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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. 167899

Court of Appeals No. 371677

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DEFENDANT-APPELLANT'S BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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QUESTIONS PRESENTED

I. Statements obtained in violation of an accused's constitutional rights should be suppressed. When statements are made while a person is detained in violation of the Fourth Amendment under *Riverside Co v McLaughlin*, 500 US 44 (1991), the statements should be suppressed unless there were intervening events breaking the causal connection between the unreasonable pre-arraignment delay and the statements. In this case, there was no intervening event to break the causal connection between the unreasonable pre-arraignment delay and Mr. Sanders' statements. Thus, the statements should be excluded. Should this Court overturn the trial court's decision so that Mr. Sanders' statements are held inadmissible?

Mr. Sanders answers, "Yes."

The prosecutor answered, "No."

The trial court answered, "No."

The Court of Appeals answered, "No."

II. Statements obtained in contravention of the United States Constitution and the Constitution of the State of Michigan require suppression in order to uphold the rights of the citizens of this country. The Court of Appeals' decision in *People v Manning* was incorrectly decided as the statements in *Manning* warranted suppression. In reaching its erroneous decision, the Court of Appeals ignored United States Supreme Court precedent. It is clear that suppressing unconstitutional statements furthers the deterrence of official misconduct, which is the very purpose of the exclusionary rule. The *Manning* Court's approach creates a dangerous precedent that effectively rewards and incentivizes law enforcement for constitutional violations, so long as the resulting confession meets the minimal voluntariness factors. Should this Court hold that *Manning* was improperly decided and render Mr. Sanders' statements inadmissible?

Mr. Sanders answers, "Yes."

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The prosecutor answered, "No."

The trial court answered, "No."

The Court of Appeals answered, "No."

III. Statements are only admissible if they are voluntarily given. But in the instant matter, Mr. Sanders was detained well beyond the limits allowed by law. He was subjected to repeated and intense interrogations where he was graphically told the physical condition of his daughter's injuries and medical procedures, given no mental health support upon learning of her death, and was repeatedly accused of being her killer. The subsequent "confession" was made under duress and was not voluntary. The trial court clearly erred when applying the *People v Cipriano*, 431 Mich 315 (1988), factors and determining the statements were admissible, and the Court of Appeals erred by not rectifying this ruling. Should this Court overturn the trial court's decision so that Mr. Sanders' statements are deemed inadmissible?

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 JURISDICTION

This Court has jurisdiction to decide Mr. Sanders' interlocutory application for leave to appeal pursuant to MCR 7.303(B). Mr. Sanders appealed an order of the Court of Appeals that was issued on November 20, 2024. (Exh. D.) This Court ordered his application for leave to appeal to be considered on April 4, 2025. (Exh. I.) Mr. Sanders now files this appeal brief pursuant to MCR 7.312(E).

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 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. Now, Mr. Sanders respectfully requests that this Court reverse the trial court's ruling and hold that his statements, obtained during an unconstitutional detention and through coercive interrogation tactics, must be suppressed to protect the integrity of our justice system and his constitutional rights.

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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.)

[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. (See 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.) This Court then ordered that Mr. Sanders' application for leave to appeal should be considered and provided specific questions to brief. (Exh. I.)

STANDARD OF REVIEW

Constitutional issues are reviewed de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

ARGUMENT

I. The proper analysis for determining whether statements made while detained in violation of the Fourth Amendment should be suppressed requires examining whether there were intervening events breaking the chain of causation between the unlawful detention and the statement.

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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); US Const, Ams IV, XIV; Const 1963, art 1, § 11.

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 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." [*Jackson v Denno*, 378 US 368, 389-390; 84 S Ct 1774; 12 L Ed 2d 908 (1964), 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." *People v Manning*, 243 Mich App

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615, 626; 624 NW2d 746 (2000). And it is precisely this intersection that is 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*, 500 US at 56-57, the United States Supreme Court held that any delay of more than forty-eight hours must be presumed unreasonable. "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, 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.

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> *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.* at 57 (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.*

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 critical aspects inherent in *Riverside*. Indeed, the *Manning* Court stated—after asserting 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.

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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*, 500 US at 50, the Court defined "promptly after arrest" as meaning that judicial determinations of probable cause must occur within forty-eight hours of arrest. 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 a warrantless arrest. *Id.* at 47. Respectfully, this Court's assertion in *Cipriano*, 431 Mich at 332, that "the prompt-arraignment requirement was never elevated by the United States Supreme Court to the level of a constitutional right" is now 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 claimed that the department was operating under the erroneous assumption—an assumption they had been making for over two decades—that they had 72 hours in which to have Mr. Sanders arraigned. (CH, 7-8.) But supposedly 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

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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.) 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, because there was 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

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> 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).]

In the present case, there were no intervening events breaking the causal connection 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 was 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 must be suppressed. The facts of this case present a textbook example of the very scenarios *Brown*, *Dunaway*, and *Taylor* were designed to prevent—those of law enforcement deliberately exploiting a Fourth Amendment violation to obtain incriminating statements.

As the trial court noted, the reasoning behind the delay in the present case was "readily apparent." (Exh. A, 14.) Detective Lewandowsky testified that he could not have done the same interview without using the autopsy results obtained over the weekend of detention. (CH, 40.) "That was a major factor in deciding to do the second—or do my interview with him." (CH, 40.) The court explicitly condemned this practice, finding 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.) This is *precisely* the type of exploitation that requires suppression under Fourth Amendment jurisprudence.

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Nothing in the record even suggests any intervening circumstance that would have purged the taint of the constitutional violation. Mr. Sanders remained in continuous custody during the entire 64-hour period, was not provided counsel, nor did he initiate the interrogation with Detective Lewandowsky. Put simply, there is absolutely no legally cognizable reason the government did not arraign Mr. Sanders in a manner consistent with the Constitution. Detective Lewandowsky testified that the distance between where the interrogation took place and 54-A District Court was approximately a mile and a half. (WH, 18.) He also admitted that he had "no knowledge" of judges being unavailable. (CH, 11.) And yet the interrogation by Detective Lewandowsky did not take place until 9:57 a.m. on Monday January 7, 2013. (Exh. H, 0:06.) And it should be noted that this interrogation and the subsequent one only occurred *after* Detective Lewandowsky had an opportunity to confer with the other detectives working on the case during a meeting that Monday morning. (WH, 20-21, 23.)

Under these circumstances, the causal chain between the Fourth Amendment violation and Mr. Sanders' coerced statements remained intact. Accordingly, this Court should reverse the trial court's decision granting the government's motion to admit Mr. Sanders' statements and hold that the proper analysis for determining whether statements made during a *Riverside* violation should be suppressed requires examining whether there were intervening events breaking the causal connection between an unconstitutional detention and the statements under *Brown*, *Dunaway*, and *Taylor*.

II. The Court of Appeals' decision in *People v Manning* was incorrectly decided as the statements in *Manning* warranted suppression.

