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SUPREME COURT OF THE
STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN HAROLD SANDERS,

Defendant-Appellant.

Supreme Court No. _____

Court of Appeals No. 371677

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DEFENDANT-APPELLANT'S INTERLOCUTORY APPLICATION FOR LEAVE TO APPEAL

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QUESTION PRESENTED

I. To admit statements made by a defendant while detained for more than 48 hours before arraignment, the burden is on the government to prove the existence of a bona fide emergency or that other extraordinary circumstances necessitated the delay. In this case, the trial court granted the motion to admit statements extracted during Mr. Sanders' second interrogation despite its conclusion that the delay here was "egregiously suspect" and the prosecution's unequivocal concession that the unreasonable delay was not necessitated by a bona fide emergency or any extraordinary circumstance. Further, review of the relevant factors did not nullify this violation. The trial court improperly admitted the statements that were obtained during Mr. Sanders' illegal detention in violation of his Fourth and Fifth Amendment rights. Did the Court of Appeals err when it denied Mr. Sanders' interlocutory application for leave to appeal to address this crucial issue before his trial?

Mr. Sanders answers, "Yes."

The prosecutor answered, "No."

The trial court answered, "No."

The Court of Appeals answered, "No."

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STATEMENT OF JUDGMENT AND ORDER APPEALED FROM AND RELIEF SOUGHT

John Sanders files this interlocutory application for leave to appeal from an order issued November 20, 2024, by the Court of Appeals. (Exh. D.) Mr. Sanders respectfully requests that this Court grant his interlocutory application for leave to appeal because the circuit court erred in ruling that Mr. Sanders' statements were admissible following an evidentiary hearing that established the illegal and unjustified nature of his unreasonably prolonged interrogation. The Court of Appeals then erroneously denied his interlocutory application for leave to appeal. Mr. Sanders faces grave injustice if this matter goes to trial without proper appellate review of this issue.

STATEMENT OF JURISDICTION

This Court has jurisdiction to decide Mr. Sanders' interlocutory application for leave to appeal pursuant to MCR 7.303(B). Mr. Sanders is appealing an order of the Court of Appeals that was issued on November 20, 2024. (Exh. D.)

INTRODUCTION

This case involves a man who was charged with open murder and first-degree child abuse based on the tragic death of his infant daughter. Because the police flouted Mr. Sanders' rights, the court for Mr. Sanders' first trial properly suppressed the statements that are presently at issue. The jury never heard them during Mr. Sanders' trial which ended with convictions. The Court of Appeals affirmed Mr. Sanders' convictions, and this Court denied his application for leave to appeal in regard to that first trial. However, a new trial was ultimately granted after the circuit court conducted a total of four evidentiary hearings. That ruling was based on the trial court's finding that Mr. Sanders was prejudiced by the ineffective assistance of his initial trial counsel who failed to seek expert witness testimony in defense of Mr. Sanders. (Exh. B.)

The government now seeks to tip the scales in its favor using fruits of the poisonous tree. It is again attempting to admit the statements that had been properly suppressed during his first trial. Because the purported gatekeepers to the

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criminal justice system stripped Mr. Sanders of his rights in this matter, he filed an interlocutory application for leave to appeal with the Court of Appeals. That court denied his application. He respectfully requests that this Court obstruct that injustice by granting his interlocutory application for leave to appeal.

