

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,**

-vs-

**Supreme Court No. 167391
Court of Appeals No. 367926
Circuit Court No. 23-000412-01-FC**

**DAREN DONELL FENDERSON,
Defendant-Appellant.**

_____/

**Daren Fenderson's Supplemental Brief in Support of
his Interlocutory Application for Leave to Appeal**

Oral Argument Requested

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Statement of Questions Presented

Where Mr. Fenderson invoked his right to counsel and was told by the police that he does not get an attorney, did the police conduct render his subsequent waiver of the right to counsel unknowing and involuntary?

Mr. Fenderson answers, "Yes"

The government answers, "No."

The Circuit Court answers, "Yes."

The Court of Appeals majority answers, "No."

The Court of Appeals dissent answers, "Yes."

Would the use of Mr. Fenderson's statements made after the invalid waiver violate his state and federal constitutional rights to due process and against self-incrimination?

Mr. Fenderson answers, "Yes."

The government answers, "No."

The Circuit Court answers, "Yes."

The Court of Appeals majority answers, "No."

The Court of Appeals dissent answers, "Yes."

Argument Summary

Mr. Fenderson invoked his right to counsel during a custodial interrogation. Rather than stopping the interrogation, the detective affirmed that Mr. Fenderson would tell him what he wanted to hear. The detective then asked Mr. Fenderson whether he had retained counsel. When Mr. Fenderson asked if he could have an appointed attorney, the detective said he was going to see if there was an attorney available. Even though the detectives spent only 10 to 15 minutes before determining there was no attorney available, they left Mr. Fenderson alone in the interrogation room for over two and a half hours. Mr. Fenderson spent the majority of that time in handcuffs and without updates.

After the detective finally returned to the interrogation room, Mr. Fenderson asked, "Where's my lawyer?" The detective said, "You don't get one." When Mr. Fenderson expressed confusion, the detective said, "Ain't nobody coming and you ain't got the money." The detective told Mr. Fenderson that he was going to be returned to the detention center and that the detective would be submitting a warrant request based on the statements Mr. Fenderson made.

The detective said he would not talk to Mr. Fenderson further unless Mr. Fenderson said he wanted to talk to the detective without an attorney. Mr. Fenderson was demonstrably upset, repeatedly said he was confused, and asked for clarification. But the detectives did not clarify and instead, coerced an unknowing and involuntary second *Miranda* waiver from Mr. Fenderson.

The trial court found that the detectives' conduct saying they were calling for an attorney, leaving Mr. Fenderson alone for an extended period, and then returning and telling him he was not getting an attorney amounted to a scare tactic. The trial court concluded that this scare tactic had a coercive effect and undermined the advice of rights. As a result, Mr. Fenderson's second waiver of his right to counsel was not voluntary or valid and the trial court suppressed his subsequent statements.

The Court of Appeals majority reversed, holding that the detectives' conduct was not a scare tactic and did not have a coercive effect. In reaching this conclusion, the Court of Appeals engaged in a de novo review of the facts and failed to afford the trial court the deference required by the clearly erroneous standard of review. More significantly, the

Court of Appeals majority failed to recognize or consider how the detectives' conduct directly frustrated the purpose of advising a suspect of their rights. Even though Mr. Fenderson was told he had the right to counsel, when he asked for that counsel, the detective suggested that Mr. Fenderson could only have an attorney if he could retain one. Then, the detective in no uncertain terms told Mr. Fenderson that he would not get an attorney.

When officers engage in conduct that directly undermines the *Miranda* warnings, as the detectives did in this case, they eviscerate the purpose of the warnings. Here, the detectives left Mr. Fenderson unable to make a knowing and voluntary waiver of his rights. Well-established federal law prohibits police from extracting confessions by engaging in conduct that directly undermines the constitutionally required *Miranda* warnings. This prohibition requires the suppression of Mr. Fenderson's confession in this case. Moreover, Michigan's Constitution includes language suggesting even broader protections and further supports the trial court's determination that Mr. Fenderson's confession must be suppressed. This Court should issue an opinion affirming the trial court and clarifying that once a suspect invokes the right to counsel, the police must not engage in conduct or make statements that undermine the critical procedural safeguards necessary to protect the suspect from the inherently coercive effect of police interrogations.

Statement of Facts

Introduction

Daren Fenderson unequivocally invoked his right to counsel during a custodial interrogation. (Interrogation Video, August 3, 2023 (Appendix A at 2:29¹; Preliminary Examination Transcript, January 5, 2023 (Appendix C, p 34²); Government's Brief on Appeal, December 12, 2023 (Appendix L, p 181)). The trial court found that officers then engaged in a course of conduct to scare Mr. Fenderson into rescinding his invocation. (Motion Hearing, September 6, 2023 (Appendix G, p 120-121). Detectives said they would try to find an attorney for Mr. Fenderson and left him in the interrogation room for nearly three hours, after which they told him he did not get an attorney. (Appendix A at 5:15). The police told Mr. Fenderson that no attorney was available and pointed out that Mr. Fenderson did not have the money to hire one, suggesting that Mr. Fenderson would only be able to have an attorney if he could pay for one. (Appendix A at 5:15-5:17). The trial court held that the officers' conduct rendered Mr. Fenderson's subsequent waiver of his right to counsel and statements involuntary and violated Mr. Fenderson's rights to due process and against self-incrimination. (Appendix G, pp 121-122).

Police Interrogation of Mr. Fenderson

Mr. Fenderson was arrested on August 2, 2022, because he was a suspect in a potential homicide. (Appendix C, pp 13-14, 22-23). At the time, Mr. Fenderson was 24 years old, and it was the first time he was brought in for questioning regarding an adult felony

¹ References to the video are based on the time stamp indicated in the video file (i.e. the time of day during which that portion was recorded).

² Throughout this brief, page numbers of appendices refer to the pagination appearing in blue font, in the bottom, right-hand corner of Mr. Fenderson's concurrently filed Index and Appendices. See MCR 7.312(D); MCR 7.212(J)(2).

charge.”³ (Appendix A at 1:01-1:02, 1:05-1:06, 5:19). Police brought Mr. Fenderson to Detroit Public Safety Headquarters, where he was informed of his *Miranda* rights (Appendix C, p 31). While Mr. Fenderson agreed to waive his rights, he was visibly intoxicated, lethargic, and unable to knowingly or voluntarily participate in an interrogation. (Appendix C, pp 23-28). Mr. Fenderson was transported by police to the Detroit Detention Center where he remained in custody. (Appendix C, pp 23-28).

The next day, police brought Mr. Fenderson back to the Public Safety Headquarters. (Appendix C, p 28). At around 1 p.m., Detective Beasley read Mr. Fenderson his constitutional rights off the Detroit Police Department’s advice of rights form. (Appendix A at 1:01; Appendix C, pp 28, 32). Mr. Fenderson initialed the written advice of rights form and signed it. (Appendix C, p 28). Mr. Fenderson asked Detective Williams, “Is it best to have a lawyer here?” (Appendix A at 1:03-1:04). Detective Williams responded, “That is up to you, sir.” (Appendix A at 1:04). Mr. Fenderson said, “I mean...I don’t know. Is it going to take long for one to get here?” (Appendix A at 1:04). Detective Williams said, “I have no idea. Do you have a lawyer?” (Appendix A at 1:04). Mr. Fenderson said he did not, but mentioned the portion of the advice of rights that said a lawyer could be appointed for him. (Appendix A at 1:04). Mr. Fenderson said he did not want to waste anyone’s time and wanted to “get this over with.” (Appendix A at 1:04). Mr. Fenderson then agreed to talk to the detectives without a lawyer. (Appendix A at 1:04-1:05). The detectives did not explain the process by which an attorney could be appointed. (Appendix A at 1:03-1:05).

Then, the detectives questioned Mr. Fenderson over the next hour and a half. (Appendix A 12:25-2:29). Eventually, Mr. Fenderson said, “How about this? I’m going to tell y’all what y’all want to hear. **Can I have a lawyer first?**” (Appendix A at 2:29) (emphasis added). Detective Beasley understood Mr. Fenderson was invoking his right to counsel. (Appendix C, p 34). The detectives did not immediately cease the interrogation. (Appendix

³ Court records indicate that this case is Mr. Fenderson’s first and only adult criminal felony proceeding. During the interrogation, Mr. Fenderson told the detectives that he was once in a juvenile placement because “...my guardian died, and my mama didn’t want me back...” (Appendix A at 1:02). In addition, Mr. Fenderson told the detectives he was once arrested for fighting in high school. (Appendix A at 1:02). Mr. Fenderson also told the detectives that this was his “...first time here.” (Appendix A at 1:05).

A at 2:29-2:30). Instead, Detective Beasley asked Mr. Fenderson the following series of questions:

Detective Beasley: You're going to tell me what I want to hear?

Daren Fenderson: Yep.

Detective Beasley: Do you have a lawyer?

Daren Fenderson: No. Y'all are going to appoint one, right?

Detective Beasley: Okay...real quick...Who retained you last time?

Daren Fenderson: Who?

Detective Beasley: Who retained you last time? Who retained – what judge – what lawyer did you have last time? You had a house lawyer?

Daren Fenderson: I don't know.

Detective Beasley: I mean a paid lawyer?