In *Manning*, 243 Mich App at 642, the Michigan Court of Appeals declined to rule that a statement obtained during a *Riverside* violation required an automatic suppression of the statement. The court reasoned that adopting a mandatory exclusion of a defendant's statement made during a Fourth Amendment violation "would not further the primary purpose of the exclusionary rule." *Id.* The court

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instead decided "the better approach is to consider the violation as a factor in evaluating the overall voluntariness of the statement." *Id.*

With the utmost respect for the Michigan Court of Appeals, this reasoning is inconsistent with the reasons for the exclusionary rule. As this Court has recognized, "[t]he raison d'etre of the exclusionary rule is the deterrence of official misconduct." *Cipriano*, 431 Mich at 332. The United States Supreme Court has recognized that the exclusionary rule "imposes a substantial cost on the societal interest in law enforcement." *United States v Janis*, 428 US 433, 448; 96 S Ct 3021; 49 L Ed 2d 1046 (1976). However, this interest is substantially outweighed when dealing with statements obtained through violation of an individual's right under the Fourth Amendment to a prompt probable cause determination.

To hold that suppression of a statement obtained in violation of the Fourth Amendment would not further the purpose of deterrence of official misconduct fundamentally undermines the very purpose of the exclusionary rule. The *Manning* Court's approach creates a dangerous precedent that effectively rewards and incentivizes law enforcement for constitutional violations, so long as the resulting confession meets the minimal voluntariness factors.

Holding that the unnecessary delay in arraignment is but one of several factors to consider when determining the voluntariness of a statement creates a situation where law enforcement officers can strategically violate *some* constitutional rights while carefully avoiding others. The *Manning* approach essentially permits police to circumvent constitutional protections through a calculated balancing act. Put more to the point, they are allowed to intentionally delay a suspect's arraignment beyond constitutional limits so long as they meticulously observe more *Cipriano* factors than not. This creates an absurd framework where officers can deliberately violate a defendant's Fourth Amendment right to prompt arraignment yet have resulting statements deemed admissible because they provided *Miranda* warnings, did not physically beat or threaten the suspect, ensured the suspect was not a juvenile, or ensured basic needs were met. See *Cipriano*, 431 Mich at 334.

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The approach taken in *Manning* is incongruous with the purpose of constitutional protections. The *Cipriano* factors should function as cumulative safeguards, not as a menu from which law enforcement may select which rights to honor and which rights to violate. The *Manning* interpretation effectively tells law enforcement officers that they may violate a suspect's Fourth Amendment right to a prompt probable cause determination and unlawfully extend the period of detention so long as they avoid the most obvious forms of coercion. This creates a perverse incentive structure. It effectively encourages officers to exploit the psychological vulnerability that inevitably results from prolonged and unauthorized detention, while carefully documenting compliance with the other factors to shield the statement from being suppressed. This incentive structure is particularly troubling given that an unconstitutional detention and delay creates the very conditions that make a suspect *more* vulnerable to psychological pressure, thereby undermining the reliability of any statements obtained—a concern that cannot be adequately addressed by merely weighing it as one factor in a multi-factor test.

The *Manning* decision creates a dangerous legal framework that allows law enforcement to strategically violate constitutional rights. By reducing Fourth Amendment violations to merely one factor in a balancing test, rather than treating them as threshold violations requiring suppression, the court has undermined the very purpose of the exclusionary rule. This Court should correct this error by concluding that statements obtained during *Riverside* violations are inadmissible fruits of constitutional violations, not voluntary statements to be evaluated under a mere totality test.

III. The trial court clearly erred in concluding that Mr. Sanders' statements were voluntary under the *Cipriano* factors.

Under current Michigan law, the test for admissibility of a confession is "whether, given the totality of the circumstances, the defendant's confession was voluntarily given." *Cipriano*, 431 Mich at 338-339. The test for voluntariness is whether, considering the totality of the circumstances, the statement is "the product of an essentially free and unconstrained choice" rather than the result of the accused's

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"will [being] overborne and his capacity for self-determination critically impaired." *Id.* at 333-334. The defining line for voluntariness of a confession "is that at which governing self-direction is lost and compulsion, of whatever nature or however infused, propels or helps to propel the confession." *Id.* at 334 (internal citation and quotation marks omitted.)

A. Under *Cipriano*, a confession is inadmissible if, given the totality of the circumstances, the confession was involuntarily given after examining certain factors.

This Court established that in determining whether a statement is voluntary, the trial court should examine several factors, including the accused's 1) age; 2) lack of education or intelligence; 3) prior experience with the police; 4) the length of the detention before giving the statement in question; 5) any lack of advice of the accused's constitutional rights; 6) whether there was an unnecessary delay in bringing the accused before a magistrate before the confession was given; 7) whether the accused was injured, intoxicated, drugged, or in ill health when the statement was given; 8) whether the accused was deprived of food, sleep, or medical attention; 9) whether the accused was physically abused; and 10) whether the suspect was threatened with abuse. *Id.*

When analyzing whether there was an unnecessary delay in bringing the accused before a magistrate, the focus should not only be on "the length of the delay, but rather on what occurred during the delay and its effect on the accused." *Id.* at 334-335. Further, "[t]he absence or presence of any one of these factors is not necessarily conclusive on the issue of voluntariness[;]" the ultimate test is whether the confession was voluntarily given, after examining the totality of the circumstances. *Id.* at 334.

B. The trial court clearly erred when it held that Mr. Sanders' statement was voluntary under *Cipriano* simply due to a numerical balancing act. When properly applying the *Cipriano* factors to the present case, Mr. Sanders' statement clearly was involuntary.

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The trial court found that Mr. Sanders' length of detention and the unnecessary delay in bringing him before a magistrate weighed in favor of suppressing the statements. (Exh. A, 17.) However, the trial court erroneously found that Mr. Sanders' age; education level and intelligence; previous experience with the police; advisement of constitutional rights; lack of injury, intoxication, and ill-health; lack of physical abuse; and lack of threats of abuse all weighed in favor of admitting the statements. (Exh. A, 16.) The court also found that Mr. Sanders was not deprived of food, sleep, or medical attention, but he was never afforded any mental health treatment regarding the abrupt death of his daughter, and that this factor was neutral. (Exh. A, 16-17.) This, too, was in glaring error, as the devastating trauma caused by the death of his daughter in conjunction with being accused of being her killer certainly outweighed the food and sleep Mr. Sanders was purportedly provided to "satisfy" this analysis factor and render it "neutral" in the trial court's eyes. Common sense shows that the trial court's analysis was completely off base.

As explained below, the trial court clearly erred when it concluded that the *Cipriano* factors provide that Mr. Sanders' statement should be admitted. When analyzed properly in the present case, the *Cipriano* factors firmly lean in favor of the suppression of the statement.

i. **Factors 4, 6, 7, and 8: Mr. Sanders' length of detention before the statement, unnecessary delay in his probable cause determination, his compromised emotional and mental wellbeing, and his deprivation of mental and emotional medical attention, all firmly lean in favor of Mr. Sanders and in favor of suppressing his involuntary statement.**

Both Mr. Sanders' length of detention before giving the statement on January 7, 2013, and the unreasonable delay in his probable cause determination, violated the law—and this has been unequivocally conceded by the government. (WH, 59-60; CH, 54, 65-67.) Specifically, the government conceded that there were no emergencies or extraordinary circumstances that justified Mr. Sanders' illegally lengthy detention.