GROUNDS FOR GRANTING MR. SANDERS' INTERLOCUTORY APPLICATION FOR LEAVE TO APPEAL

It is critical for this Court to grant Mr. Sanders' application for leave to appeal on an interlocutory basis. The trial court improperly granted the motion to admit Mr. Sanders' statements. (Exh. A.) And the Court of Appeals erroneously denied his interlocutory application for leave to appeal. (Exh. D.) "The requirement that a defendant's statement be voluntary is based on the recognition that there are means, ranging from outright physical brutality to more refined and subtle methods, for 'overcoming a defendant's will.'" *People v Manning*, 243 Mich App 615, 625; 624 NW2d 746 (2000), quoting *Jackson v Denno*, 378 US 368, 389; 84 S Ct 1774; 12 L Ed 2d 908 (1964). While the delay is but one factor for this Court to consider in looking at the totality of the circumstances surrounding Mr. Sanders' statements, the government cannot meet its burden in the first instance because—as the government readily admits—the primary reason for its delay was the fact that the Lansing Police Department was supposedly laboring under the misapprehension that 72 hours was the permissible timeframe between detention and arraignment. (CH, 7.) Ignorance of the law certainly does not qualify as an extraordinary circumstance or a bona fide emergency. Detective Lewandowsky's uncontroverted testimony establishes that Mr. Sanders' rights were trampled by those who were supposed to serve and protect him. The trial court's error will result in substantial harm to Mr. Sanders if this Court does not review this issue and reverse the decision to make it congruent with the edicts of justice. Further, the caselaw in this area would benefit from additional guidance from this Court as further explained in the analysis.

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STATEMENT OF FACTS[1]

Mr. Sanders' charges stem from the Friday, January 4, 2013, death of his infant daughter, the government having accused Mr. Sanders of shaking his daughter or striking her head with such force as to cause her death. (WH, 22-24.) The Lansing Police Department (LPD) first interrogated Mr. Sanders at Sparrow Hospital on Friday, January 4, 2013. (WH, 27-28.) At the conclusion of that encounter, Mr. Sanders was arrested. (WH, 25-26; Exh. A, 2.) But Mr. Sanders was not arraigned until the following Monday, January 7, 2013, as the government concedes. (CH, 65.) This was more than 64 hours after he was arrested. (WH, 5.) Importantly, the police interrogated Mr. Sanders a second time on the day of, but before, his arraignment. (WH, 5; Exh. A, 2.)

As justification for the delay, Detective Mark Lewandowsky claimed it was his understanding—as well as past practice at the police department—that there was a 72-hour time limit to bring someone in for arraignment. (CH, 7.) He held this erroneous belief even though he had served as a field training officer and had held the rank of detective for six years by the time he interrogated Mr. Sanders. (CH, 6.) Perhaps not surprisingly, Detective Lewandowsky initially claimed that he was not familiar with any case law from the United States Supreme Court, but ultimately conceded he was intimately familiar with *Miranda*[2]. (CH, 6.) Nonetheless, it was a purported complete newsflash to the detective that the Supreme Court had promulgated the 48-hour standard nearly a quarter of a century before he interrogated Mr. Sanders. (CH, 5.) After much quarreling, Detective Lewandowsky eventually agreed that it is critically important for the people who enforce the law to know what the law is. (CH, 27-28.) Additionally, alternate explanations for the delay were offered, including that additional medical evidence from the autopsy was gathered for the investigation. (WH, 24, 28.) And the detective also claimed that as

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[1] For ease of reference, transcripts will be delineated as follows:
WH Motion hearing, 04/05/2024
CH Motion hearing, 04/19/2024

[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602 (1966)

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of Sunday morning, January 6, 2013, the police report was still not completed and the case had not yet been reviewed by the prosecutor's office. (WH, 29-30.)

Detective Lewandowsky eventually confirmed that there was no emergency or extraordinary circumstance that prevented the timely arraignment of Mr. Sanders. (CH, 8-12.) Additionally, none of the evidence that would ultimately be used against him would have dissipated if Mr. Sanders had been released while investigators continued to gather information. (CH, 14.) Also, the sole purpose of the second interrogation was to obtain inculpatory statements because Detective Lewandowsky admitted that nothing Mr. Sanders could have said would have resulted in his release. (CH, 14-15.)