Daren Fenderson: I ain't been in trouble in a long time, so I really don't know.

Detective Beasley: Okay. All right. Just hang tight.

Daren Fenderson: Okay. Do you know how long it's going to take?

Detective Beasley: Don't know.

Daren Fenderson: Okay.

Detective Beasley: It might take a minute and could be quick. Make a couple phone calls.

(Appendix A at 2:29-2:30). The detectives left Mr. Fenderson alone in the interrogation room.

Detectives Beasley and Williams called the control center to get “a show cause” or “show-up” attorney. (Appendix C, pp 36-37, 48). According to Detective Williams, there was an attorney on duty that day, but she said she was only available for line-ups. (Appendix C, p 48). Detective Williams testified there were ongoing efforts to try to get an attorney after that but did not specifically describe them. (Appendix C, p 48-49). In total, Detective

Williams estimated that he only spent about 10 or 15 minutes actually trying to find an attorney. (Appendix C, p 49). He did not document his efforts. (Appendix C, p 49). According to Detective Williams, the detectives were not able to locate an attorney to come attend the interrogation. (Appendix C, p 49).

Mr. Fenderson remained in the interrogation room alone, where he worried aloud that the police were trying to force him to “confess.” (Appendix A at 2:32) (Appendix C, 52). He lamented, “Man, they’re trying to get me to confess to some shit I ain’t do. I knew this was gonna happen. I knew this was gonna happen.” During this time, Mr. Fenderson covered his face with his hands and appeared distressed. (Appendix A at 2:32).



Screenshot from Appendix A at 2:32:57

After about 40 minutes, the door opened, and someone told Mr. Fenderson that they were working on getting an attorney for him. (Appendix A at 3:11). Mr. Fenderson told the person at the door that he had not yet had his “meds.” (Appendix A at 3:11). He asked to use the bathroom after which Mr. Fenderson was returned to the interrogation room in handcuffs. (Appendix A at 3:16). The detectives did not give Mr. Fenderson any updates for about two hours. Mr. Fenderson spent that time alone in the interrogation room restrained in handcuffs. (Appendix A at 3:13-5:14).

About two hours and 45 minutes after Mr. Fenderson asked for an attorney, Detective Beasley returned to the interrogation room, along with another officer. (Appendix A at 5:15). The other officer removed the handcuffs that Mr. Fenderson had been wearing, only to turn him around and start placing another pair on him. (Appendix A at 5:15).

Mr. Fenderson appeared perplexed and asked, “Where’s my lawyer?” (Appendix A at 5:15). The detective said, “You don’t get one.” (Appendix A at 5:15). Mr. Fenderson expressed confusion, and the detective clarified that they did not have a lawyer for Mr.

Fenderson. (Appendix A at 5:15). Mr. Fenderson and the detective had the following exchange:

Daren Fenderson: What? Where my lawyer?

Detective Beasley: You don't get one.

Daren Fenderson: Wait. Huh?

Detective Beasley: You don't have a lawyer, because... You got one?

Daren Fenderson: No. You said that you're going to call one.

Detective Beasley: We tried to call one and ain't nobody available. You ain't got no money. So...

Daren Fenderson: Yeah, I do. The money that I came in with. You can't use it?

Detective Beasley: Can't use that money.

Daren Fenderson: Oh, come on. So, what's going on?

Detective Beasley: You said you want an attorney. I can't talk to you no more without an attorney. So the story you gave is the story they'll go with.

Daren Fenderson: I'm confused then.

Detective Beasley: What you confused about?

Daren Fenderson: Story [inaudible due to overtalking]. I don't know what's going on from this point. You ain't told me nothing.

Detective Beasley: Okay, so what's going to happen now, we're going to take you back to DDC [Detroit Detention Center], then we're going to submit a warrant and the prosecutor will review it. Alright?

Daren Fenderson: That means...I'm not sure what all that means.

Detective Beasley: If you request an attorney, I can't talk to you no more about the case.

Daren Fenderson: I'm just...what?

Detective Beasley: If you wanted to talk to me, you just say you

want to talk without an attorney then I can talk to you. You said you want an attorney. I'm not allowed to talk to you by law.

Daren Fenderson: Um, I just want to get this over with. Um, if you're trying to talk, we can talk. I just want to get this over with! That's it! I just want to get this over with.

Detective Beasley: Like I said, I can go over your rights again with you. If you agree to talk to me without an attorney...

Daren Fenderson: I want to talk to you without an attorney. I agree. I just want to get this over with.

Detective Beasley: I don't want you to feel compelled to talk to me because you don't want to go with them. That's the thing. Now, if you reasonably want to talk to me, without an attorney present, I'll talk to you. But you gotta understand that that's something that you want to do. I don't want you feeling like you're forced to do anything.

Daren Fenderson: Okay.

Detective Beasley: Is that something you want to do?

Daren Fenderson: Yes.

(Appendix A at 5:15-5:17). Then, Detective Beasley told Mr. Fenderson to turn around and directed the other officer to finally remove the handcuffs. (Appendix A at 5:17).



Screenshot from Appendix A at 5:18:44 and 5:18:50

Detective Beasley and the other officer left Mr. Fenderson alone in the interrogation room. (Appendix A at 5:18). Mr. Fenderson became increasingly upset and started crying. (Appendix A at 5:18). Mr. Fenderson put his head down on the table and can be heard sobbing. (Appendix A at 5:18-5:19).

At this point a third officer, Sargent Brown came into the interrogation room. (Appendix A at 5:19). Mr. Fenderson said, "I don't understand..." (Appendix A at 5:19). Sargent Brown responded, "So I am independent from the investigation. I have no knowledge of what is going on." (Appendix A at 5:19). Mr. Fenderson interrupted him and said, "This is not, this cannot be right, this is not going right, everything is not going right. I'm trying to see..." (Appendix A at 5:19). Sargent Brown interrupted Mr. Fenderson and said, "Well, check this out. You'll talk with the detectives about that. I just gotta re-establish your rights so you can speak to them. Alright because you said you want to talk to them." (Appendix A at 5:19). Sargent Brown then asked Mr. Fenderson for his age and date of birth and read the *Miranda* form out loud to Mr. Fenderson. After reading the rights, Sargent Brown asked, "No one has forced you, threatened you, or coerced you to give a statement, right?" Mr. Fenderson and Sargent Brown have the following exchange:

Daren Fenderson: See, that's why I don't understand what's going...

Sargent Brown: Now, I'm specifically talking about this [Sargent Brown gestures to the *Miranda* form].

Daren Fenderson: Yes.

Sargent Brown: But you want to talk to them?

Daren Fenderson: Yes.

Sargent Brown: Okay, that's all I'm asking, Okay. And so, what you gonna do since you re-established those is you're going to put your initials there and your signature there.

(Appendix A at 5:19-5:21). Sargent Brown put the form in front of Mr. Fenderson as he directed Mr. Fenderson to initial and sign it. (Appendix A at 5:21). Sargent Brown told Mr. Fenderson the date and time for Mr. Fenderson to write on the form. (Appendix A at 5:21).

After signing the form, Mr. Fenderson said, "This is bullshit. I swear, I don't know ..." (Appendix A at 5:21-5:22). Sargent Brown responded, "Well, you know, when they come in, just um, you know, like I said, I'd independent of it...just talk to them about it, man. Just

make sure you are open and honest.” Mr. Fenderson sobbed. Sargent Brown said, “The one thing is thing, get through this right here first, and then we can always work on the rest.”

After Sargent Brown obtained the second waiver from Mr. Fenderson, he left the room, and Mr. Fenderson continued crying. (Appendix A at 5:23). Detective Beasley returned and resumed interrogating Mr. Fenderson. (Appendix C, p 57). During the final



Screenshot from Appendix A at 5:23:08

portion of the interrogation, both detectives began cursing at Mr. Fenderson and their tone became increasingly aggressive. (Appendix A at 5:27-5:30; Appendix C, pp 59-60). Detective Beasley said, “You’re sitting here with this whole bullshit story that your mom was there, and your mom says she don’t even fuck with you.” (Appendix A at 5:28-5:29). Both detectives started yelling at Mr. Fenderson at the same time, after which Detective Beasley said:

This is what’s gonna happen. You gonna sit here and you gonna roll the mother fuckin’ dice. We’re gonna take this big ass fuckin’ file, give it to the fuckin’ prosecutor. They will review it. Somebody who...they not from the hood. They don’t understand that shit. They don’t understand the fuckin’ streets. All they’re gonna to see is you sittin’ in this fuckin’ room lying your fuckin’ ass off. And they’re gonna say he a fuckin’ stone cold fuckin’ killer.

(Appendix A at 5:29). Mr. Fenderson leaned back in his chair, away from the detectives, and covered his face with his hands. (Appendix A at 5:29). Mr. Fenderson started sobbing, which prompted Detective Beasley to say, “Stop all that fuckin’ crying.” (Appendix A at 5:29; Appendix C, p 59). Detective Williams began yelling “Stop cryin’! Stop cryin’!” at the same time. (Appendix A at 5:29). Detective Williams accused Mr. Fenderson of playing games and then yelled, “Fuck off!” (Appendix A at 5:29). Detective Beasley said, “Are you a stone cold killer?” (Appendix A at 5:29). Mr. Fenderson responded, “No.” (Appendix A at 5:29). Detective Beasley said, “Then, tell us what fuckin’ happened. That’s why we need to know.” (Appendix A at 5:29-5:30). Both detectives continued to push Mr. Fenderson to tell

them “what happened,” after which Mr. Fenderson finally broke down and made inculpatory statements. (Appendix A at 5:30; Appendix C, pp 57-58).