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(CH, 59-60.) The trial court correctly concluded that these two factors clearly favor suppression of Mr. Sanders' statements. (Exh. A, 17.)

Concerning whether Mr. Sanders was injured, intoxicated, drugged, or in ill health when the statement was given, Mr. Sanders' compromised emotional and mental state constitute a significant health factor that weighs in favor of suppression. On this factor, the government has harped that Mr. Sanders exhibited "flat" emotions in an attempt to show that he was not affected by his daughter's death. (WH, 42; CH, 29.) However, as the trial court astutely wrote, "it is not necessarily determinative" that Mr. Sanders "did not react to this sudden loss frenziedly or emotively. Individuals react to traumatic events and process trauma in varying ways." (Exh. A, 10.) The court went on to add that "while some may be panicking or crying hysterically, others may quietly 'shut down'" and "trauma does not manifest uniformly; rather, it engenders a diverse range of reactions shaped by myriad factors including personal resilience, prior experiences, and coping mechanisms." (Exh. A, 10.) Incredibly, however, the trial court inexplicably omitted this reasoning when it concluded that "there is no indication" that Mr. Sanders was "in ill-health." (Exh. A, 16.) This is wholly incorrect.

The government's attempt to equate Mr. Sanders' lack of visible emotional distress with callousness and a lack of emotional vulnerability fails to recognize that his composure in the face of extreme accusations suggested a person who maintains the same demeanor in all situations, not someone unaffected by his child's death. 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 toiling under its weight. Mr. Sanders' daughter's death undoubtedly placed him in a severely compromised emotional and mental state that weighs heavily in favor of suppression.

The profound grief and trauma of losing a child—particularly under such sudden and disturbing circumstances—would naturally inflict significant psychological distress that constitutes a genuine health impairment, regardless of

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whether this manifested as visible emotional displays or as the "flat" affect that the government erroneously interpreted as indifference. The emotional devastation of losing an infant child represents precisely the type of "ill health" that the *Cipriano* factors recognize as undermining voluntariness, making it all the more troubling that the trial court acknowledged this reality in its analysis but inexplicably failed to incorporate it into its ultimate conclusion. (Exh. A, 16.)

Although the government and Detective Lewandowsky consistently tried to portray Mr. Sanders as lacking a proper emotional state, Mr. Sanders' demeanor in all his interrogations can be consistently described as stoic. Whether it was Mr. Sanders speaking about his daughter before she died, after she died, or being bombarded with inhumane and provocative statements about his character, Mr. Sanders never once raised his voice, retaliated verbally, or did any action that could be described as anything other than calm and measured. But while he kept his emotions under control, that certainly does not equate to being indifferent or unfeeling about the traumatic loss he suffered.

For instance, in the first interrogation, Detective Thielen questioned Mr. Sanders, in a comparatively calm manner, for approximately 90 minutes, and then left the room. (Exh. E, 3:21 – 1:31:35.) After another 90 minutes of waiting, Detective Reust entered the interrogation room and immediately began grilling Mr. Sanders. (Exh. F, 1:16:00.) It is very important to note that during this interrogation, Mr. Sanders' daughter *had not yet been pronounced dead*. At one point, Detective Reust stated, "Okay, but you are lying, John. The evidence clearly shows that. I don't know if you get how serious this is, do you understand that **that baby is going to die**?" (Exh. F, 1:26:30 – 1:26:37.) Mr. Sanders, under the impression that his child was not going to die, cut her off and said, "Don't say that." (Exh. F, 1:26:38.) Detective Reust insisted, "I am telling you the honest truth, she is dying, **they are waiting at the hospital for her to die. She is going to die**." (Exh. F, 1:26:40 – 1:26:50.) Just a few moments later, Detective Reust continued, "Either you are an absolute monster that should have never been left alone with this baby" or a "good and loving father that had something bad happen to him." (Exh. F, 1:27:00 – 1:27:10.)

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The reprehensible and dehumanizing conduct did not stop there. Detective Reust said that his daughter's mother "is going to **bury that baby**. **She is going to stand by that baby's grave and bury her, and she deserves to know what happened**." (Exh. F, 1:27:22 – 1:27:34.) The interrogation continued, with Detective Reust commenting multiple times that Mr. Sanders was not a "real man" because he would not admit to injuring and killing his infant daughter. (Exh. F, 1:27:20, 1:27:57, 1:29:01, 1:35:22, 1:35:42.) Towards the end, when the detective apparently felt that Mr. Sanders was not making adequate eye contact with her, she laughed and said "ohhh don't stop looking at me John, don't stop looking at me, you know that what I am saying is the truth, you are not even man enough to explain to her mother what happened to her baby." (Exh. F, 1:31:13 – 1:32:26.)

Detective Reust then got crudely and inhumanly graphic to a man whose child was at that very moment fighting for her life in the hospital. "**When they took her skull off in the operating room**, **her brain swelled up bigger than her head**." (Exh. F, 1:33:22 – 1:33:30.) Just a few moments later, after repeatedly shutting down any assertion that he had no involvement in his daughter's injuries, Detective Reust concluded the interview by saying "that is fine, I am going to take you to jail tonight, you are going to go to jail for causing this injury. We'll just put it in the report that you are not man enough to tell what happened to the baby, that's how my report is going to read." (Exh. F, 1:35:28 – 1:35:47.) When officers came into the room just a few minutes later, Detective Reust ended her remarks by saying, "I'll call the jail with a complaint number, and he'll be lodged for homicide." (Exh. G, 6:12 – 6:17.)

It is truly remarkable that Mr. Sanders *at no point* raised his voice, pounded on the table, cursed, or did anything that might imply anything but stoicism in response to the provocative, manipulative, and dehumanizing tactics unleashed by Detective Reust. Throughout both interrogations—being told his daughter was dying, being called a "monster," being told he was not "man enough," and hearing graphic descriptions of his infant daughter's brain surgery—Mr. Sanders, at every moment, responded with restraint rather than explosive emotion. This emotional consistency across all circumstances, whether discussing his daughter's condition or being

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accused of causing her death, demonstrated a stable personality trait, not guilt or indifference.

Following that Friday interrogation where Detective Reust employed these tactics, Mr. Sanders was detained in the jail over the weekend, and he was not arraigned until Monday. This extended detention period is particularly problematic when considering the voluntariness of his subsequent statement. During this crucial time, Mr. Sanders learned of his daughter's death while confined to a jail cell. He was deprived of the opportunity to properly grieve, seek professional counseling, or receive spiritual or family support that would normally be available to someone facing such devastating news. The psychological impact of Detective Reust's reprehensible conduct—calling him a "monster," questioning his manhood, graphically describing his daughter's brain surgery, and prematurely declaring a homicide charge—combined with receiving news of his child's death while in isolation, created conditions that would overwhelm any parent's capacity for rational decision-making.