On June 24, 2024, the trial court issued an opinion and order, summarizing the factual background and procedural history of the instant case from inception. (Exh. A.) A majority of the trial court's legal analysis turned on the *Riverside* and *Cipriano* opinions.[3] (Exh. A.) Although it admitted Mr. Sanders' statements from the second interrogation, the trial court made several findings that deserve emphasis. (Exh. A, 17.) The trial court admonished the officers for engaging in efforts to avail themselves of "an illegal and unconstitutional opportunity to justify a warrantless arrest of an individual after an arrest had already been made." (Exh. A, 15.) Indeed, the trial court found it "highly suspect" that law enforcement continued to detain Mr. Sanders while awaiting autopsy results, and "while aiming to take another bite at the 'interrogation apple' with fresh, updated evidence in mind and at its disposal." (Exh A, 14.) Doubtless, that was based on Detective Lewandowsky's revelation that he could not possibly have performed the same interrogation without autopsy results. (CH, 40.) Regarding the unreasonable nature of the delay, the trial court seized on the fact that Mr. Sanders never appeared to be a flight risk and he did not seem to present a danger to the community or to public safety if he had been released. (Exh. A, 14.)

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[3] *County of Riverside v McLaughlin*, 500 US 44; 111 S Ct 1661; 114 L Ed 2d 49 (1991), and *People v Cipriano*, 431 Mich 315; 429 NW2d 781 (1988).

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Unlike Detective Lewandowsky and the government, the trial court astutely and correctly recognized that the absence of visible emotional reactions does not equate to an absence of intense internal turmoil or an immense psychological impact. (Exh. A, 10.) As such, the trial court stated that it is of paramount importance that the trier of fact empathize with Mr. Sanders given the naturally devastating impact of the sudden, unexpected loss of his infant daughter. (Exh. A, 9.) Also of note here, the trial court recognized that black individuals like Mr. Sanders are disproportionately vulnerable to coercion and experience additional pressure during interrogation. (Exh. A, 12.)

In sum, the trial court held that three *Cipriano* factors especially suggest involuntariness: (1) the length of Mr. Sanders' detention before he gave the statement in question, (2) the unnecessary delay in bringing him before a magistrate before he made the statement, and (3) the repeated and prolonged questioning Mr. Sanders was forced to endure. (Exh. A, 16-17.) Nevertheless, the remaining factors were weighed against Mr. Sanders. (Exh. A, 16-17.) While the trial court clarified that it was not adopting a novel numerical or mathematical approach to ascertain the totality of the circumstances, it nonetheless erred in ruling that Mr. Sanders' statements were admissible. (Exh. A, 17.) Mr. Sanders filed an interlocutory application for leave to appeal with the Court of Appeals and that application was denied. (Exh. D.) But Mr. Sanders will suffer a grave injustice if the trial court's ruling on his inadmissible statements is not rectified before the trial begins. (Exh. A.) Therefore, Mr. Sanders respectfully urges this Court to grant his interlocutory application for leave to appeal to correct the erroneous rulings of both the trial court and the Court of Appeals.

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STANDARD OF REVIEW

A trial court's factual findings regarding a defendant's knowing and intelligent waiver of *Miranda* rights are reviewed for clear error. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983). The meaning of "knowing and intelligent" is a question of law that is reviewed de novo. *McDougall v Schanz*, 461 Mich 15, 24; 597 NW2d 149 (1999).

ANALYSIS

I. To admit statements made by a defendant during a more than 48-hour detainment before arraignment, the burden is on the government to prove the existence of a bona fide emergency or that other extraordinary circumstances necessitated the delay. Here, the government conceded it could not meet that burden. Thus, Mr. Sanders' statements should have been suppressed.

The Fifth Amendment of the United States Constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." US Const, Am V; see also Const 1963, art 1, § 17. This federal constitutional guarantee was made applicable to the states through the Fourteenth Amendment. US Const, Am XIV; *Malloy v Hogan*, 378 US 1, 3; 84 S Ct 1489; 12 L Ed 2d 653 (1964). Courts have the authority to suppress statements obtained by law enforcement in contravention of the Fifth Amendment to the Constitution of the United States. See, e.g., *People v Tanner*, 496 Mich 199, 206-207; 853 NW2d 653 (2014).