The entirety of the August 3rd interrogation was recorded on video and a copy of the recording was admitted into evidence at the preliminary examination. (Appendix A; Appendix C, p 41).

Procedural History

At the preliminary examination, Mr. Fenderson's counsel objected to the admission of his inculpatory statements on the basis that they were involuntary and obtained in violation of *Miranda*. (Appendix C, pp 53-54). The District Court overruled the objection, considered the statements, and bound Mr. Fenderson over on charges of first-degree murder, felony-firearm, and escaping from lawful custody. (Appendix C, pp 54-55; Preliminary Examination, January 26, 2023 (Appendix D, pp 83-84)).

In the Circuit Court, Mr. Fenderson sought suppression of his inculpatory statements, based on the violation of his *Miranda* rights. (Mr. Fenderson's Suppression Motion, May 31, 2023 (Appendix E)). In his motion, Mr. Fenderson argued that the government could not meet its burden to establish that Mr. Fenderson's *Miranda* waiver was knowing and voluntary as required by the Michigan and United States Constitutions. (Appendix E, pp 89-91, 11). He also argued that the police improperly reinitiated the interrogation after Mr. Fenderson invoked his right to counsel. (Appendix E, pp 103-105). Mr. Fenderson asserted that the use of his inculpatory statements at trial would violate his state and federal rights against self-incrimination and to due process. (Appendix E).

After briefing and argument, the Circuit Court made the following determinations:

- (1) Mr. Fenderson invoked his right to counsel during a custodial interrogation, (Appendix G, p 119);
- (2) Officers left to find an attorney for Mr. Fenderson, (Appendix G, p 119);
- (3) Officers returned to the interrogation room, and told Mr. Fenderson they could not find him an attorney, (Appendix G, p 119);
- (4) Officers confirmed that Mr. Fenderson could not afford to retain an attorney, (Appendix G, pp 119-120);
- (5) The officers told Mr. Fenderson that because he did not have money to pay for an attorney and because they did not have one available, "you don't get a lawyer," (Appendix G, pp 119-120);

- (6) Officers sought a waiver of Mr. Fenderson's *Miranda* rights after telling him that he did not get an attorney (Appendix G, pp 119-120);
- (7) The officers' conduct was a "scare tactic," (Appendix G, pp 120-121); and
- (8) Officers' communications with Mr. Fenderson frustrated the advice of rights required by *Miranda* (Appendix G, pp 120-121).

Based on these findings, the Circuit Court determined that Mr. Fenderson's inculpatory statements were not voluntary because the waiver of his *Miranda* rights was not voluntary. (Appendix G, pp 121-122). The Circuit Court granted the motion and suppressed the statements extracted from Mr. Fenderson after he invoked his right to counsel (Appendix G, pp 121-122).

The government sought leave to appeal in the Court of Appeals. After granting leave to appeal, briefing, and argument, the Court of Appeals reversed. *People v Fenderson*, unpublished per curiam opinion of the Court of Appeals, issued June 6, 2024 (Docket No. 367926) (Appendix N). Judge Garrett dissented. *People v Fenderson*, unpublished per curiam opinion of the Court of Appeals, released June 6, 2024 (Docket No. 367926) (Garrett, J. dissenting) (Appendix O).

Mr. Fenderson sought leave to appeal in this Court. This Court ordered the parties to file supplemental briefs addressing:

[W]hether the Court of Appeals erred by reversing the trial court's decision to grant the defendant's motion to suppress statements. In particular, the parties shall address whether the defendant's decision to waive his rights under *Miranda v Arizona*, 384 US 436 (1966), was made " 'voluntarily, knowingly, and intelligently,' " *People v Tanner*, 496 Mich 199, 209 (2014), quoting *Miranda*, 384 US at 444, and whether the interrogating officers' statements and conduct violated defendant's right to be free from self-incrimination under the Fifth Amendment of the United States Constitution or Article 1, § 17 of the Michigan Constitution.

(Order, 1/24/25). Mr. Fenderson now files this brief in response to the Court's order.

Argument

- I. Where Mr. Fenderson invoked his right to counsel and was subsequently told by the police that he does not get an attorney, the government cannot show that his subsequent waiver of the right to counsel was voluntary or knowing. The use of Mr. Fenderson's statements made after the invalid waiver violated his state and federal constitutional rights to due process and against self-incrimination.**

The United States and Michigan Constitutions expressly protect the right against self-incrimination. US Const, Am V; Const 1965, art 1, § 17. Police interrogation tactics directly threaten this right so procedural safeguards, including the right to counsel and a clear and unequivocal advice of that right, are necessary to safeguard the accused's rights. *Miranda v Arizona*, 384 US 436, 478 (1966). When police engage in conduct that directly undermines those safeguards, they render any waiver unknowing and involuntary, and due process prohibits the use of any resulting statements against the accused at trial. *Missouri v Seibert*, 542 US 600, 611-616 (2004). Likewise, confessions involuntarily extracted by the police violate due process. US Const, Am XIV; Const 1963, art 1, §17; *People v Conte*, 421 Mich 704, 721-724 (1984).

Mr. Fenderson invoked his constitutional right to counsel during a custodial interrogation. (Appendix A at 2:29; Appendix C, p 34). The detectives did not immediately cease the interrogation. Instead, they undermined the protections *Miranda* requires and rendered Mr. Fenderson's subsequent waiver unknowing and involuntary. The trial court properly found the detectives' conduct amounted to a scare tactic. The detectives' actions and words made it clear to Mr. Fenderson that even though he invoked the right to counsel, he would not get an attorney for the purposes of his interrogation because he could not afford one. The trial court correctly concluded that Mr. Fenderson's subsequent waiver of the right to counsel was invalid. Applying the law to its findings of fact, the trial court properly suppressed the statements Mr. Fenderson made after the invalid waiver.

- A. *Miranda* warnings are essential to prevent the police from violating citizens' rights against self-incrimination.**

The United States and Michigan Constitutions both guarantee the right against self-incrimination. US Const, Am V; Const 1963, art 1 § 17. Our courts have long recognized that

when police take a citizen into custody, deprive them of their freedom, and subject them to interrogation, “the privilege against self-incrimination is jeopardized.” *Miranda v Arizona*, 384 US 436, 478 (1966). This is because “the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals.” *Id.* at 455. The “incommunicado police-dominated atmosphere” is designed to overbear the will of the accused. *Id.* at 455-457. The *Miranda* Court observed that, “It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner.” *Id.* at 457-458.

In *Miranda*, the United States Supreme Court held that during a custodial interrogation, a suspect must be “informed in clear and unequivocal terms” that he has the right to remain silent and any statements made may be used against him in court. A suspect also has the constitutional right to counsel during a custodial interrogation. *People v Tanner*, 496 Mich 199, 207 (2014). The right to counsel is imperative to protect the suspect’s right against self-incrimination. *Miranda*, 384 US at 469. “Once a suspect invokes his right to remain silent or requests counsel, police questioning must cease unless the suspect affirmatively reinitiates contact.” *Tanner*, 496 Mich at 208.

The advice of rights required by *Miranda* safeguards the Fifth Amendment right not to be compelled to be a witness against oneself. Although *Miranda* is often described as a prophylactic measure, the Supreme Court has made clear that it is a “constitutional rule.” *Dickerson v United States*, 530 US 428, 444 (2000). It is well-established that the accused must be “adequately and effectively apprised” of his rights as required by *Miranda*, to combat the “inherently compelling pressures” of custodial interrogation. *People v Attebury*, 463 Mich 662, 668-669 (2001), quoting *Miranda*, 384 US at 467.

B. Because Mr. Fenderson invoked his right to counsel the police were required to immediately cease the interrogation, unless or until, counsel was provided.

Not only must police provide *Miranda* warnings before beginning an interrogation, if the accused invokes their *Miranda* rights during an interrogation, police must immediately cease questioning. *Miranda*, 384 US at 473-474. The invocation of the right to counsel, like the invocation of the right to silence, is part of the “right to cut off questioning” that must be “scrupulously honored” by law enforcement. *Michigan v Mosley*, 423 US 96,

103-104 (1975), quoting *Miranda*, 384 US at 474, 479. The police may not fail to honor the right of a person in custody to cut off questioning “by persisting in repeated efforts to wear down his resistance and make him change his mind.” *Mosley*, 423 US at 102, 105-106.

The parties agree that Mr. Fenderson invoked his constitutional right to counsel during a custodial interrogation by directly asking Detective Beasley if he could have an attorney. (Appendix A at 2:29; Appendix C, p 34; Appendix L, p 181). The detectives also understood that Mr. Fenderson invoked his right to counsel. (Appendix C, 34). Because of this invocation, officers were required to immediately stop the interrogation, unless or until they provided Mr. Fenderson with counsel. *Mosley*, 423 US at 103-104. And yet, police continued to question Mr. Fenderson and ultimately told him that he did not get an attorney. (Appendix A at 5:15).