The psychological devastation of learning about his daughter's death while isolated in jail, combined with the lingering effects of Detective Reust's interrogation tactics, created an overwhelming emotional burden that substantially impaired Mr. Sanders' mental health and decision-making capacity by the time of the second interrogation. This lines up with what Detective Lewandowsky described when referring to moments of silence in the interrogation as being used to "cook" or "slow cook" and "marinate" Mr. Sanders. (CH, 42.) The weekend in between the two interrogations served only to intensify this psychological pressure, as Mr. Sanders was forced to process the devastating news of his child's passing in isolation, without appropriate support mechanisms, while simultaneously facing the prospect of life-altering criminal charges. This prolonged period of detention following such traumatic news fundamentally undermined the voluntariness of any statements made during the subsequent interrogation.

Lastly, with regard to whether Mr. Sanders was deprived of food, sleep, or medical attention, Mr. Sanders was without access to adequate grief counseling, support, or spiritual guidance necessary to cope with the news of his daughter's

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passing. The trial court in its opinion concluded this factor as neutral because while Mr. Sanders was "never deprived of food, sleep or medical attention" he was also "never afforded any mental health treatment regarding the abrupt death of his daughter." (Exh. A, 16-17.) Factors such as being hungry and tired due to deprivation of food and sleep have been included as factors that must be considered when evaluating the validity of a statement and those factors alone can tip the scale into the accused's favor. In comparison, the emotional toll of losing a child while simultaneously being brow-beaten, humiliated, and insulted in a hostile atmosphere certainly deserves heavier weight on the scales of justice than whether one was hungry or tired. As the United States Supreme Court has articulated, "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain.'" *Estelle v Gamble*, 429 US 97, 104; 97 S Ct 285; 50 L Ed 2d 251 (1976) (internal citation omitted). Mr. Sanders was experiencing enough pain due to the circumstances that had evolved. The government's callus failure to take this into consideration only multiplied the effect of Mr. Sanders' need for mental health treatment and support. And this compromised his ability to make rational decisions.

It is also important to remember that, in this context, when an accused is being held without a warrant and without a probable case determination, they are not only "'presumptively innocent until proven guilty,'" they are also, as Justice Scalia articulated in his *Riverside* dissent, "quite literally" an "innocent arrestee." *Manning*, 243 Mich App at 622. Mr. Sanders, who at this time was "an innocent arrestee," was not given the appropriate mental health support and spiritual support during the most vulnerable point in his life. This should be considered a form of medical deprivation that significantly impaired Mr. Sanders' mental state, mental health, and decision-making capacity during questioning, thus undermining the voluntariness of his statement. This factor, too, leans in favor of Mr. Sanders and in favor of his statement being involuntary.

ii. Factors 2 and 3: Mr. Sanders' level of education and previous experience with the police are neutral factors that do not favor either the government or the defense.

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Mr. Sanders' level of education and previous experience with police should be considered neutral factors in this analysis, not ones that favor the government as the trial court concluded. (Exh. A, 16.) The trial court found that Mr. Sanders was "not only a high school graduate, but articulate and actively enrolled in college courses." (Exh. A, 16.) However, this educational background must be properly contextualized. The mere fact that Mr. Sanders was enrolled in online college courses does not automatically enhance his ability to withstand the sophisticated interrogation techniques employed by Detectives Reust and Lewandowsky, especially given that Mr. Sanders was in an emotionally and mentally subtracted capacity.

Further, Mr. Sanders' previous experience with the police does not mean, as the trial court concluded, that Mr. Sanders "was very familiar with interactions with law enforcement due to having sported an extensive criminal history and being out on parole during the commission of the alleged offense." (Exh. A, 16.) Rather, a 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. Mr. Sanders' prior experience with law enforcement could not and did not prepare him for the interrogation techniques deployed by Detectives Reust and Lewandowsky.

When examining these factors, this Court should recognize that a high school degree and some online college education provides little, if any, defense against the tactics employed by Detectives Reust and Lewandowsky. Similarly, prior routine and expedient interactions with police officers do not equate to preparation for withstanding the detectives' sophisticated tactics while grieving the tremendous loss of an infant. When viewed in proper context, these factors should be considered neutral at best and do not support the trial court's finding that they weighed in favor of voluntariness.

iii. Factors 1, 5, 9, and 10: Mr. Sanders' age, advice of his constitutional rights, lack of physical abuse, and lack of threats of abuse, lean in favor of the government.

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Mr. Sanders does agree that a few of the *Cipriano* factors, at least on paper, lean in favor of the government. Mr. Sanders agrees that he was thirty-seven years old at the time of the interrogation. (WH, 47.) Mr. Sanders also agrees that he was given *Miranda* rights, he was not physically abused, and he was not threatened with physical abuse by law enforcement.

However, while the above-mentioned factors appear to lean in the government's favor, when properly contextualized within the totality of the circumstances, their significance is heavily diminished. The government should not receive special credit merely for refraining from the most egregious forms of misconduct. That Mr. Sanders was not a juvenile, was advised of his constitutional rights, and was not physically abused or threatened with abuse reflects nothing more than basic adherence to minimal constitutional—and basic human decency—requirements that were violated in other respects through the prolonged detention and unreasonable delay committed and admitted by the government. However, meeting *some* legal obligations while flouting others should not be construed as evidence of voluntariness. Indeed, these minimal compliance factors carry little weight here and should not be credited to the government to equally outweigh the government's much more egregious behaviors.

These minimal compliance factors are substantially outweighed by the sophisticated psychological pressure applied during both interrogations, particularly given Mr. Sanders' extreme emotional vulnerability following his daughter's hospitalization and subsequent death. These factors, while technically leaning in favor of the government, must be properly weighed within the broader context of the severe psychological manipulation and extreme emotional distress that ultimately overwhelmed Mr. Sanders' capacity for voluntary decision-making.

iv. When properly analyzed, the *Cipriano* factors decisively weigh in favor of finding that Mr. Sanders' statement was involuntary.

When properly analyzing the *Cipriano* factors, it is clear that the trial court clearly erred in its determination that these factors weighed in favor of admitting Mr. Sanders' statement. In its written opinion, it just tallied up numbers giving each

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factor the same amount of weight. There was no analysis of how negatively impactful several of the factors were to Mr. Sanders. The length of Mr. Sanders' detention, the unnecessary delay in his probable cause determination, his severely compromised emotional and mental state following his daughter's death, and the deprivation of essential mental health support during this traumatic period all strongly favor suppression.

Factors 2 and 3—Mr. Sanders' educational background and prior police experience—are at best neutral when properly contextualized, as neither adequately prepared him to withstand the sophisticated psychological interrogation techniques applied during this uniquely vulnerable period in his life.