In *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965), this Court held that when a defendant contends that statements that had been made were involuntary, the trial court must conduct a hearing outside the presence of the jury to determine the issue of voluntariness, at which the defendant may take the stand without waiving the right not to testify at trial. As the United States Supreme Court has announced:

> [T]his Court has recognized that coercion can be mental as well as physical, and that the blood of the accused is not the only hallmark of

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> an unconstitutional inquisition. A number of cases have demonstrated, if demonstration were needed, that the efficiency of the rack and the thumbscrew can be matched, given the proper subject, by more sophisticated modes of ["]persuasion." [*Denno*, 378 US at 389-390, quoting *Blackburn v Alabama*, 361 US 199, 206; 80 S Ct 274; 4 L Ed 2d 242 (1960).]

A motion to suppress evidence must be made in advance of trial and this requirement applies to a motion to suppress an involuntary confession. *People v Gray*, 45 Mich App 643, 644; 207 NW2d 161 (1973), aff'd 393 Mich 1; 222 NW2d 515 (1974); *People v Leonard*, 81 Mich App 86, 89; 264 NW2d 130 (1978). As the *Manning* Court noted, "It is at this point that the Fifth Amendment protection against self-incrimination intersects with the Fourth Amendment protection against unreasonable searches and seizures, because a defendant may argue that an unreasonable delay between an arrest without a warrant and the district court arraignment resulted in an involuntary confession." *Manning*, 243 Mich App at 626. And it is precisely this intersection at issue here. Mr. Sanders was unlawfully detained, and this ultimately led to a statement that must be suppressed.

In *Gerstein v Pugh*, 420 US 103, 114, 125; 95 S Ct 854; 43 L Ed 2d 54 (1975), the United States Supreme Court held that an arrest becomes unreasonable under the Fourth Amendment if a person is held for an unreasonable time before a judicial officer determines that there was probable cause for the arrest. In *Riverside*, the United States Supreme Court held that any delay of more than forty-eight hours must be presumed unreasonable. *Riverside*, 500 US at 56-57. "The burden then falls on the government to demonstrate that extraordinary circumstances necessitated the delay." *Manning*, 243 Mich App at 628, citing *Riverside*, 500 US at 57.

As far as what constitutes an unreasonable delay, the United States Supreme Court provided some examples: delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay's sake. *Riverside*, 500 US at 56-57. The Court also made clear that in evaluating whether a delay in a particular case is unreasonable,

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courts must allow "a substantial degree of flexibility." *Id.* at 56. For example, "[c]ourts cannot ignore the often unavoidable delays in transporting arrested persons from one facility to another, handling late-night bookings where no magistrate is readily available, obtaining the presence of an arresting officer who may be busy processing other suspects or securing the premises of an arrest, and other practical realities." *Id.* at 56-57. But no such situation existed in the instant matter. Indeed, the government conceded that there was no justifiable reason for the delay. (WH, 59-60; CH, 54, 65-67.)

In *Riverside*, the Supreme Court's answer to the delay issue was straightforward:

> Where an arrested individual does not receive a probable cause determination within 48 hours, the calculus changes. In such a case, the arrested individual does not bear the burden of proving an unreasonable delay. Rather, the burden shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance. *The fact that in a particular case it may take longer than 48 hours to consolidate pretrial proceedings does not qualify as an extraordinary circumstance. Nor, for that matter, do intervening weekends.* A jurisdiction that chooses to offer combined proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest. [*Id.* (emphasis added).]