“[T]he assertion of the right to counsel [is] a significant event.” *Edwards v Arizona*, 451 US 477, 485 (1981). It requires officers to immediately cease interrogating a suspect “until an attorney is present.” *Id.*, citing *Miranda*, 384 US at 474. To scrupulously honor a suspect’s invocation of their right to counsel, police cannot resume questioning the suspect in the absence of counsel, “*unless the accused himself initiates further communication exchanges, or conversations with the police*” and voluntarily waives the right to counsel. *Id.* at 484-485 (emphasis added). Detective Beasley did not scrupulously honor Mr. Fenderson’s invocation of his right to counsel. Instead, he insisted Mr. Fenderson agree to tell the detective what he wanted to hear. (Appendix A at 2:29-2:30). Then, Detective Beasley asked Mr. Fenderson misleading questions about whether Mr. Fenderson had retained counsel. (Appendix A at 2:29-2:30). The detectives told Mr. Fenderson they were going to make some calls about finding an attorney and left him alone for almost three hours without updates. (Appendix A at 2:30-5:15). When Detective Beasley finally returned, Mr. Fenderson did not reinitiate the interrogation. To the contrary, Mr. Fenderson said, “Where’s my lawyer?”—a continuation of the invocation of his right to counsel that he made nearly three hours earlier. (Appendix A at 5:15). It was the detectives who then further misled Mr. Fenderson about his right to counsel and then coerced Mr. Fenderson into rescinding his invocation.

- C. The government did not satisfy its heavy burden to establish that Mr. Fenderson's second waiver was knowing and voluntary because the police engaged in scare tactics that directly undermined the advice of rights and caused Mr. Fenderson to be confused and misled about his right to counsel.**

The trial court found that the police engaged in a scare tactic and that their actions mislead Mr. Fenderson about his right to counsel under *Miranda*. (Appendix G, pp 120-121). The trial court's conclusion is well-grounded in the factual record and consistent with the law. The government was required to show that Mr. Fenderson's waiver was voluntary, meaning it did not result from police coercion. The government was also required to show that Mr. Fenderson's waiver was knowing, meaning he understood that he had a right to have counsel present during the interrogation. The trial court properly concluded the government failed on both fronts.

- 1. The government bears a "heavy burden" of showing that any waiver of the right to counsel during custodial interrogation is knowing and voluntary.**

"A statement obtained from a defendant during a custodial interrogation is admissible only if the defendant voluntarily, knowingly, and intelligently waived his Fifth Amendment rights." *People v Akins*, 259 Mich App 545, 564 (2003). The government bears a "heavy burden" to show the accused waived the privilege against self-incrimination and the right to counsel. *Miranda*, 384 US at 475. The government must meet that burden by a preponderance of the evidence. *People v Cheatham*, 453 Mich 1, 27 (1996); *Colorado v Connelly*, 479 US 157, 168 (1986). Whether a waiver of one's rights is voluntary and whether an otherwise voluntary waiver is knowing and intelligent are separate questions that must both be addressed to determine whether a waiver is valid. *People v Daoud*, 462 Mich 621, 634 (2000); *People v Howard*, 226 Mich App 528, 538 (1997). In other words, the government must show both that a *Miranda* waiver is voluntary and that it is also knowing and intelligent. *Daoud*, 462 Mich at 634.

To be voluntary, the waiver must be "the product of a free and deliberate choice" of the accused. *Moran v Burbine*, 475 US 412, 421 (1986). A waiver that is the result of "intimidation, coercion, or deception" is not voluntary. *Id.* The focus of the voluntariness prong of the waiver analysis is on the conduct of the police. *Daoud*, 462 Mich at 635.

To be knowing and intelligent, “the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.” *Colorado v Spring*, 479 US 564, 573 (1987). This means that the accused is aware of and understands his rights. *Daoud*, 462 Mich at 637, 640-641 (internal citations and quotations omitted). Specifically, the accused must understand that the government intends to use his statements to secure his conviction. *Id.* It also requires that the accused know that he can remain silent, request a lawyer, and if he does either of those things, his decision to do so matters. In determining whether a suspect knowingly and intelligently waived his rights, courts must analyze the totality of the circumstances surrounding the waiver, including the suspect's education, experience, conduct, and intelligence, as well as the defendant's capacity to understand the nature of his rights and the warnings given. *Id.* at 634, 636.

2. When the police undermine the advice of rights, their conduct renders any waiver of those rights unknowing and involuntary.

The police cannot engage in conduct that undermines the procedural safeguards *Miranda* requires. When police engage in tactics and methods that “undermine the suspect's will to invoke his rights once they are read,” their conduct and any resulting waiver is “inherently coercive.” *Oregon v Elstad*, 470 US 298, 317 (1985).

For example, the practice of questioning a suspect first and only giving the *Miranda* warnings after the suspect has confessed is one that “render[s] *Miranda* warnings ineffective.” *Missouri v Seibert*, 542 US 600, 611 (2004). This technique is intended to get a suspect to give a confession he would not give if he understood his rights from the outset. *Id.* at 613. In this scenario, “a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again.” *Id.* The *Seibert* court noted this was especially so because the two interrogations (before and after the warnings) were “close in time and similar in content.” *Id.* The Court observed that a suspect would likely be confused by the discussion of rights, which is “an unpromising frame of mind for knowledgeable decision.” *Id.* This two-step approach by the police was a “strategy adapted to undermine the *Miranda* warnings.” *Id.* at

616. *Elstad* and *Seibert* establish that police conduct that undermines *Miranda* warnings can render a *Miranda* waiver unknowing or involuntary, and therefore invalid.

Our Court of Appeals reached a similar conclusion in *People v McKee*, unpublished opinion per curiam of the Court of Appeals, issued February 27, 2018 (Docket Nos. 333720, 335767, and 336598)⁴. While *McKee* is not published, it is instructive as it includes a thorough analysis, including a review of decisions from other jurisdictions, related to police conduct that expressly contradicts or undermines the *Miranda* advice of rights. From the outset of his interrogation, Mr. Butler, one of the defendants in *McKee*, told the police he knew his rights, but then during the interrogation, one of the detectives told Mr. Butler, “I’m not intending to use anything you say against you.” *Id.* at 11.

The *Butler* Court held that “the detective vitiated the warnings, and invalidated any waiver of Butler’s rights, by expressly contradicting the advice required by *Miranda* and instead telling Butler that he was not intending to use what Butler said against him.” *Id.* The *Butler* Court emphasized that, “[a] police officer cannot directly contradict, out of one side of his mouth, the *Miranda* warnings just given out of the other.” *Id.*, citing *State v Pillar*, 359 NJ Super 249, 268 (2003). In other words, “when police engage in trickery that wholly undermines the validity of a waiver by depriving ‘a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.’” *Id.* at *12, quoting *Moran*, 475 US at 424 and citing 2 LaFave et al, *Criminal Procedure*, § 6.9(c) n 65 (4th ed.). Police conduct that contradicts or undermines the advice of rights, “undermine the suspect’s ability to knowingly and voluntarily waive his rights because this type of trickery deprives the defendant of the ‘knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.’” *Id.* citing, *Hopkins v Cockrell*, 325 F3d 579, 584 (CA 5 2003). As recognized in *Butler*, even when a suspect understands their *Miranda* rights from the outset, the police can render a waiver unknowing and invalid when they make statements that vitiate those rights.

⁴ Available at 2018 WL 1072808.

3. The police conduct was coercive and rendered Mr. Fenderson's second *Miranda* waiver involuntary.

The police conduct that led Mr. Fenderson to sign the second *Miranda* waiver was coercive. When Mr. Fenderson invoked his right to counsel, the detectives did not immediately cease the interrogation. Instead, Detective Beasley responded, "You're going to tell me what I want to hear?" (Appendix A at 2:29; Appendix C, p 34). This suggested the detective was only willing to honor Mr. Fenderson's invocation if Mr. Fenderson was willing to make the confession Detective Beasley sought. Then, Detective Beasley questioned Mr. Fenderson about whether he had an attorney. (Appendix A at 2:29-2:30). Mr. Fenderson said he did not and asked Detective Beasley to confirm he would get an appointed attorney. (Appendix A at 2:29-2:30). Detective Beasley did not answer and instead continued questioning Mr. Fenderson about a retained attorney. (Appendix A at 2:29-2:30). Ultimately, Detective Beasley told Mr. Fenderson to "hang tight" while he made some phone calls. (Appendix A at 2:29-2:30). When Mr. Fenderson asked how long it would take, Detective Beasley said, "It might take a minute and could be quick." (Appendix A at 2:29-2:30).

But it was not quick. The detective left Mr. Fenderson in the interrogation room for hours. (Appendix A at 2:32-5:14). While the detectives spent only about 10 to 15 minutes actively trying to locate an attorney, the detectives left Mr. Fenderson confined in the interrogation room for over two and a half hours, with Mr. Fenderson spending two hours of that time in handcuffs and without any update from the detectives. (Appendix A at 2:32-3:13, 3:13-5:14); (Appendix C, pp 49). Holding a suspect incommunicado at the police station is the classic coercive conduct with which *Miranda* was concerned. *Miranda*, 384 US at 455-458.

