 299 Mich App 679, 702 (2013) (O'Connell, P J, concurring).

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II. TO PROTECT AGAINST WRONGFUL CONVICTIONS BASED ON FALSE CONFESSIONS, THIS COURT SHOULD HOLD THAT CONFESSIONS ELICITED FOLLOWING THE USE OF THE FALSE EVIDENCE PLOY ARE *PER SE* INVOLUNTARY AND INADMISSIBLE.

Police lies about evidence pose a significant risk that an innocent person will provide a false confession and, consequently, be wrongfully convicted. To protect against such miscarriages of justice, *Amicus* urges this Court to hold that the use of the false evidence ploy will render a resulting confession involuntary and inadmissible *per se* under Article 1, Section 17 of the Michigan Constitution (1963). In the alternative, and at a minimum, *Amicus* urges the adoption of such a rule for the interrogation of young people under age twenty-five, who are more vulnerable to such deceptive ploys.

While this Court would be the first in the nation to adopt a *per se* rule requiring the suppression of confessions elicited in response to false evidence ploys, the rule would not be entirely unprecedented. First, some state high courts have adopted similar, albeit narrower, *per se* rules to deter against certain types of false evidence ploys. See *State v Matsumoto,* 452 P3d 310, 313, 322 (Hawaii 2019) (creating a *per se* rule regarding lies about the results of a suspect's polygraph test because such lies "'are of a type reasonably likely to procure an untrue statement or to influence an accused to make a confession regardless of guilt'") (quoting *State v Kelekolio,* 849 P2d 58, 73 (Hawaii 1993)); *Wilson v State,* 311 SW3d 452, 465 (Tex Crim App, 2010) (holding that it is unlawful for Texas officers to confront a suspect with fabricated physical evidence and, therefore, confessions elicited following such deception will not be admissible in evidence).

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Second, there is an emerging trend among state legislatures to prohibit the use of the false evidence ploy in interrogations. In the last five years, and as of the date of this writing, ten states—California, Connecticut, Colorado, Delaware, Illinois, Indiana, Minnesota, Nevada, Oregon, and Utah—have adopted laws that regulate the use of deception in interrogations of legal minors.[16] In Illinois, the law additionally prohibits police deception in the interrogation of adults with severe intellectual disability. 705 ILCS 405/5-401.6 (2021). Although the language in each state's legislation varies, most of these laws establish a rebuttable presumption that statements elicited from children in response to a police officer's knowing use of deception are involuntary and thus inadmissible. Two states—Indiana and Utah—however, require suppression *per se* of a confession elicited in response to police deception.[17] As the knowledge around the dangers of deceptive tactics and the impact of presenting false evidence to a suspect becomes more widespread, other state legislatures are working to pass similar laws.[18]

Additionally, while stopping short of issuing *per se* rules, many courts have recognized the dangerously coercive power of the false evidence ploy. The Hawaii

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[16] California: Cal Wel & Inst Code § 625.7 (2023); Colorado: CRS 19-2.5-203 (2023); Connecticut: Conn Gen Stat § 54-86q (2023); Delaware: Del Code Ann Tit 11, Ch 20, Subch II (2022); Illinois: 705 ILCS 405/5-401.6 (2021); Indiana: Ind Code Ann § 31-30.5-1-6 (2023); Minnesota: Minn Stat Ann § 634.025 (Effective 1/1/2025); Nevada: Nev Rev Stat Ann Ch 62C.014 (2024); Oregon: ORS § 133.403 (2002); Utah: Utah Code Ann § 80-6-206 (2021).

[17] In Indiana, a statement made by a juvenile in response to deceptive tactics is "inadmissible," Ind Code Ann § 31-30.5-1-6 (2023), and in Utah, the language of the statute is prescriptive: a law enforcement officer "may not" use certain deceptive tactics, Utah Code Ann. § 80-6-206 (2021).