While factors 1, 5, 9, and 10 potentially favor the government, they serve as the floor, not the ceiling, of how officers ought to comport themselves and deserve little weight in the calculations here. They represent mere minimal constitutional compliance and are substantially outweighed by the severe constitutional violations and psychological manipulation present throughout the interrogation process. The trial court's analysis improperly credited minimal constitutional compliance while simultaneously discounting or ignoring the factors that most significantly impaired Mr. Sanders' capacity for self-determination. When viewed holistically, the *Cipriano* factors decisively support the conclusion that Mr. Sanders' statements were involuntary and should be suppressed.

C. Detectives Reust and Lewandowsky's calculated use of the Reid Interrogation Technique significantly influenced the voluntariness of Mr. Sanders' statement, and undermines the veracity of Detective Lewandowsky's testimony

During the *Walker* hearing, Detective Lewandowsky testified that he had "completed all of the Reid and Reid investigative courses" as well as the "Wicklander-Zulawski" method. (WH, 15.) However, when asked by the government if he had employed a specific interrogation technique, he testified that he had not used any specific technique in his interrogation of Mr. Sanders, but rather "went into the interviews open-minded and attempted first and foremost to have an adult

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conversation" with the subject. (WH, 16.) In the textbook *Essentials of the Reid Technique*, the Reid Technique is painstakingly detailed. Inbau et al., *Essentials of the Reid Technique* (Burlington, MA: Jones & Bartlett Learning, 2015).

The Reid Technique involves 9 steps.

- Step 1: The investigator directly and positively confronts the suspect.
- Step 2: The investigator introduces an interrogation theme.
- Step 3: The investigator handles the initial denials of guilt.
- Step 4: The investigator overcomes the suspect's objections.
- Step 5: The investigator gets and retains the suspect's attention and clearly displays sincerity in what he says.
- Step 6: The investigator recognizes the suspect's passive mood.
- Step 7: The investigator uses an alternative question—a suggestion of a choice to be made by the suspect concerning some aspect of the crime.
- Step 8: The investigator has the suspect orally relate the various details of the offense that will serve ultimately to establish legal guilt.
- Step 9: The verbal confession is converted into a written or recorded statement. [*Id.* at 131.]

A detailed review, however, of the statements in question reveals that both Detectives Reust and Lewandowsky employed the Reid Technique. The Reid Technique provides that investigators "need not utilize the steps in the exact order in which they appear" and "there may be times when two or more steps will have to be intermingled so that they may seem to represent only a single step." *Id.* at 130. Under this technique, it is important to begin the interrogation *after* the interview, so that "the investigator can contrast his friendly, approachable demeanor displayed during the interview to a much more serious and firm demeanor at the outset of an interrogation." *Id.*

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Regarding step one of the Reid Technique, "the interrogation begins by the investigator telling the suspect that there is no doubt about his involvement in the crime." *Id.* at 134. The investigator should give a "confrontation statement" directly asserting the subject's involvement in the crime, and a "transition statement" which serves "to establish why the suspect committed the crime." *Id.* at 134-135.

The interview with Detective Thielen can be accurately categorized as the "interview" of Mr. Sanders, hence the relaxed and non-confrontational style. (Exh. E.) When Detective Reust took over, the interrogation immediately began with a confrontational statement where she announced, "Mr. Sanders, our investigation clearly shows that you are responsible for the injury that caused your daughter to be hospitalized." (Exh. F, 1:16:00 – 1:16:07.) Soon thereafter, Detective Reust utilized the transition sentence recommended by the literature by saying, "The piece that I don't know is why did it happen." (Exh. F, 1:17:31- 1:17:36.)

Similarly, in Detective Lewandowsky's interview and subsequent interrogation, the interview can be categorized as the first hour or so of the statement. Just a few minutes after the detective took a break to get coffee and water, he reentered the room and soon thereafter began with his confrontation sentence immediately trailed by his transition sentence, "Our investigation is very in depth, and it's very clear. And in conjunction with the autopsy report, it tells us you did something, and we need to know why and what specifically." (Exh. H, 1:03:43 – 1:03:58.)

Proceeding with step two, the Reid method recommends that theme development involves "presenting a 'moral excuse' for the suspect's commission of the offense or minimizing the moral implications of the conduct. Some themes may offer a 'crutch' for the suspect as he moves toward a confession." *Essentials of the Reid Technique*, 142. In both interrogations, the theme consistently employed in the interrogations was that this was a difficult baby who frequently cried and could have easily driven Mr. Sanders insane. In Detective Reust's interrogation, she posited that Mr. Sanders might be among the "normal loving caring fathers who lose it or do something stupid because of circumstances that are going on." (Exh. F, 1:18:30 –

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1:18:40.) "I know that this is a difficult baby, *everybody* at the hospital told us that, that baby screams like no other baby could scream and that could get on *anyone's* last nerve." (Exh. F, 1:29:21 – 1:29:31.) And in Detective Lewandowsky's interrogation, he used his own parentage and said that children "make you nuts sometimes" and "I mean I got five of my own, man. I'm, I'm, I teeter, I walk that fence line of nuts and not nuts half the time." (Exh. H, 57:01 – 57:11.) At another time, "Tell me what happened. I know how frustrating it is, dude. I'm a dad, too. I know. Tell me about it. Was the baby crying?" (Exh. H, 1:07:20 – 1:07:42.) This theme is a *direct* application of the first recommended theme in the textbook, "Theme 1: Sympathize with the Suspect by Saying That Anyone Else Under Similar Conditions or Circumstances Might Have Done the Same Thing." *Essentials of the Reid Technique*, 145 (emphasis omitted).

Concerning the third step, the Reid Technique provides that the investigator should "discourage the suspect from engaging in unnecessary denials, which distracts from the investigator's theme and subsequent efforts to persuade the suspect to tell the truth." *Id.* at 167 (emphasis omitted). Alarmingly, the literature explains that "it is important for an investigator to appreciate a fundamental principle of interrogation: The more often a guilty suspect denies involvement in a crime, the less likely it is that he will tell the truth." *Id.*

In Detective Reust's interview, Mr. Sanders said, "I didn't shake my baby," to which Detective Reust cut Mr. Sanders off and said, "No. You have to stop right there, the evidence is very clear that you did." (Exh. F, 1:17:38 – 1:17:44.) At another point, Mr. Sanders explained to Detective Reust, "I understand that, like I was telling her [Detective Thielen], I am telling you what happened from the time I got up," to which Detective Reust again cut off Mr. Sanders and stated, "Okay, but you are lying John, and the evidence clearly shows that." (Exh. F, 1:26:25 – 1:26:33.)