When the detective returned, Mr. Fenderson asked about the attorney. (Appendix A at 5:15). The detective responded, "You don't get one," and then asked questions and made statements emphasizing Mr. Fenderson's poverty and inability to hire an attorney. (Appendix A at 5:15-5:17).

The trial court properly found that this course of conduct was a scare tactic that frustrated the critical advice of rights that serves to protect the right against self-incrimination. (Appendix G, pp 120-121). The detectives' conduct and express statements

made it clear that even though Mr. Fenderson invoked the right to counsel, that right was meaningless. This is the exact type of coercive conduct that overbears the will of a suspect and “subjugate[s] the individual to the will of his examiner.” *Miranda*, 384 US at 457-458. Mr. Fenderson wanted counsel with him during the interrogation. Instead, the police isolated and misled him. The police asked questions implying, and then told Mr. Fenderson directly, that he did not have the right to counsel because he could not afford to hire an attorney. The police wore Mr. Fenderson down and caused him to withdraw his request for counsel.

When presented with the second waiver form, Mr. Fenderson continued to express his confusion about whether he had a right to counsel. (Appendix A at 5:19-5:21). He tried to ask questions of the officer reviewing the waiver form with him. (Appendix A at 5:19-5:21). But that officer simply encouraged Mr. Fenderson to sign the waiver and talk to the detectives without an attorney. (Appendix A at 5:19-5:21). The police conduct here was designed to “undermine the suspect’s will to invoke his rights once they are read,” and thus was “inherently coercive.” *Elstad*, 470 US at 317. This coercive conduct left Mr. Fenderson unable to make a voluntary *Miranda* waiver.

4. The police conduct misled Mr. Fenderson and rendered his second *Miranda* waiver unknowing.

The detective’s misleading statements left Mr. Fenderson unable to make a knowing and intelligent *Miranda* waiver. Mr. Fenderson invoked his right to counsel, but the detectives’ words and actions conveyed to Mr. Fenderson that his right to counsel depended on his ability to afford an attorney. (Appendix A at 2:29-2:30, 5:15-5:17). They communicated that Mr. Fenderson’s constitutional rights hinged on his wealth—those that can afford an attorney get one and those who cannot do not. Just like in *Seibert*, the detectives’ conduct left Mr. Fenderson to “hardly think he had a genuine right to [appointed counsel], let alone persist in so believing once the police began to lead him over the same ground again.” *Id.*; (Appendix A at 5:15-5:21).

The second advice of rights did nothing to cure the Detective Beasley’s misleading statements. Mr. Fenderson was distraught, crying, and expressing confusion about his rights. (Appendix A at 5:17-5:19). Like Ms. Seibert, Mr. Fenderson was in “an unpromising

frame of mind for knowledgeable decision.” *Id.* While in that vulnerable state, the officer administering the second advice of rights ignored Mr. Fenderson’s questions seeking clarification about his rights and encouraged Mr. Fenderson to sign the waiver and talk to the detectives anyway. (Appendix A at 5:19-5:21).

Sargent Brown’s handling of the waiver stands in sharp contrast with the conduct at issue in *Daoud*. In *Daoud*, a detective had Mr. Daoud read the *Miranda* advice of rights along with him and stopped after each warning to make sure that Mr. Doud understood. *Daoud*, 462 Mich at 641. Mr. Daoud confirmed he understood each of the warnings and so the Court held his waiver was knowing and intelligent. *Id.* In contrast, when Sargent Brown reviewed the advice of rights with Mr. Fenderson, he did not confirm he understood his rights. In fact, Mr. Fenderson continued to express confusion. Mr. Fenderson’s statements and unanswered questions seeking clarification of his rights are, evidence that he, unlike Mr. Doud, did not understand that he had a right to have appointed counsel present before answering any questions.

It is evident that Mr. Fenderson did not understand that he could stand on his earlier invocation of the right to counsel. Viewed through the lens of the “objective circumstances surrounding the waiver,” *Daoud*, 462 Mich at 641, a reasonable person in Mr. Fenderson’s shoes (young and without experience in the adult criminal legal system) could not be expected to understand whether this meant that he did not get appointed counsel for pre-arraignment questioning or that he did not get appointed counsel at all. Detective Beasley’s questions and comments about Mr. Fenderson’s inability to afford a retained attorney suggested that Mr. Fenderson’s right to appointed counsel did not exist because of his poverty. The confusion Mr. Fenderson experienced was a direct result of Detective Beasley’s statements. While Mr. Fenderson told both Detective Beasley (to whom he first invoked his right to counsel) and Sargent Brown (who administered the second advice of rights) that he was confused and did not understand, neither officer ever provided the necessary clarification consistent with the advice of rights to ensure Mr. Fenderson actually understood his right to counsel.

As in *McKee*, 2018 WL 1072808, the police gave Mr. Fenderson conflicting information about his right to counsel, “directly contradict[ing], out of one side of his mouth, the *Miranda* warnings just given out of the other.” *McKee*, slip op at *11, citing *Pillar*,

359 NJ Super at 268. The effect of this contradiction deprived Mr. Fenderson of the “knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.” *Hopkins*, 325 F3d at 584. Mr. Fenderson did not understand the nature of his right to counsel, so he could not knowingly and intelligently waive it. Mr. Fenderson’s obvious confusion and the officers’ failure to ensure Mr. Fenderson understood his right to counsel before he signed the second waiver, render his second waiver unknowing and invalid.

The trial court correctly concluded that the government cannot meet its burden to show that Mr. Fenderson’s second *Miranda* waiver was valid under Michigan and federal law. (Appendix G, pp 120-121); *Elstad*, 470 at 317.

D. The trial court’s conclusion that the police conduct rendered Mr. Fenderson’s second *Miranda* waiver unknowing and involuntary is also consistent with the authorities of other jurisdictions.

The trial court’s conclusion that the government could not meet its burden to show that Mr. Fenderson’s second waiver was knowing and voluntary is also consistent with the decisions from other jurisdictions involving similar circumstances. For example, in *State v Climer*, the Tennessee Supreme Court held that the government failed to establish by a preponderance of the evidence Mr. Climer’s *Miranda* waiver was knowing where the officer’s statements and questions left Mr. Climer confused about whether he had a right to counsel during the interrogation. *State v Climer*, 400 SW3d 537, 566 (TN 2013). The *Climber* Court held the government failed to show that Mr. Climer actually understood his right to counsel under *Miranda*, which was fatal to the government’s argument that Mr. Climer validly waived his *Miranda* rights. *Id.* In support of that conclusion, the Court observed that Mr. Climer professed an understanding of his *Miranda* rights but found that “his statements demonstrate just the opposite with regard to his right to appointed counsel.” *Id.*

The Massachusetts Supreme Court has been similarly critical of situations where police make comments suggesting that the right to counsel during an interrogation depends on the suspect’s ability to pay for an attorney. See *Commonwealth v Libby*, 472 Mass 37, 54-55 (2015); *Commonwealth v Hoyt*, 461 Mass. In *Libby*, the Court considered an

interrogation where the police made comments that created a situation where it was unclear whether Mr. Libby understood his right to counsel. *Libby*, 472 Mass at 55. Because “this fundamental misunderstanding went uncorrected,” the Court held that the government could not meet its burden to show Mr. Libby’s subsequent *Miranda* waiver was valid.⁵ *Id.*

When considering similar circumstances, the South Dakota Supreme Court emphasized the importance of considering an invocation of the right to counsel in the totality of circumstances when assessing the validity of a second waiver. See *State v Arpan*, 277 NW2d 597, 601 (SD, 1979). The *Arpan* Court emphasized that the police do not have an obligation to locate or obtain an attorney for a suspect who invokes the right to counsel, but emphasized that, where the police have not provided counsel, they should, “should be wary of accepting any type of waiver of the accused’s previous request for counsel.” *Id.*

In this case, Mr. Fenderson also repeatedly expressed his confusion about his right to counsel, at times appearing to believe it depended on his ability to hire one. (Appendix A at 2:29-2:30, 5:17). Much like in Mr. Climber’s case, the trial court here concluded that Mr. Fenderson’s confusion was exacerbated by the detective’s responses to Mr. Fenderson’s questions. In *Climber*, the Court observed that, “By replying that Defendant could ‘not at this time’ have an appointed lawyer and by discussing the funds Defendant had available to hire a lawyer, Detective Grooms reinforced, perhaps unwittingly, Defendant’s confusion about his right to appointed counsel.” *Climber*, 400 SW3d at 566. Just like the detectives in *Climber* and *Hoyt*, Detective Beasley reinforced Mr. Fenderson’s confusion about his right to appointed counsel, and then extracted an unknowing and involuntary waiver of that right. See *Climber*, 400 SW3d at 566.

⁵ Mr. Fenderson acknowledges that Massachusetts requires the government to establish the validity of a *Miranda* waiver beyond a reasonable doubt standard, which is a higher standard than required under federal law. C.f. *Libby*, 472 Mass at 55, and *Connelly*, 479 US at 168. However, the Massachusetts Supreme Court’s focus on the relationship between the officers’ comments and resulting confusion experienced by the suspects about their right to counsel are consistent with the trial court’s focus on the relationship between Detective Beasley’s statement that Mr. Fenderson did not get an attorney and its role in undermining the advice of rights.