In *Manning*, the Court of Appeals confronted the intersection of the Fifth Amendment protection against self-incrimination with the Fourth Amendment protection against unreasonable searches and seizures because the "delay [there] was clearly more than forty-eight hours." *Manning*, 243 Mich App at 626. Thus, the *Manning* Court dealt with the question as to the appropriate remedy for the government's delay and violation of Mr. Manning's Fourth Amendment rights. *Id.* In sum, the issue was whether Mr. Manning's statements should be suppressed because of the delay. *Id.*

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The *Manning* Court concluded that *Riverside* did not supplant *Cipriano* but rather, that the two opinions "dovetail." *Id.* at 617. Before *Riverside*, this Court established a test to determine whether a confession or statements made during a delay between arrest and arraignment must be suppressed. *Cipriano*, 431 Mich at 334. Here, the government heavily relies upon the *Manning* Court's decision that "[t]he proper analysis is voluntariness under the *Cipriano* factors," and that "[w]hen a confession was obtained during an unreasonable delay before arraignment, in Michigan the *Cipriano* factors still must be applied," and that "unreasonable delay is but one factor in that analysis." *Manning*, 243 Mich App at 643; see also Exh. C, 20.

However, the government's analysis overlooks some of the subtleties and nuances inherent in *Riverside*. Indeed, the *Manning* Court stated—after acknowledging that *Riverside* did not supplant *Cipriano*—that a "sufficiently long delay in itself will be enough to make a confession involuntary under *Cipriano*." *Id.* at 638. The *Manning* Court further cautioned that "[u]nder the balancing analysis of *Cipriano*, officers obtaining confessions do run a greater risk of having them suppressed as involuntary when the arraignment is unnecessarily delayed." *Id.* at 641.

In *Gerstein*, 420 US at 125, the United States Supreme Court held that the Fourth Amendment requires a state to "provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." In *Riverside*, the Court defined "promptly after arrest" as meaning that judicial determinations of probable cause must occur within forty-eight hours of arrest. *Riverside*, 500 US at 50. As such, the holding in *Riverside* is grounded in the Fourth Amendment and, indeed, the Supreme Court clearly stated that the Fourth Amendment *requires* a judicial determination of probable cause as a prerequisite to a detention following arrest. *Id.* Respectfully, this Court's assertion in *Cipriano*, 431 Mich at 332, that "the prompt-arraignment requirement was never elevated by the

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United States Supreme Court to the level of a constitutional right" appears to be wholly incorrect in light of *Gerstein* and *Riverside*.

While a Fourth Amendment violation need not require automatic suppression, the analysis *must* focus on whether the evidence was obtained by exploitation of a defendant's Fourth Amendment rights; in other words, whether the evidence is the product of illegal government activity. See *New York v Harris*, 495 US 14, 19; 110 S Ct 1640; 109 L Ed 2d 13 (1990). Here, Mr. Sanders was arrested and held in police detention for more than 64 hours before he was arraigned. There were none of the "often unavoidable delays in transporting arrested persons from one facility to another, handling late-night bookings where no magistrate is readily available, obtaining the presence of an arresting officer who may be busy processing other suspects or securing the premises of an arrest, and other practical realities." See *Riverside*, 500 US at 57. Absolutely none. Indeed, the detective instead admitted that it was operating under the erroneous assumption that it had 72 hours in which to have Mr. Sanders arraigned. (CH, 7-8.) But relying on false assumptions does not validate the violation of Mr. Sanders' constitutionally guaranteed rights. Under *Riverside*, this delay was presumptively unreasonable, and the government bears the burden of demonstrating the existence of a bona fide emergency or other extraordinary circumstance. The government concedes that it could not have done so because no such circumstances existed here. (WH, 59-60; CH, 8-15, 54, 65-67.)

There is absolutely nothing in the record suggesting that Mr. Sanders was held for more than 64 hours because of any emergency or extraordinary circumstance. (CH, 8-15.) Rather, Mr. Sanders was held *precisely* so that the police could continue to investigate the alleged crime. (CH, 65-66.) And the trial court admonished this as being both illegal and unconstitutional. (Exh. A, 15.) Further, in the 36 pages of its brief that focus almost exclusively on whether Mr. Sanders' statements to the police were voluntary, the government does not ever address the *Riverside* violation. And even the *Manning* Court acknowledged that the "longer the delay, the greater the probability that the confession will be held involuntary" and a long enough delay *alone* can make a confession involuntary. *Manning*, 243 Mich

App at 643. Indeed, to find otherwise would allow the police to hold an accused indefinitely before an arraignment and allow an otherwise so-called "voluntary" confession to be admissible at trial. And this is exactly what has happened in the instant matter.