Similarly, Detective Lewandowsky's interrogation used this step during the confrontation statement in step one when Mr. Sanders asked the detective why he was the only suspect. Mr. Sanders asked, "So, there is no way her mom could've did anything to her?" (Exh. H, 1:03:37 – 1:03:55.) To which Detective Lewandowsky cut

him off and said "John, John, here is the thing, okay? Our investigation is very in-depth and very clear—it tells us you did something." (Exh. H, 1:03:37 – 1:03:55.) At another point, Mr. Sanders' said once again, "I don't know. I'm not trying—I'm not no monster, man," to which Detective Lewandowsky responded, "Then tell me what happened." (Exh. F, 1:12:46 – 1:12:52.) These examples highlight how Detectives Reust and Lewandowsky consistently reduced denials by Mr. Sanders into opportunities to pressure for a confession, reinforcing their claim that there was absolutely no doubt about his guilt.

Step four of the Reid Technique teaches investigators to overcome objections. Objections are defined in the Reid literature as "a statement that is proposed by the suspect as an excuse or reason why the accusation is false." *Essentials of the Reid Technique*, 182. Of great concern, the Reid textbook claims that "objections . . . represent an offensive strategy and are heard, almost exclusively, from guilty suspects." *Id.* at 182 (emphasis omitted). When dealing with these objections, the investigator should engage in a three-step process that requires 1) recognizing the objection, 2) rewarding the objection, and 3) turning the objection around. *Id.* at 183-185.

In Detective Reust's interrogation, Mr. Sanders stated that he did not ever "lose it" with the baby. (Exh. F, 1:16:03 – 1:26:07.) Detective Reust 1) recognized the objection, and 2) rewarded the objection by stating, "Okay I am glad to hear that. And I am glad to hear that people were telling me the truth about you, John." (Exh. F, 1:26:07 – 1:26:12.) Immediately after, Detective Reust 3) turned the objection around by saying, "I am glad to hear that people were telling me the truth about you, John, but what I need to know is what happened today that was different. What happened today that caused something different to happen?" (Exh. F, 1:26:08 – 1:26:20.)

In Detective Lewandowsky's interrogation, he explained that intentionally committing this crime or accidently committing this crime was "the difference between being a monster—" and Mr. Sanders immediately broke in and said, "I am not a monster." (Exh. H, 1:06:10 – 1:06:25.) "I am not a monster" can be categorized as an "objection" as described by the literature. Detective Lewandowsky then engaged

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in a textbook three-step response to the objection. Detective Lewandowsky 1) recognized the objection, 2) rewarded the objection by stating, "Then tell me what happened, John. Tell me what happened, John, cause I don't think you are a monster. I do think you love your kids," and 3) turned the objection around by continuing, "I do think you love your kids. I know something happened in that house, in that apartment that you didn't intend to do maybe." (Exh. H, 1:06:10 – 1:06:37.)

Step five of the Reid Technique involves procurement and retention of the suspect's attention where the investigator prevents the suspect from engaging in "psychological withdrawal," which is defined as "emotional detachment from a situation, including the tendency to abandon verbal efforts and avoid eye contact." *Essentials of the Reid Technique*, 189. The literature recommends that once an investigator has recognized the suspect psychologically withdrawing, "the investigator should slowly move his chair in closer to the suspect's." *Id.* at 190-191. Both Detectives Reust and Lewandowsky moved their chairs closer to Mr. Sanders at points in their interrogations, signifying perhaps the most blatant application of the Reid Technique yet.

In Detective Reust's interrogation, before she officially began, she offered Mr. Sanders a bathroom break. (Exh. F, 1:13:35 – 1:13:49.) After Mr. Sanders is escorted out by a different officer and is presumably in the bathroom at this time, Detective Reust entered the interrogation room and *immediately* moved Mr. Sanders' chair closer to hers and then abruptly left the room again. (Exh. F, 1:14:39 – 1:14:47.) Further, Detective Reust attempted to redirect eye contact twice throughout the interrogation. First, Detective Reust was becoming increasingly hostile, and said, "You can't even look at me. There is something very interesting, someone over here in this room, John, but it's not me. You can't even look at me." (Exh. F, 1:30:40 – 1:30:47.) And at another point, as mentioned above, Detective Reust said, "Ohhh, don't stop looking at me John, don't stop looking at me. You know that what I am saying is the truth. You are not even man enough to explain to her mother what happened to her baby." (Exh. F, 1:31:13 – 1:32:26.)

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Likewise, in Detective Lewandowsky's interrogation, he both moved his chair and redirected eye contact to him at various points in the interrogation. The detective twice moved his chair closer to Mr. Sanders during the interrogation and is eventually just inches away from him. (Exh. H, 1:04:00 – 1:04:05, 1:07:29 – 1:07:32.) The detective also redirected Mr. Sanders' eye contact to him on at least three occasions, stating "John—look at me John," "John, look up," and "John. Look at me." (Exh. H, 1:04:16 – 1:04:19, 1:15:14 – 1:15:17, 1:16:50 – 1:16:53.)

Unsurprisingly, both Detectives Reust and Lewandowsky also employed step six of the Reid Technique during their interrogations. Step six advises the investigator to display "understanding and sympathy in urging the suspect to tell the truth" after the suspect becomes passive. *Essentials of the Reid Technique*, 197 (emphasis omitted). The investigator may also attempt to persuade the suspect to "tell the truth for the sake of his own conscience, mental relief, or moral wellbeing, as well as for the sake of everybody concerned." *Id.* (internal quotation marks omitted). The manual also encourages the investigator to interject that "if the suspect were the investigator's own brother (or father, sister, etc.) he would still advise telling the truth." *Id.*

Detective Reust, although not very understanding or sympathetic in her interrogation, employed step six by repeatedly stating that the daughter's mother was "going to stand by that baby's grave and bury her, and she deserves to know what happened." (Exh. F, 1:27:25 – 1:25:34.) Detective Reust's repeated assertions that telling the truth was imperative for Mr. Sanders to be a "man" can be easily interpreted as a persuasive reason for the suspect "to tell the truth." (Exh. F, 1:31:13 – 1:32:26, 1:35:28 – 1:35:47.) Detective Reust also framed it as a moral obligation to his daughter's mother by stating, "So, apparently you aren't the kind of guy that steps up to the plate and takes responsibility for your actions. There is only one thing you need to tell and that is the truth about what happened to this baby" and that the child's mother "deserves to know what happened." (Exh. F, 1:27:54 – 1:28:15.)

Detective Lewandowsky, on the other hand, employed a *textbook* application of step six in his interrogation of Mr. Sanders. Throughout the questioning, Detective

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Lewandowsky displayed the "understanding and sympathy" recommended by the Reid Technique. Much of the feigned sympathy Detective Lewandowsky expressed was in line with his application of step two's theme to "Sympathize with the Suspect by Saying That Anyone Else Under Similar Conditions or Circumstances Might Have Done the Same Thing." *Essentials of the Reid Technique*, 145 (emphasis omitted). The detective's consistent use of sympathy and understanding fell directly under the recommendations articulated in step six when he stated that having "difficult" children can "make you nuts sometimes" and "I know how frustrating it is." (Exh. G, 1:29:21 – 1:29:31, 57:01 – 57:04, 1:07:20 – 1:07:42.)