E. Not only was Mr. Fenderson's second *Miranda* waiver invalid, but the police improperly reinitiated his interrogation and his subsequent statements were not voluntary.

As discussed above, Mr. Fenderson's second *Miranda* waiver was invalid because it was both unknowing and involuntary. As a result, the statements he made after the invalid waiver are not admissible against him at trial. *Fare v Michael C*, 442 US 707, 718 (1979); *Daoud*, 462 Mich at 632-634. In addition, the statements are inadmissible because they were obtained after improper reinitiation of the interrogation by the police and because the statements themselves were involuntarily coerced in violation of Mr. Fenderson's due process rights.

1. In addition to coercing an invalid *Miranda* waiver, Detective Beasley improperly reinitiated the interrogation.

The detectives' course of conduct failed to scrupulously honor Mr. Fenderson's invocation of his right to counsel and effectively reinitiated the interrogation. An accused in custody, "having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him," unless he validly waives his earlier request for the assistance of counsel. *Edwards v Arizona*, 451 US 477, 484-485 (1981). This "rigid" rule, *Fare*, 442 US at 719, embodies two distinct inquiries.

First, courts must determine whether the accused actually invoked his right to counsel. See, e. g., *Edwards*, 451 US at 484-485. Second, if the accused invoked his right to counsel, courts may admit his responses to further questioning only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he previously invoked. *Id.* at 485, 486, n. 9. Here, the parties agree that Mr. Fenderson invoked his right to counsel. (Appendix A at 2:29; Appendix C, p 34; Appendix L, p 181). That means that, "a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." *Edwards*, 451 US at 484.

After Mr. Fenderson invoked his right to counsel, it was Detective Beasley who reinitiated contact. (Appendix A at 5:14). Mr. Fenderson's only question was about where

his attorney was. (Appendix A at 5:14). Detective Beasley told Mr. Fenderson he did not get an attorney and he would be sending Mr. Fenderson back to the detention center, requesting a warrant, and that “the story you gave is the story we are going to go with.” (Appendix A at 5:17). This course of conduct was the functional equivalent of interrogation because it was intended to (and did) engage Mr. Fenderson in further interrogation. See *Rhode Island v Innis*, 446 US 291, 300-303 (1980).

In *Innis*, the United States Supreme Court defined interrogation to include “any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response.” *Id.* at 301. A reviewing court must focus “primarily upon the perceptions of the suspect, rather than the intent of the police.” *Innis*, 446 US at 301. Applying *Innis* to the factual record here, the detectives should have known that their conduct and words were reasonably likely to evoke an incriminating response from Mr. Fenderson. See also, *Martinez v Cate*, 903 F3d 982, 996 (CA 9, 2018) (finding an officer improperly reinitiated interrogation by telling a suspect “you’re going to be booked for murder because I only got one side of the story”).

Mr. Fenderson’s question about his attorney and his expressions of confusion in response to the Detective’s claims that Mr. Fenderson did not get an attorney were not an expression of Mr. Fenderson’s desire to “discuss the circumstances of the crime at issue.” To the contrary, Mr. Fenderson said, “Where’s my lawyer?”—a continuation of the invocation of his right to counsel that he made nearly three hours earlier. It was Detective Beasley, not Mr. Fenderson, who steered the conversation toward the idea that Mr. Fenderson could rescind his invocation of his right to counsel.

Other jurisdictions have held that a suspect’s post-invocation remarks or questions do not constitute reinitiation where they cannot be reasonably construed as expressing a desire to discuss the circumstances of the crime at issue. See, e.g., *United States v Allegra*, 187 F Supp 3d 918 (ND Ill, 2015) (suspect stating, “But you guys aren’t telling me what you want me to do,” not reinitiation) *Commonwealth v Thomas*, 469 Mass 531 (2014) (suspect stating, “I’m real confused here,” not reinitiation); *Ferguson v Commonwealth*, 52 Va App 342 (2008) (Exclamation of, “I messed up,” or, “This is messed up,” that broke 20 minutes of silence after suspect invoked right to counsel not reinitiation). Some jurisdictions go

even further. For example, Georgia courts established that, “If police initiate questioning after the invocation of the right to counsel, any uncounseled waiver of that right is invalid.” *Roper v State*, 258 Ga 847, 849 (1989).

Although current Michigan law does not require that counsel be provided before a suspect can waive a previously invoked right to that counsel, the rationale behind such a rule is understandable and furthers the concerns enunciated by the United States Supreme Court. Invocation of the right to counsel by a suspect demonstrates “that he considers himself unable to deal with the pressures of custodial interrogation without legal assistance.” *Arizona v Roberson*, 486 US 675, 683 (1988). Moreover, “to a suspect who has indicated his inability to cope with the pressures of custodial interrogation by requesting counsel, any further interrogation without counsel having been provided will surely exacerbate whatever compulsion to speak the suspect may be feeling.” *Id* at 686. The rule prohibiting officers from reinitiating interrogation is grounded in concerns that, “a suspect may be coerced or badgered into abandoning his earlier refusal to be questioned without counsel.” *Maryland v Shatzer*, 559 US 98, 106 (2010). This concern is greatest when a suspect “remains cut off from his normal life and companions, thrust into and isolated in an unfamiliar, police-dominated atmosphere, where his captors appear to control his fate.” *Id*. When the police continue to question a suspect in spite of his request for a lawyer, or impermissibly reinitiate interrogation, the accused is denied the chance to “regain[] a sense of control or normalcy.” *Id*. at 107.

The detectives’ conduct was contrary to Mr. Fenderson’s rights, and the restrictions on reinitiation required by *Edwards*. See *Edwards*, 451 US 477. After Mr. Fenderson invoked his right to counsel, there was no break in custody or change in location. Instead, detectives left Mr. Fenderson with the impression that his right to counsel was meaningless because he could not afford to hire an attorney and suggested that his invocation of his right to counsel resulted in the detectives’ decision to obtain a warrant. Mr. Fenderson did not initiate further interrogation, nor did he subsequently give a voluntary and knowing waiver of his right to counsel, so his statements made after detectives reinitiated the interrogation should be suppressed. *Id*. at 484-485.

2. Police extracted involuntary statements from Mr. Fenderson in violation of his state and federal due process rights.

In addition to the right against self-incrimination, citizens have due process protections that are implicated during police questioning. US Const, Am XIV; Const 1963, art 1 § 17. Specifically, the use of involuntary or coerced statements in criminal trials violates due process. *People v Stewart*, 512 Mich 472, 480 (2023). A statement extracted by police is considered involuntary in violation of due process when the suspect's "will was overborne or if his confession was not the product of a rational intellect and a free will." *Id.* (quotation omitted). Coercive tactics include psychological pressure. *Id.* (citation omitted). Much like the voluntariness of a *Miranda* waiver, it is the government's burden to establish the voluntariness of a confession by a preponderance of the evidence. *Id.* (citation omitted).

The voluntariness of a confession requires consideration of totality of the circumstances, including:

the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse.

People v Cipriano, 431 Mich 315, 334 (1988).

As it relates to delays during interrogations, court should pay particular attention to the length of the delay, as well as "what occurred during the delay and its effect on the accused." *Id.* at 335. In addition, "[t]he fact that a suspect chooses to speak after being informed of his rights is, of course, highly probative." *Elstad*, 470 US at 318. However, the adequacy of the warnings and intervening events are critical factors in determining just how probative a suspect's decision to speak is. *Cipriano*, 431 Mich 334-335; e.g. *Seibert*, 542 US at 615-616.

Here, Mr. Fenderson was a younger adult. (Appendix A at 5:19). While he was not a juvenile, this Court has recognized that young adults are different from older adults in ways

that make them more susceptible to psychological pressure exerted by police during interrogations. See *Stewart*, 512 Mich at 491, citing *People v Parks*, 510 Mich 225 (2022); see also *People v Taylor*, __ Mich __ (2025), slip op at 17 (recognizing that the features of adolescent brain development that affect decision-making and susceptibility to pressure extend until the age of 25) (Bernstein, J. concurring, in part and dissenting in part).

In addition, while the detectives assumed that Mr. Fenderson had recent or extensive experience in the adult criminal legal system, he did not, and even told the officers that this interrogation was his “first time.” (Appendix A at 1:05, 2:29-2:30). Mr. Fenderson was not a sophisticated individual with extensive experience in police interrogations. To the contrary, his own words and demeanor expressed that he felt overwhelmed and confused. (e.g. Appendix A at 2:32, 5:15-5:22, 5:29).

The police interrogation here lasted for hours and followed an attempted interrogation the previous day. (Appendix C, pp 23, 25-26). In between the two interrogations, Mr. Fenderson was held in custody and did not have an opportunity to leave the police-dominated atmosphere of the detention center. (Appendix C, p 23). Nor was Mr. Fenderson formally charged or brought before a judicial officer or attorney who could have better helped him understand his rights.

During the second day of interrogation, Mr. Fenderson was interrogated by two detectives. (Appendix C, p 62). While he was administered his advice of rights, when Mr. Fenderson invoked his right to counsel, the officers left him alone for hours and then convinced Mr. Fenderson to sign a second *Miranda* waiver. See Sections (I)(A)-(D), *supra*. While Mr. Fenderson was read his rights and signed the waiver of those rights, as discussed above, his decision to waive his rights was not knowing or voluntary. The intervening events, specifically the detectives’ scare tactics and misinformation related to Mr. Fenderson’s right to counsel, are critical factors showing that Mr. Fenderson’s ultimate decision to speak was not actually voluntary. *Cipriano*, 431 Mich 334-335.