[18] See, e.g., S1860, A3269, 2025-2026, Reg Sess (NY 2025) (prohibiting admission of confession evidence where the confession was "involuntarily made," meaning "by means of any promise or statement of fact, which promise or statement undermines the reliability of the defendant's statement, or creates a substantial risk that the defendant might falsely incriminate himself or herself; or *by knowingly communicating false facts about evidence to the defendant*") (emphasis added).

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Supreme Court, for example, has recognized that "false claims of physical evidence result in an unsettling number of false or involuntary confessions," and held that "misrepresentations about the existence of incontrovertible physical evidence that directly implicates the accused is an *exceptionally coercive interrogation tactic* and its use is a strong indicator that the suspect's statement was involuntary." *State v Baker*, 465 P3d 860, 878-879 (Hawaii 2020) (*emphasis added*). Likewise, the United States Court of Appeals for the Seventh Circuit has found impermissible coercion when police falsely led a suspect to believe that the police were in possession of medical evidence that conclusively established his guilt. *Aleman v Hanover Park*, 662 F3d 897, 906 (CA 7, 2011). The Seventh Circuit reasoned that the false presentation of evidence by an interrogator may "destroy the information required for a rational choice." *Id*. Particularly when interrogators' misrepresentation of evidence "foreclose[s] any other conclusion" but that the suspect committed the offense, the suspect's choice and perception of reality may be "'seriously distort[ed].'" *Id*. (quoting *United States v Rutledge*, 900 F2d 1127, 1130-1131 (CA 7, 1990)). Indeed, as that court recognized, when such powerfully manipulative ploys are used during an interrogation, the "confession so induced is *worthless* as evidence[.]" *Id*. at 907 (*emphasis added*); see also *People v Thomas*, 22 NY3d. 629, 643 (2014) (holding that the interrogating officers' use of deception during the interrogation at issue functioned to "nullify individual judgment in any ordinarily resolute person and [was] manifestly lethal to self-determination when deployed" against a vulnerable suspect); *Gray v Commonwealth*, 480 SW3d 253, 259 (2016) (recognizing that police "trickery"

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is likely to produce a coerced, involuntary confession); *State v Swanigan*, 106 P3d 39, 50 (Kan 2005) (holding that a confession was elicited involuntarily after, among other coercive tactics, the interrogating officer lied to the accused about his fingerprints being found at the crime scene). As noted above, this Court has likewise recognized the impact of false evidence ploys and the dangers they pose to the innocent. See *Stewart*, 512 Mich at 498-99 ("This exaggeration of the strength of the case against defendant and the conviction of the officers' belief in defendant's guilt weighs against a finding that defendant's inculpatory statements were made of a free and voluntary mind.") (citation omitted)*; Lemons*, 514 Mich at 521.

In recent years, a justice of the New Jersey Supreme Court has expressly called on that court to recognize both the "ethical concern[s]" with sanctioning police deception, and the reality that the "use of lies may overbear the will of a suspect, overcome the suspect's ability to resist the psychologically coercive pressures inherent in the interrogation process, and, in some instances, elicit a false confession." *State v Gonzalez*, 268 A3d 329, 345 (2022) (Albin, J, concurring).[19] Marking the issue of police deception in interrogation as one of "supreme importance," Justice Albin urged the court to decide in the next appropriate case, "whether sanctioning deception and trickery in the interrogation process offends judicial integrity and whether the cost of potentially eliciting false confessions outweighs the benefits of eliciting a number of true confessions." *Id.* at 639-640 (citation omitted).

[19] Similar to Mr. Fenderson, the defendant in the *Gonzalez* case had been falsely told that surveillance cameras had captured her alleged criminal conduct, when in fact no such evidence existed. *State v Gonzalez*, 249 NJ 612, 622 (2022).

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Justice Albin is not alone in his expression of disdain for the sanctioning of police deception in interrogation. See, e.g., *State v Phelps*, 696 P2d 447, 452 (Mont 1985) ("[W]e cannot condone the tactics of this officer who informed Phelps as to the existence of incriminating evidence when the evidence was inconclusive."); *State v Register*, 476 SE2d 153, 158 (SC 1996) (stating that "the misrepresentation of evidence by police is a deplorable practice"); *State v Geno*, 417 Mont 135, 146 (2024) ("[W]e will not condone the use of deception to obtain a confession.").