Therefore, there being a violation of Mr. Sanders' Fourth Amendment rights, this Court should proceed under the *Brown*, *Dunaway*, and *Taylor* cases and determine whether there were intervening events breaking the causal connection between the unreasonable pre-arraignment delay and Mr. Sanders' statements. Only then can it be said that the statements were an act of freewill that would purge the primary taint. In *Taylor v Alabama*, 457 US 687, 690; 102 S Ct 2664; 73 L Ed 2d 314 (1982), the United States Supreme Court excluded the petitioner's confession because it was the fruit of his illegal arrest. The Court explained why the confession was invalid notwithstanding the three *Miranda* warnings that the petitioner received before confessing:

> In *Brown [v Illinois*, 422 US 590; 95 S Ct 2254; 45 L Ed 2d 416 (1975)] and *Dunaway* [*v New York*, 442 US 200; 99 S Ct 2248; 60 L Ed 2d 824 (1979)], this Court firmly established that the fact that the confession may be "voluntary" for purposes of the Fifth Amendment, in the sense that *Miranda* warnings were given and understood, is not by itself sufficient to purge the taint of the illegal arrest. In this situation, a finding of "voluntariness" for purposes of the Fifth Amendment is merely a threshold requirement for Fourth Amendment analysis. The reason for this approach is clear: "[t]he exclusionary rule, . . . when utilized to effectuate the Fourth Amendment, serves interests and policies that are distinct from those it serves under the Fifth" Amendment. If *Miranda* warnings were viewed as a talisman that cured all Fourth Amendment violations, then the constitutional guarantee against unlawful searches and seizures would be reduced to a mere "'form of words.'" [*Taylor*, 457 US at 690 (internal citations omitted).]

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For the reasons set forth in this analysis, there were no intervening events breaking the causal connection in this case between the unreasonable pre-arraignment delay and Mr. Sanders' statements. Moreover, with respect to the unreasonable pre-arraignment delay, it should be noted that the delay in securing the determination of probable cause itself allowed the police to gather additional evidence against Mr. Sanders *precisely* so that an arrest warrant could be obtained. In other words, the delay certainly has the appearance of being used as a tool to extract statements made by Mr. Sanders—who was under duress because he had just lost his infant daughter—and those statements were then used to secure his arrest warrant. Again, because there were no attenuating circumstances breaking the causal chain between the unreasonable pre-arraignment delay and Mr. Sanders' statements, the statements should be suppressed. Accordingly, this Court should reverse the trial court's decision granting the government's motion to admit Mr. Sanders' statements.

A. Even under the *Cipriano* factors, Mr. Sanders' statements should be suppressed because of the unreasonable delay and unnecessary length of time of his detention, and because he was in shock and operating under the duress of just having lost his infant daughter.

Among the factors the *Cipriano* Court set out for determining whether a statement is voluntary are the length of the detention of the accused before he gave the statement in question, whether there was an unnecessary delay in bringing him before the magistrate before he gave his statements, and whether the accused was "injured, intoxicated or drugged, or in ill health when he gave the statement." *Cipriano*, 431 Mich at 334.

Here, the government has already conceded that the length of Mr. Sanders' pre-arraignment detention violated the law. (WH, 59-60; CH, 54, 65-67.) Further, the government has admitted that the delay was unreasonable, which obviously includes the concept of "unnecessary," and it has failed to meet its burden of showing any emergency or extraordinary circumstance that justified Mr. Sanders' illegally lengthy detention. (CH, 59-60.) It comes as no surprise that the trial court

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correctly concluded that these factors clearly favor suppression of Mr. Sanders' statements. (Exh. A, 17.)