Regarding the seventh step of the Reid Technique, both Detective Reust and Lewandowsky consistently used the "alternative question" recommended by the Reid literature. *Essentials of the Reid Technique*, 203. An alternative question is defined as "a question that offers the suspect two incrimination choices concerning some aspect of the crime." *Id.* When selecting the alternative question, "primary consideration should be given to the theme that the investigator has been using." *Id.* at 205 (emphasis omitted).

As mentioned above, Detective Reust, used the theme of a difficult baby who drove a father crazy and presented the alternatives that he was either a monster who should not have been left alone with his baby or a good and loving father who had something bad happen to him. (Exh. F, 1:27:00 – 1:27:10.) Likewise, Detective Lewandowsky used the same alternative question theory when he said "the alterative for 'didn't mean for that to happen' is 'meant to do it, meant for it to happen.'" (Exh. G, 1:06:06 – 1:06:14.) And just a few moments later, "I think you do love your kids. I know something in that apartment [happened] that you didn't intend to do maybe." (Exh. G, 1:06:30 – 1:06:37.) This is followed shortly after with "or the flipside of that coin is, John, that you're a monster and you meant to kill this child." (Exh. H, 1:07:05 – 1:07:12.)

The eighth and ninth steps of the Reid Technique involve having the suspect relate details of the offense and ensuring the confession is electronically recorded or reduced to writing and signed, respectively. *Essentials of the Reid Technique*, 212,

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221. In the present case, Mr. Sanders did—after being subjected to an unlawful delay, detention, and two calculated iterations of the Reid Technique—implicate himself in his daughter's injuries. The interrogations were also recorded. As such, steps eight and nine of the Reid Technique were successfully leveraged against him.

Moreover, Detective Lewandowsky, throughout the evidentiary hearings, also repeatedly offered seemingly "innocent" explanations for his actions in the interrogation room. Detective Lewandowsky testified that when he interrogated Mr. Sanders, he was not wearing his police uniform, was not carrying his firearm or badge, and removed the handcuffs from Mr. Sanders. (WH, 40.) When asked why the detective rearranged the interrogation room so that the table was not in between Mr. Sanders and him, Detective Lewandowsky said it was to "take the barrier out of the middle of us so that we could sit and talk knee-to-knee, face-to-face without any barriers between us." (WH, 40.)

However, Detective Lewandowsky's actions, although obfuscated under the guise of trying to make the interrogation more "personal," are also direct recommendations of the Reid Technique. (WH, 40.) Specifically, John E. Reid and Associates recommend on their website and in multiple articles and guides that "there should be no barrier between the investigator and suspect within the interrogation room."[4] In another article, they posit that "it is a major error to have any barrier (desk or table) between the investigator and subject's chair."[5] This is because, as the Reid Technique argues, "a guilty suspect will use that barrier as a shield and he will feel more confident and protected when lying to the investigator."[6]

Other portions of the Reid Technique literature also undermine the credibility of Detective Lewandowsky's testimony in the evidentiary hearings. The Reid

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[4] Reid, A Quick Guide to Best Practices for THE REID NINE STEPS OF INTERROGATION https://reid.com/resources/investigator-tips/a-quick-guide-to-best-practices-for-the-reid-nine-steps-of-interrogation (accessed May 9, 2025.)

[5] Reid, Designing an Interview/Interrogation Room https://reid.com/resources/investigator-tips/designing-an-interview-interrogation-room (accessed May 9, 2025)

[6] *Id.*

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Technique recommends that "[t]he investigator should dress in civilian clothes rather than in uniform. Otherwise, the suspect will be reminded constantly of police custody and the possible consequences of an incriminating disclosure. If the uniform cannot be avoided altogether, the coat, badge, gun, and holster should be removed for the duration of the contact with the suspect." *Essentials of the Reid Technique*, 48. The Reid Technique also recommends that handcuffs should not be worn, stating "[p]olice paraphernalia such as handcuffs, mace, or badges should be covered or not worn at all during an interview." *Id.* at 36. It also adds that "[f]or safety reasons, the investigator should not be armed with a gun during an interview or interrogation of a suspect." *Id.*

Together, these actions demonstrate that Detective Lewandowsky was employing Reid Technique methods despite his testimony that he was not using any specific interrogation approach. It is more than a mere coincidence that all nine steps were followed despite the government's denials to the contrary and this undermines Detective Lewandowsky's credibility and his testimony about the purpose of the interrogation. (WH, 16.) The interrogation methods used were more calculated and strategic than he represented to the court. The fact that Detective Lewandowsky and Detective Reust also employed the exact same strategies—both using the theme of a crying baby driving a parent to frustration and presenting the identical "monster versus good father who made a mistake" alternative—undermines his claim that he had not reviewed the prior interviews of Mr. Sanders and "did not know what the content" was. (CH, 41.)

It comes as no surprise that the government has also attempted to portray Mr. Sanders' "flat" emotional state as indicative of not having been affected by his daughter's death, because this too is from the Reid Technique. In direct contradiction to modern psychology, as well as the trial court's own assessment, the Reid Technique incorrectly states, "**The truthful subject openly expresses appropriate emotional states**." *Essentials of the Reid Technique*, 90 (emphasis added).

Critically, the Reid Technique has been consistently and thoroughly criticized for producing false confessions. As such, Wicklander-Zulawski & Associates, the

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second program Detective Lewandowsky testified he had completed, announced on March 6, 2017, that they would discontinue instruction using the Reid Technique because "[i]t's human nature to deny and defend oneself. Confrontation is not an effective way of getting truthful information."[7] The Innocence Project also states that "in recent years, criminal justice experts have closely examined the Reid Technique and found that its tactics rely overly on deception, coercion, and aggressive confrontation to secure confessions."[8] Regarding the misstatements of modern psychology and behavioral analysis peppered throughout the Reid Technique literature, false confession expert Saul Kassin remarks that it "reads like a bad psychology textbook. It was filled with assertions with no empirical proof."[9] Dr. Kassin has found that the Reid Technique "is inherently coercive" and "creates feeling[s] of hopelessness."[10] Because of these emotional chasms that the suspect can fall into, "confession opens something of an escape hatch, so it is only natural some people choose it."[11]

While the Reid Technique has never been found to be unconstitutional per se, courts have admonished and cautioned law enforcement about using the technique. In *United States v Monroe*, the United States District Court for the District of Rhode Island ruled that the use of the Reid Technique was lawful. *United States v Monroe*, 264 F Supp 3d 376, 393 (D RI, 2017). However, the court cautioned that:

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[7] Wickalnder-Zulawski &Associates, Inc., Wicklander-Zulawski Discontinues Reid Method Instruction After More Than 30 Years chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.w-z.com/wp-content/uploads/2017/03/Attachment-A-WZ-Press-Release-Discontinue-Reid-1.pdf (accessed May 9, 2025).

[8] Innocence Staff, Leading Police Consulting Group Will No Longer Teach the Reid Technique https://innocenceproject.org/news/police-consultants-drop-reid-technique/ (accessed May 9, 2025).