Furthermore, courts around the country, including the United States Supreme Court, have long acknowledged that *per se* suppression rules are appropriate when they deter the use of particularly coercive interrogation tactics that have the power to elicit false confessions. See *Beecher v Alabama,* 389 US 35, 38 (1967) (holding that there is an "inescapable conclusion" that a confession is involuntary if the confessor has been threatened "at gunpoint to speak his guilt"); *State v Hillery*, 956 NW2d 492, 499 (Iowa 2021) (declining to abandon the Iowa common-law rule that a confession obtained by a threat or promise requires suppression *per se,* as such tactics "create the risk of a false confession leading to a wrongful conviction."); *United States v Jenkins,* 938 F2d 934, 938 (CA 9 1991) (noting that "confessions accompanied by physical violence wrought by the police have been considered per se inadmissible").

As noted above, the false evidence ploy has a comparable impact—and places innocent suspects at comparable risk of falsely confessing—with the interrogation tactics that are the subject of the above-listed *per se* rules. See Kassin et al, *On the General Acceptance of Confessions Research,* 73 Am Psych at 75 (surveyed experts

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"judged the tactic of presenting suspects with false evidence . . . as equally perilous[]" to "explicit promises of leniency, threats of harm or punishment, and [torture]"). A *per se* rule is thus necessary to deter the use of the false evidence ploy and, in turn, help prevent against the elicitation of false confessions and the wrongful convictions that follow. Accord *Hillery,* 956 NW2d at 499 (Iowa 2021) (maintaining the state's *per se* suppression rule regarding threats and promises to "'deter[] police from using a tactic that might induce the innocent to confess falsely.'") (citation omitted).

Equipped with a thorough understanding of the relevant science regarding the dangerously manipulative power of the false evidence ploy, this Court has the constitutional authority—either by virtue of its supervisory powers through state constitutional due process guarantees or by amending state evidentiary rules—to implement a rule that precludes confession evidence that is obtained by such a highly coercive tactic, and which will help ensure only confessions that are voluntary under Article 1, § 17, of Michigan's 1963 Constitution are admitted into evidence. See generally Const 1963, art 6, § 5. Moreover, the issuance of such a rule is consistent with this Court's demonstrated commitment to aligning state law with clear scientific consensus in a manner that prevents against manifest injustice. See, e.g., *Parks*, 510 Mich at 247 (2022); *Stewart*, 512 Mich at 472 (2023).

For these reasons, *Amicus* urges the Court to adopt a *per se* rule rendering confessions that follow the use of the false evidence ploy involuntary and inadmissible, regardless of the accused's age. At minimum, the Court should apply such rules in cases involving interrogations of children, adolescents, and young adults

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(anyone under the age of 25) who are categorically more vulnerable to deceptive interrogation tactics than adults. *Accord Taylor*, 2025WL1085247, at *4 (Mich 2025) (granting enhanced 8th amendment protection to adolescents under age 21, and recognizing that individuals 25 and younger are at a similar developmental stage).

Further, in addition to a *per se* rule deterring the use of the false evidence ploy, and as *Amicus* has argued to this Court in recent amicus briefings, the Court should encourage trial judges to consider all relevant, generally-accepted "risk factors" of false confession in assessing the voluntariness and corresponding admissibility of confession evidence.[20] Accord *State v Derri*, 511 P3d 1267, 1277 (Wash 2022) (holding that, when applying the test for admissibility of eyewitness identification evidence, trial courts "must apply relevant, widely accepted modern science . . . at each step of the test"); *State v Henderson*, 27 A3d 872, 916-17 (NJ 2011) (announcing a revised test for the admission of eyewitness identification evidence that takes into account the relevant social science); *State v Lawson*, 291 P3d 673, 688 (Or 2012) (en banc) (holding that "variables identified in the scientific research" warrant consideration in the admissibility test for eyewitness identification evidence). A voluntariness analysis that accounts for the scientifically-established risk factors for false confession will result in more accurate, reliable suppression decisions and will help prevent against the admission of false confessions that were coerced from innocent, wrongfully accused suspects. This case is instructive as the appellate court did not appear to give any weight to several "risk factors" for false confession at issue when

[20] Referring to *Amicus* briefs filed before this Court in *People v Sanders,* SC No 167899, Ingham CC 13-000224-FC, and *People v. Soriano*, SC No 167373, Grand Traverse CC 20-013669-FH.