With regard to Mr. Sanders' health, though, the trial court got it wrong when it concluded that he was not in ill health when he made his statements. (Exh. A, 16.) The government harps that Mr. Sanders exhibited "flat" emotions in an attempt to claim he was not affected by his daughter's death. (WH, 42; CH, 29.) It sought to support this by repeatedly extracting a statement from the detective that Mr. Sanders had said he was having a bad year because he was being charged with first-degree murder as opposed to losing a child. (WH, 50; CH, 28-29, 38, 64.) It should be noted, though, that while the detective stated that the right answer should have been "my child died," Detective Lewandowsky—a seasoned and experienced officer—admitted on the stand that he did not immediately find fault with that as he did not "grab that until I reviewed it" in preparation for testifying at the hearing. (CH, 38.) Begrudgingly, Detective Lewandowsky was forced to admit that people's reactions under stress and during traumatic events span the gamut and that Mr. Sanders was not outside that range. (CH, 36-37.) To be sure, it cannot be denied that Mr. Sanders was extremely upset and in severe emotional distress over his daughter's death. Just because he did not put on the emotional show that the government felt he must in order to "prove" his devastation does not mean that he was not feeling it. And the trial court likewise astutely observed that trauma does not manifest uniformly in people and it engenders a diverse range of reactions shaped by myriad factors including personal experiences as well as coping mechanisms. (Exh. A, 9-12.) But then the trial court inexplicably omitted this reasoning when it considered Mr. Sanders to not be in ill health. (Exh. A, 16.)

Regardless of the government's allegations, Mr. Sanders clearly was in extreme distress and duress under the circumstances. Not only had he just lost his daughter under tragic circumstances, he was also unnecessarily separated from any consolation his loved ones could have provided. And on top of his daughter's death, he was aware that he was likely going to be charged with her death. He had been arrested and unreasonably detained for more than 64 hours before appearing in

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front of a magistrate. As the government stated, the detective's last interrogation of Mr. Sanders came 64 hours and 35 minutes after his initial detention. (CH, 51.) The "heightened risk of coercion" that the trial court recognized in this case reached dizzying levels because of the repeated and protracted nature of the questioning during a time when he was facing the unexpected and unexplained loss of his child. (Exh. A, 13.) The government bemoaned the fact that Mr. Sanders changed his story; however, the trial court recognized and explained that this can happen during interrogation because of various psychological, emotional, and situational factors, many of which do not necessarily indicate guilt. (Exh. A, 11.) The government placed more weight on that factor than is relevant.

In engaging in the balancing process that *Cipriano* outlines, courts are "free to give greater or lesser weight to any of the *Cipriano* factors, including delay in arraignment." *Manning*, 243 Mich App at 643. Here, the trial court reasoned that three factors weighed against the government. (Exh. A, 19.) Turning to Mr. Sanders' education, the fact that he took a handful of college courses certainly does not eclipse the extensive training that Detective Lewandowsky unleashed upon Mr. Sanders while he was in an emotionally and mentally subtracted capacity. Plenary review of Mr. Sanders' criminal history reveals that before the interrogation in question, he had always chosen the most expedient resolution and entered a guilty plea without the need for the sort of probing by law enforcement that happened here. In other words, he was *not* learned in that aspect of the criminal justice process.

The trial court also stated that there was no physical or mental abuse here—another factor it placed as a "win" in the government's column. But it must be noted that it is far from dispositive that neither happened here because, as already explained, the Supreme Court has clarified that given the right subject, the efficiency of the rack and thumbscrew can be matched by more sophisticated modes of persuasion. *Denno*, 378 US at 389-390. In addition to the shocking loss of his daughter, isolating Mr. Sanders from his loved ones and mental health professionals during a time of unexpected and immense grief is certainly a form of

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mental abuse. And this did not happen in a vacuum. Indeed, he was also repeatedly questioned by authorities in a custodial setting while knowing that he was suspected of the very act that led to his grief. Those circumstances were not only unnecessary, but negatively persuasive as well.