[9] Starr, *The Interview*, The New Yorker https://www.newyorker.com/magazine/2013/12/09/the-interview-7 (accessed May 9, 2025).

[10] *Id.*

[11] *Id.*

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> Indeed, all agents in the criminal justice system—prosecutors, defense attorneys, and judges—want a system that does not wrongfully convict innocent people. If law enforcement agents are led to believe incorrectly that the Reid Technique possesses a kind of special power to root out the truth—as the company's marketing material implies—they will be misled in certain cases, resulting in false confessions and wrongful convictions. It is also particularly important to recognize the risk of false confessions in vulnerable populations. [*Id.* at 393-394 (internal citations omitted).]

Further, false confessions obtained through the Reid Technique in shaken baby syndrome cases are particularly concerning because of how confident the police and prosecutor can be about the suspect's guilt. In a paper published in the Journal of Medicine and Philosophy, researchers wrote:

> In such cases, the police and prosecutor are confident that the suspect is guilty as they have been informed by an expert from, for example, a Child Protection Team that because there is no alternative "acceptable" explanation, the infant must have been violently shaken. In this manner, even false confessions may contain detailed (but confabulated) information about what happened.[12]

The government relied on the criticized Reid Technique—whether admitted to or not—as it was carried out step by step in the interrogation of Mr. Sanders. This resulted in an injustice and the remedy is that the involuntary statements should now be excluded.

D. When examining the totality of the circumstances—including the *Cipriano* factors and the detectives' calculated use of the Reid Technique—Mr. Sanders' statement should be excluded as involuntary.

When examining the totality of the circumstances, it is clear that Mr. Sanders' statement was not "the product of an essentially free and unconstrained choice" but rather resulted from his "will [being] overborne and his capacity for self-determination critically impaired." *Cipriano*, 431 Mich at 334 (internal citation and

[12] Niels Lynøe, Niklas Juth, Anders Eriksson, *From Child Protection to Paradigm Protection—The Genesis, Development, and Defense of a Scientific Paradigm*, 44(3) The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine 378, 383 (June 2019).

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quotation marks omitted). The proper analysis under the *Cipriano* factors—particularly Mr. Sanders' length of detention before the statement, the unnecessary delay in his probable cause determination, his compromised emotional and mental wellbeing, and his deprivation of appropriate mental health support during a period of extreme psychological vulnerability—strongly supports the conclusion that his statement was involuntary.

This conclusion is cemented by the detectives' unwavering implementation of the Reid Technique, a method that has been widely criticized for its propensity to elicit false confessions, particularly from vulnerable suspects. Despite Detective Lewandowsky's testimony that he did not employ any specific interrogation technique, the evidence demonstrates that both detectives methodically applied each and every step of the Reid Technique, as well as other recommendations from the literature that John E. Reid and Associates erroneously found relevant. From Detective Reust's confrontational approach to their development of a "sympathetic" theme about a frustrating baby driving a father mad, as well as their use of the identical "monster vs. good father" alternative questions, the detectives created an environment of psychological coercion designed to extract a confession from a grieving and emotionally vulnerable father.

The psychological pressure was particularly potent given the timing and sequence of events. Detective Lewandowsky's own description of using silence in interrogation to "cook" or "slow cook" and "marinate" suspects is particularly telling in this case. (CH, 42.) The prolonged and unlawful weekend detention between Detective Reust's aggressive and dehumanizing Friday interrogation and Detective Lewandowsky's Monday interrogation served precisely this purpose. The prolonged detention allowed Mr. Sanders to "marinate" in isolation, processing the devastating news of his daughter's death without appropriate support, while the psychological pressure of Detective Reust's abominable tactics continued to weigh on him. By the time Detective Lewandowsky conducted his interrogation, Mr. Sanders had been effectively "slow cooked" for days, significantly impairing his capacity for voluntary decision making.

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This vulnerability was effectively exploited by Detective Lewandowsky's use of the Reid Technique, which created, as Dr. Kassin describes, "feelings of hopelessness" from which "confession opens something of an escape hatch." Mr. Sanders faced these sophisticated psychological tactics during the most vulnerable moment in his life—while he was grieving the loss of his infant daughter—a circumstance that would severely compromise anyone's emotional and mental resilience.

The trial court's analysis failed to properly apply the *Cipriano* factors to the present case and, given the significant inconsistencies in Detective Lewandowsky's testimony at the evidentiary hearings as well as the detectives' use of the Reid Technique, the court's totality of the circumstances analysis was fundamentally flawed. The court also failed to recognize the contradiction between its own acknowledgment that trauma manifests differently in different individuals and its subsequent conclusion that Mr. Sanders showed "no indication" of being in ill-health. (Exh. A, 16.)

The defining line for voluntariness is "that at which governing self-direction is lost and compulsion, of whatever nature or however infused, propels or helps to propel the confession." *Cipriano*, 431 Mich at 334 (internal citation and quotation marks omitted). Mr. Sanders was, throughout this entire process, an "innocent arrestee" as articulated by Justice Scalia, deserving of both the presumption of innocence and the full protection of his constitutional rights—not the psychological manipulation and isolation he endured. And the trial court clearly erred in concluding otherwise. Accordingly, his statement should be excluded.

CONCLUSION AND RELIEF REQUESTED

The government conceded the unreasonableness of the delay in Mr. Sanders' arraignment and failed to provide adequate justification to overcome this error. And the trial court clearly erred when applying the *Cipriano* factors to Mr. Sanders' statements and found they would be admissible at trial. If the trial court's clearly erroneous ruling is allowed to stand, law enforcement will only be emboldened to continue to tout ignorance of the law and disregard the rights of the accused under similar circumstances. Therefore, Mr. Sanders respectfully requests that this Court

reverse the trial court's erroneous ruling and suppress his coerced statements for the foregoing reasons.

Respectfully submitted,

CHARTIER & NYAMFUKUDZA, P.L.C.

Dated: 05/16/2025 /s/ *Mary Chartier*

Mary Chartier

Dated: 05/16/2025 /s/ *Takura Nyamfukudza*

Takura Nyamfukudza

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WORD COUNT CERTIFICATION

Per MCR 7.305(A)(1), the number of countable words in the Statement of Jurisdiction, Introduction, Statement of Facts, Standard of Review, Argument (including footnotes), and Conclusion is 12,555.

Dated: 05/16/2025

/s/ *Mary Chartier*
Mary Chartier

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing 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 May 16, 2025, by ___ US First Class Mail ___ 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
Exhibit E	Video Recording of Detective Thielen and John Sanders, dated 1/04/2013
Exhibit F	Video Recording of Detective Reust and John Sanders, dated 1/04/2013
Exhibit G	Video Recording of Detective Reust and John Sanders, dated 1/04/2013
Exhibit H	Video Recording of Detective Lewandowsky and John Sanders, dated 1/07/2013
Exhibit I	Michigan Supreme Court Order, dated 04/04/2025
Exhibit J	Transcript of Interrogations with Detectives Thielen and Reust
Exhibit K	Transcript of Interrogation with Detective Lewandowsky