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concluding that Mr. Fenderson's *Miranda* waiver and statements were voluntarily provided.[21]

III. *MIRANDA* WAIVERS THAT ARE PROVIDED IN RESPONSE TO POLICE DECEPTION ABOUT THE *MIRANDA* RIGHTS THEMSELVES SHOULD BE, CATEGORICALLY, DEEMED INVALID AND INVOLUNTARY.

Although *Miranda* protections are not a panacea for the problem of false confessions,[22] the requirement that interrogating officers must inform suspects that they have the right to remain silent and the right to the presence of an attorney is meant "to dispel the compulsion inherent in custodial surroundings." *Miranda v Arizona*, 384 US 436, 458 (1966). When officers mislead people, and especially young people, about their *Miranda* rights, they eviscerate the safeguard that *Miranda* provides, leaving innocent, wrongfully accused suspects without any meaningful mechanism to end a coercive interrogation and rendering them vulnerable to further manipulation.

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[21] For example, the interrogating detective here used the "alternative question technique"—a type of "minimization" tactic—when he insisted that Mr. Fenderson was undoubtedly guilty and was either a "cold-blooded killer" or "not this fuckin' bad guy" who maybe was provoked. Int. at 5:04:49-05:05:02. Such minimization tactics have been scientifically proven to communicate, by implication, a promise of leniency in exchange for a confession. See Luke; Alceste, *The Mechanisms of Minimization: How Interrogation Tactics Suggest Lenient Sentencing Through Pragmatic Implication*, 44 L & amp; Hum Behav 266, 282 (2020). For that reason, minimization tactics have the power to elicit false confessions from the innocent and are routinely found in proven false confession cases. See Kassin, et al, *Police-Induced Confessions, 2.0: Risk Factors and Recommendations*, 49 L & Hum Behav 7, 12 (2025). This highly coercive tactic used against Mr. Fenderson does not appear to have been meaningfully considered by the courts below.

[22] Indeed, nearly all of *Amicus*'s clients who had falsely confessed and were later exonerated with DNA evidence, waived their *Miranda* rights before falsely incriminating themselves. *Amicus* therefore urges this Court, as discussed throughout, to issue rulings that would serve to meaningfully deter against deceptive interrogation tactics, and that require consideration of all scientifically-established factors that place innocent people at risk of false confession.

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Here, after isolating Mr. Fenderson for nearly three hours, he was told that he would not get a lawyer because officers could not contact an attorney via telephone and he could not afford to retain one himself. Int. at 4:50:40-44. Officers then, as they handcuffed Mr. Fenderson, told him that because he did not want to speak to police without an attorney, he would be taken back to the local jail—suggesting that the escalated police conduct was a *consequence* of his invocation.[23] Disregarding Mr. Fenderson's expressed confusion, the officers relied on such deception and "scare tactics" to elicit Mr. Fenderson's second *Miranda* waiver**.**

Misleading a suspect in such a manner about the meaning of the *Miranda* rights undermines the right itself, reduces *Miranda* waiver comprehension, and places those most prone to providing a false confession at significant risk of succumbing to coercive police pressure to waive their rights and confess. See *State of New Jersey* v. ODA-C, 250 NJ 408, 422 (NJ 2022) ("Comments that contradict and hollow out *Miranda* warnings can negate their effectiveness and cast doubt on whether a defendant fully understood and knowingly waived his rights."); *State v. Alexander*, 2018-1772 (La 12/3/18), 257 So 3d 672 (La 2018) (holding that lies about the purported "confidentiality" of the police interrogation "subverted the *Miranda* warning . . . [and] rendered defendant's statement involuntary").