Crucial here, none of the relevant case law calls for a trial court to simply tally the number of factors that seemingly favor one side or another and award the relief requested to the one with more checkmarks. But despite the trial court noting that it was *not* adopting a mathematical approach, the evidence to the contrary shows otherwise. Indeed, in its ruling, the trial court made note of the following factors and—because there were more in favor of the government—ruled against Mr. Sanders as follows:

Factors in the Government's Favor

(1) Age;

(2) Education/Intelligence;

(3) Previous Experience with Police;

(4) Advisement of Constitutional Rights;

(4) Injury/Intoxication/Health;

(6) Physical Abuse; and

(7) Threats of Abuse.

Factors in Mr. Sanders' Favor

(1) Prolonged Questioning;

(2) Length of Detention; and

(3) Unnecessary Delay.

The trial court found one factor as neutral—that of deprivation. The trial court explained that while Mr. Sanders was not deprived of food, sleep, or medical attention he was also not offered any mental health treatment regarding the abrupt death of his daughter.

It should be noted here that the trial court's findings are further contrary to the evidence in two significant areas. In relation to Mr. Sanders' health, his mental health was surely a factor at the time of the interviews. He suffered a tremendous

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and unexpected loss, and he was undergoing unimaginable stress. And with regard to threats of abuse, the circumstances Mr. Sanders faced certainly matched the "rack and thumbscrew" analogy in *Denno* and likely overcame his will. The trial court correctly stated that "the improper reasoning behind the delay is readily apparent." (Exh. A, 14.) He was unconstitutionally held so authorities could "take another bite at the 'interrogation apple' with fresh, updated evidence in mind and at its disposal, which if favorable to the government, could have been used to pressure, scare, or intimidate [Mr. Sanders] into producing an involuntary confession." (Exh. A, 14.) Indeed, Mr. Sanders' statements were not "freely and voluntarily made" under the circumstances here. See *Cipriano*, 431 Mich at 334. But the trial court's recognition of this only adds confusion to its questionable weighing of the *Cipriano* factors and its ruling to allow Mr. Sanders' statements to enter. The trial court should have suppressed them, and the Court of Appeals should have reviewed this issue as it will directly influence the constitutionality of Mr. Sanders' trial and the confidence in any verdict rendered by the trier of fact.

CONCLUSION

The government conceded the unreasonableness of the delay in Mr. Sanders' arraignment and failed to provide adequate justification to overcome this error. If the trial court's erroneous ruling is allowed to stand, law enforcement will only be emboldened to continue to feign ignorance of the law and disregard the rights of the accused under similar circumstances. Therefore, Mr. Sanders respectfully requests that this Court grant his request to file an interlocutory appeal and reverse the trial court's decision to admit his statements.

Respectfully Submitted,

CHARTIER & NYAMFUKUDZA, P.L.C.

Dated: 12/18/2024

/s/ ***Mary Chartier***

Mary Chartier

Attorney for John Sanders

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WORD COUNT CERTIFICATION

Per MCR 7.312(A) the number of countable words in the Statement of Judgment, Order Appealed From, and Relief Sought; Statement of Jurisdiction; Introduction; Statement of Facts; Ground for Granting Mr. Sanders' Interlocutory Application for Leave to Appeal; Standard of Review; Analysis (including footnotes); and Conclusion is 5384.

Dated: 12/18/2024 /s/ *Mary Chartier*

Mary Chartier

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the attorneys of record, and, if required, all parties in the above case, by mailing same to them at their respective addresses as disclosed by the pleading of record with postage fully prepaid on December 18, 2024, by U.S. First Class Mail or by ___ Fax ___ Hand Delivery ___ Express Mail __X_ Other (MiFile).

/s/ *Kim Barrus*

Kim Barrus

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TABLE OF EXHIBITS

Exhibit A	Trial Court Opinion and Order, dated 06/24/2024
Exhibit B	Trial Court Opinion and Order for New Trial, dated 08/17/2022
Exhibit C	Government's Motion to Admit Statements, dated 02/05/2024
Exhibit D	Court of Appeals Order, dated 11/20/2024