During the interrogation, detectives failed to provide Mr. Fenderson with his medications despite his request for them. (Appendix A at 3:11). When Mr. Fenderson expressed confusion, the detectives refused to provide clarification. (e.g. Appendix A at 5:15-5:17). In addition, after the officers coerced Mr. Fenderson into rescinding his invocation of his right to counsel, they increased the pressure on him by yelling, cursing at

him, and brought up his childhood trauma. (Appendix A at 5:28-5:30). For example, at one point, Detective Beasley said, "...your mom says she don't even fuck with you," referring back to Mr. Fenderson's earlier disclosure that he was put into a juvenile placement because his mother did not want him. (Appendix A at 1:02, 5:28). As Mr. Fenderson started to break down and cry, Detective Beasley said, "Stop all that fuckin' crying." (Appendix A at 5:29; Appendix C, p 59). Detective Williams began yelling "Stop cryin'! Stop cryin'!" at the same time. (Appendix A at 5:29). Detective Williams accused Mr. Fenderson of playing games and then yelled, "Fuck off!" (Appendix A at 5:29). The detectives told Mr. Fenderson that the prosecutor was going to think he was a "fuckin' stone cold fuckin' killer," unless he told the detectives, "what happened." (Appendix A at 5:29). As the detectives' tone became increasingly hostile and aggressive, Mr. Fenderson continued to break down, and ultimately made inculpatory statements. (Appendix A at 5:30).

Considering the above factors, the record shows that the officers engaged in coercive tactics, which included applying psychological pressure, using profane language, misleading Mr. Fenderson about his right to counsel, and depriving him of medication, all while holding him incommunicado. In addition, the "overall tone of the interrogation was combative." See *Stewart*, 512 Mich at 499. This Court recently recognized that officers' "choice of language and tone throughout the interrogation" can isolate and belittle a suspect, rendering "him more susceptible to the other coercive tactics that were employed." *Id.* This Court must consider the above circumstances in their totality and "their cumulative effect on [Mr. Fenderson]'s free will." *Id.* at 500. The cumulative effect of the police conduct during both days of interrogation, their mishandling of Mr. Fenderson's request for an attorney, and the tone of the interrogation are such that Mr. Fenderson's inculpatory statements were not freely and voluntarily made. *Id.* at 500-501. Mr. Fenderson's inculpatory statements cannot be used against him without violating his state and federal due process rights and so must be suppressed on this additional basis.

F. The police conduct in this case violated Mr. Fenderson's rights under Article 1, § 17 of Michigan's Constitution and Michigan's jurisprudence that predates *Miranda* and the incorporation of the Fifth Amendment.

Michigan has long prohibited the use of statements extracted from the accused when those statements are not free and voluntary. Both the Michigan Constitution and common law prohibit police from engaging in the sorts of tactics that mislead the suspect into involuntarily and unknowingly waiving his constitutional rights. Even if federal law did not compel the suppression of Mr. Fenderson's confession based on the United States Constitution, Michigan's constitutional and common law establish that the police conduct in this case extracted an involuntary wavier and, ultimately, an involuntary statement from Mr. Fenderson.

Michigan's case law recognizing a due process right to be free from tactics that compel involuntary statements long predates the United States Supreme Court decision in *Miranda* and the incorporation of the Fifth Amendment. This Court should consider this history and jurisprudence when evaluating the police conduct in this case.

1. Decades before the Fifth Amendment was incorporated against the states, Michigan applied the common law to prohibit police from engaging in manipulative tactics to coerce confessions and later determined the common law was grounded in Article 1, §17 of Michigan's Constitution.

As far back as the 1800s, this Court prohibited the admission of compelled statements against the accused. This rule applied when the tactics involved manipulation and subterfuge intended to weaken the suspect's will. For example, in *Flagg v People*, police arrested Mr. Flagg, and an officer told him, "the best thing he can do is to own up," gave Mr. Flagg alcohol, held him overnight, and then interrogated him in front of an attorney. *Flagg v People*, 40 Mich 706, 708-709 (1879). Even though there were no express promises or inducements, the Court unanimously held that "it is idle to say that such a confession was free and voluntarily made." *Id.* at 709. The Court went so far as to say, "Legally and morally a more serious offense was committed in the efforts to extort a confession than the respondent was guilty of [arson], even if his confession was true, as it was a perversion of the process of the law,--'a poisoning of the fountains of justice.'" *Id.* at 709-710.

Although this recognition that coercive police conduct during interrogations could render confessions inadmissible arose out of the common law, this Court has since determined that the rights are grounded in the due process clause of Michigan's Constitution. See *People v Conte*, 421 Mich 704, 721-724 (1984). In *Conte*, this Court discussed the history of Michigan's jurisprudence related to the voluntariness of confessions, originally analyzed on due process grounds, and the shift to analyzing confessions considering the right against self-incrimination, also protected by Michigan's Constitution. *Conte*, 421 Mich at 722-723. This shift in Michigan's jurisprudence proceeded the incorporation of the Fifth Amendment against the states and ratification of Michigan's Constitution in 1963. *Id.*

2. Article 1, §17 of Michigan's Constitution varies in significant ways from the Fifth Amendment that suggests it provides broader protections than have been recognized by the Michigan Supreme Court.

When the current version of Michigan's Constitution was ratified, it included express language protecting the right against self-incrimination, as well as additional language not included in the Fifth Amendment, protecting a right to "fair and just treatment" during investigations. Const 1963, art 1 § 17; c.f. US Const, Am V.

Article 1, § 17 of Michigan's Constitution and the Fifth Amendment of the United States Constitution have frequently been treated as identical and providing coextensive protections. E.g. *Cheatham*, 453 Mich at 9. However, it has long been recognized that the United States Constitution and the cases interpreting it, merely establish the "floor" of minimally required constitutional protections. The United States Supreme Court has held that the States are free to set higher ceilings as they see fit and may, "impose greater restrictions on police activity than those this Court holds to be necessary upon federal constitutional standards." *Oregon v Hass*, 420 US 714, 719 (1975).

Likewise, Michigan's Supreme Court has recognized that, "In interpreting our Constitution, we are not bound by the United States Supreme Court's interpretation of the United States Constitution, even where the language is identical." *People v Goldston*, 470 Mich 523, 534 (2004) (citation omitted). Rather, "[this Court] must determine what law 'the people have made.'" *Id.* When interpreting Michigan's Constitution, courts must look to

the text of the Constitution itself and should consider it “in the sense most obvious to the common understanding.” *People v Tanner*, 496 Mich 199, 224 (2014). Michigan courts may also look at federal authorities interpreting analogous provisions of the federal constitution. See *Conte*, 421 Mich at 724. However, “our courts are not obligated to accept what we deem to be a major contraction of citizen protections under our constitution simply because the United States Supreme Court has chosen to do so.” *Sitz v Dept of State Police*, 443 Mich 744, 763 (1993). This means that even when the text of the Michigan and United States Constitutions is identical, this Court is “not bound by the United States Supreme Court’s interpretation of the United States Constitution.” *People v Goldston*, 470 Mich 523, 534 (2004).

In *Goldston*, this Court identified several factors relevant to determining whether a compelling reason exists to interpret the Michigan and United States Constitutions differently:

- 1) Textual language of Michigan’s Constitution;
- 2) Significant textual differences between parallel provisions of the Michigan and United States Constitutions;
- 3) Michigan’s constitutional and common law history;
- 4) State law preexisting adoption of the relevant constitutional provision;
- 5) Structural differences between the Michigan and United States Constitution; and
- 6) matters of peculiar state or local interest.

Id.

As discussed above, see Sections (I)(A)-(E), *supra*, the detectives violated Mr. Fenderson’s federal rights to due process and against self-incrimination. But even if this Court was not prepared to say that the police conduct in this case violated the Fifth Amendment of the United States Constitution, it can and should find that this conduct violates Michigan’s Constitution. See Const 1963, art 1, § 17. Michigan is free to provide greater protections for citizens’ rights than the bare minimum required by the United States Constitution and the federal court decisions construing it. And indeed, this Court has found broader protections against the use of compelled statements than those recognized solely under the Fifth Amendment. See, e.g., *People v Harris*, 499 Mich 332 (2016) (statute

prohibited use of compelled false statements, even though those statements would not fall within the Fifth Amendment's protection).⁶

Mr. Fenderson asserts that variations in the structure and text of the Fifth Amendment of the United States Constitution and art 1, § 17 of Michigan's Constitution demonstrate that Michigan's Constitution provides greater protections than the Fifth Amendment. See *Goldston*, 470 Mich at 534.

	Michigan Constitution	United States Constitution
Title	§ 17 Self-incrimination; due process of law; fair treatment at investigations.	Amendment V
Text	No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.	No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Each of the above provisions includes language the other does not and the differences between Section 17 and the Fifth Amendment are noteworthy in a few ways. This Court has recognized that “differences in language often reflect an intention to deviate from federal law.” *People v Pickens*, 446 Mich 298, 316 (1994).