[23] The detective told Mr. Fenderson "you don't got a lawyer," while asking if he could pay for one, without explaining to Mr. Fenderson that he would ultimately be provided a lawyer, for free, once he was arraigned. As aptly noted by Judge Garrett in dissent in the Court of Appeals, Mr. Fenderson's "decision to speak to the officers without counsel was a direct result of the uniformed officer cuffing his hands behind his back and . . . misleading statements that there was no attorney available to represent [him] and that [he] could not afford to retain an attorney." Dissent at 5.

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Even in the absence of policy trickery, "educated adults in the US … struggle to fully comprehend their [*Miranda*] rights[.]" Saul M Kassin et al, *The Right to Remain Silent: Realities and Illusions,* in The Routledge International Handbook of Legal and Investigative Psychology 4 (2019) (citations omitted); see also *State v Purcell*, 203 A3d 542, 564 (Conn 2019) ("Yet, even the [well educated] have difficulty understanding their *Miranda* warnings." (quotation marks and citations omitted; brackets in original)). The stress associated with police interrogation and accusations of wrongdoing further undermines *Miranda* comprehension. Kyle C Scherr and Stephanie Madon, *"Go Ahead and Sign": An Experimental Examination of Miranda Waivers and Comprehension*, 37(3) L Hum Behav 208, 209 (2013). Given the inherently stressful nature of custodial interrogations, studies have shown that "comprehension levels fall dramatically" for detained individuals. Kassin et al, *The Right to Remain Silent*, at 4. Moreover, and as noted above, young people, whose brains are still developing and maturing, are far less likely than adults to grasp the meaning and function of their fundamental rights in the interrogation room. Goldstein et al, *Evaluation of Miranda Waiver Capacity*, in APA Handbook of Psychology and Juvenile Justice at 475. Likewise, people with intellectual disabilities who, like adolescents, are at heightened risk of false confession, "display remarkably low abilities relevant to comprehending *Miranda* rights." Sydnee L Erickson, et al, *The Predictive Power of Intelligence*: Miranda *Abilities of Individuals with Intellectual Disability,* 44:1 L & Hum Behav 60, 62, 66 (2019).

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Accordingly, deception in the *Miranda* waiver process—even for adults without any known intellectual disabilities—is "particularly troublesome" as such deception "is more likely to render the [*Miranda*] advisement ineffective." *People v Smiley*, 530 P3d 639, 647 (Colo 2023). Accordingly, "affirmative deceit that induces a [*Miranda*] waiver is a recipe for suppression." *Id.*; *accord Leger v Com*, 400 SW3d 745, 750 (Ky 2013) (holding that "deception about the rights protected by *Miranda* and the legal effects of giving up those rights" is impermissible and render a waiver invalid).

To help prevent against such "affirmative deceit"[24] that leads to unknowing and involuntary waivers, this Court should find that a *Miranda* waiver that follows police deception about *Miranda* itself is invalid and involuntary, *per se*. At a minimum, such a rule should be adopted for young people under age 25, who, as discussed above, have diminished capacity to adequately understand and knowingly waive *Miranda* and are more susceptible to type of coercion and deception that can lead to false confessions.

CONCLUSION

Decades of research demonstrate that deceptive interrogation tactics—particularly the false evidence ploy—significantly increase the risk of false confessions, particularly among young adults like Mr. Fenderson. For all the reasons explained above, in order to protect Michigan residents against false confession and wrongful conviction, this Court should reverse the ruling below, hold that Mr. Fenderson's statements, which were the product of deception, are inadmissible, and

[24] *People v Smiley*, 530 P3d 639, 649.

in so ruling, hold that (1) custodial statements made after police use the "false evidence ploy"—when they lie to suspects about the existence of evidence against them—are *per se* involuntary and inadmissible, and (2) *Miranda* waivers that follow police deception about the *Miranda* rights themselves, are involuntary and thereby invalid, *per se*.

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CERTIFICATE OF SERVICE

On February 3, 2026, the foregoing was served via electronic filing on the counsel of record for all parties in this case.

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