⁶ While this Court rejected the idea that Michigan's Constitution requires a broader rule than the United States Constitution when it comes to informing a suspect that his counsel is trying to reach him during an interrogation, the Court did not apply *Goldston* or compare the text of the constitutional provisions, instead limiting its consideration to just the self-incrimination clauses. *Tanner*, 496 Mich at 224-225 n 18. The analysis in *Tanner*, which was focused on police misconduct of which the suspect is not aware, is not controlling in this case where the police conduct was all directed at Mr. Fenderson. C.f. *Id.* at 245-249.

First, the Fifth Amendment contains various rights, which are generally included in Michigan's Constitution, but not within the same provision as the rights at issue in this case. For example, the Fifth Amendment includes the prohibition on double jeopardy and government takings without compensation. Instead of wholesale adopting language in the Fifth Amendment as it appears in the United States Constitution, the Michigan Constitution includes prohibition on double jeopardy and government takings, but in distinct sections and/or articles from the other rights enumerated in the Fifth Amendment. See Const 1963, art 1 § 15 (double jeopardy); Const 1963, art 10, § 2. In this sense, Michigan's Section 17 is more narrowly focused than the corresponding provision of the United States Constitution.

In addition, Section 17 includes language protecting the rights of citizens targeted by governmental investigations that does not appear anywhere in the United States Constitution. Michigan's Section 17 incorporates a right to "fair and just treatment in the course of legislative and executive investigations." This language was added to Michigan's Constitution in 1963. While it could have been added in another section, it was added to the existing language protecting citizens against compelled self-incrimination and to due process of law. This demonstrates that the language of these provisions should be read together. See *People v Antkoviak*, 242 Mich App 424, 436 (2000), quoting *Clearwater Tp v Kalkaska County Bd of Supervisors*, 187 Mich 516, 525 (1915) (constitutional interpretation requires considering the text's most common and obvious meaning, in light of the "objects fairly considered within its terms as gathered from...the section of which it forms a part"). In this sense, the rights conferred by Section 17 must be broader than those afforded by the Fifth Amendment. Any other conclusion would effectively nullify the expressly enumerated right to "fair and just treatment" incorporated into Section 17.

This Court has not meaningfully explored or addressed the full protections afforded under the Fifth Amendment and has not addressed the language guaranteeing citizens "fair and just treatment in the course of legislative and executive investigations." See, e.g. *Tanner*, 496 Mich at 224 n 18 (acknowledging the addition of language protecting the right to fair and just treatment in investigations in the 1963 Constitution). Mr. Fenderson urges this Court to do so and find that this language further supports the conclusion that the police conduct in this case violated his rights under Michigan's Constitution.

This Court has, at times, decided questions about the admissibility of confessions based solely on Michigan's Constitution, holding that, "[s]ince these provisions provide an adequate basis for our decision, we find it unnecessary to reach the federal constitutional issue." *Conte*, 421 Mich at 724. Mr. Fenderson asserts that the suppression of his statements obtained using a coerced and unknowing waiver of his right to counsel violated not only his rights under the United States Constitution, but also his rights under Article 1, Section 17 of Michigan's Constitution. Since Section 17 provides an adequate basis for this conclusion, this Court could affirm the trial court based solely on the basis of Michigan's Constitution without reaching the federal constitutional issues. *Id.* Doing so is both consistent with principles of constitutional avoidance and would both honor and provide guidance regarding the often overlooked but intentional differences between Section 17 and the Fifth Amendment.

G. The Court of Appeals erroneously reversed the trial court because it failed to properly review and defer to the trial court's findings of fact.

The Court of Appeals majority erroneously reviewed the factual record in this case as if it were the first court to do so. A trial court's ruling on a suppression issue presents a mixed question of fact and law. *Tanner*, 496 Mich at 206. An appellate court reviews the legal questions de novo, but the trial court's factual findings are reviewed for clear error. *Id.* Factual findings are clearly erroneous only when the reviewing court is left with a "definite and firm conviction" that the trial court made a mistake. *People v Armstrong*, __ Mich __ (2025), slip op at 3. As this Court recently explained, clear error requires more than a difference of opinion amongst jurists, even when the record reviewed by the trial court is the same as the record reviewed on appeal. *Id.* at 8 n 18 ("The dissent's differing interpretation of the video footage is insufficient to constitute clear error or require a remand."). "On appeal from a ruling on a motion to suppress evidence of a confession, deference must be given to the trial court's findings." *People v Kowalski*, 230 Mich App 464, 471 (1998).

The Court of Appeals described its own interpretation of the record evidence, which differed from the trial court's findings. It ignored the key factual finding that led the trial court to conclude that the police conduct had a coercive effect that rendered Mr.

Fenderson's second waiver and subsequent statements involuntary. In doing so, the Court of Appeals majority reversibly erred.

The trial court reviewed the parties' pleadings and the record, including the interrogation video, and found as fact that the detectives engaged in a course of conduct that included telling Mr. Fenderson that they were calling for an attorney for him, leaving Mr. Fenderson alone for an extended period, and then returning and telling him he was not getting an attorney. (Appendix G, pp 120-121). The trial court found that this was a scare tactic and added "extra pressure" on Mr. Fenderson to waive his right to counsel and these findings of fact were critical to the trial court's conclusion that Mr. Fenderson's second waiver was not voluntary. (Appendix G at 120-122).

The trial court's findings of fact are consistent with the video footage of the interrogation and the testimony from the preliminary examination. After being told detectives were going to call an attorney, and being left alone in the interrogation room for hours, Mr. Fenderson asked, "Where's my lawyer?" (Appendix A at 5:15). The detective said, "You don't get one." (Appendix A at 5:15). Mr. Fenderson expressed confusion, and the detective clarified that they did not have a lawyer for Mr. Fenderson. (Appendix A at 5:15). The detective said, "Ain't nobody coming and you ain't got the money." (Appendix A at 5:15). Mr. Fenderson repeatedly said he was confused and did not understand, but the detective and other officers involved did not ever provide clarification necessary to ensure Mr. Fenderson understood his right to counsel. (Appendix A at 5:15-5:21).

The Court of Appeals majority did not acknowledge or consider Mr. Fenderson's repeated expressions of confusion, the detective's statement that Mr. Fenderson did not get an attorney, or the way the detective's comments conveyed to Mr. Fenderson that he only had a right to counsel if he could afford to retain counsel. Nor did the Court of Appeals majority identify any mistakes in the trial court's findings of fact, nor could it have given how precisely the factual record supports the trial court's findings. Instead, the Court of Appeals majority appears to have reversed because of its differing interpretation of the factual record, which is not a proper application of the clear error standard. *Armstrong*, __ Mich __; slip op at 8 n 18. Reversal is only appropriate where the trial court's factual determinations are so weakly grounded in the record as to warrant appellate intervention. See, e.g. *People v Reese*, 491 Mich 127, 156-157 (2012) (the Court of Appeals erred by

rejecting the trial court's finding of fact where there was evidence to support the finding). The United States and Michigan Constitutions both guarantee the right against self-incrimination. US Const, Am V; Const 1963, art 1 § 17. In *Miranda v Arizona*, 384 US 436, 467-469; 86 S Ct 1602; 16 L Ed 2d 694 (1966), the United States Supreme Court held that during a custodial interrogation, a suspect must be "informed in clear and unequivocal terms" that he has the right to remain silent and any statements made may be used against him in court. A suspect also has the constitutional right to counsel during a custodial interrogation. *People v Tanner*, 496 Mich 199, 207; 853 NW2d 653 (2014). The right to counsel is imperative to protect the suspect's right against self-incrimination. *Miranda*, 384 US at 469. "Once a suspect invokes his right to remain silent or requests counsel, police questioning must cease unless the suspect affirmatively reinitiates contact." *Tanner*, 496 Mich at 208. The appellate court must defer to the trial court's factual findings and rely on them when analyzing legal questions.

An appellate court is not free to ignore the trial court's findings of fact unless they are clearly erroneous. But that is exactly what the Court of Appeals majority did here, ignoring the most problematic of the detective's statements, and the one expressly telling Mr. Fenderson that he did not have a right he was then called upon to waive. By ignoring this portion of the factual record and failing to accord the trial court's findings of fact the deference required by the clearly erroneous standard of review, the Court of Appeals majority reversibly erred.

Conclusion

"To reduce the risk of a coerced confession, this Court in *Miranda* concluded that the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored. *Seibert*, 542 US at 608. That did not happen here. Detectives failed to scrupulously honor Mr. Fenderson's invocation of his right to counsel, left him alone in restraints for hours, and then misinformed him that he did not get an attorney. The trial court found that the detectives' unusual course of conduct amounted to an effective scare tactic that overbore Mr. Fenderson's will and resulted in an involuntary and unknowing waiver of the right to counsel and an involuntary statement. The trial court did not rely on any clearly erroneous findings of fact or make any errors of law in its analysis.

This Court should reverse the Court of Appeals and affirm the trial court's order suppressing the statements that followed the invalid waiver.

Summary and Relief Requested

Daren Fenderson respectfully requests that this Honorable Court reverse the Court of Appeals and affirm the trial court's order suppressing the involuntary statements Mr. Fenderson made after he invoked his right to counsel.

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