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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

JOHN HAROLD SANDERS,
Defendant-Appellant.

_____/

Supreme Court No. 167899

Court of Appeals No. 371677

Circuit Court No. 13-224-FC

PLAINTIFF-APPELLEE'S BRIEF ON APPEAL
ORAL ARGUMENT REQUESTED

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COUNTER-STATEMENT OF QUESTIONS INVOLVED

I. Following the U.S. Supreme Court's guidance and this Court's own precedent, whether the proper analysis to apply to a statement made after a *McLaughlin* violation is the voluntariness test adopted by this Court in *Cipriano*, assessing the totality of the circumstances under which the statement was made.

Plaintiff-Appellee answers, "Yes."
Defendant-Appellant answers, "No."

II. Applying *Cipriano*, whether the trial court committed clear error in finding Defendant's statement voluntary.

Plaintiff-Appellee answers, "No."
Defendant-Appellant answers, "Yes."

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COUNTER-STATEMENT OF APPELLATE JURISDICTION

This Court has discretionary jurisdiction to review a decision of a panel of the Court of Appeals. MCR 7.303(B)(1). This Court ordered this application for leave to appeal to be considered on April 4, 2025.

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INTRODUCTION

The primary issue in this appeal is the proper analysis for determining whether statements made while detained in violation of the Fourth Amendment under *Riverside Co v McLaughlin,* 500 US 44 (1991) should be suppressed. But the Supreme Court gave us a rule without a remedy in *McLaughlin*, and the answer to the question has varied by jurisdiction. In this state, the same test has been applied since this Court first announced it over 35 years ago: an inculpatory statement obtained during an unreasonably long delay between a warrantless arrest and a probable cause hearing will be suppressed only if it was involuntary. *People v Cipriano*, 431 Mich 315 (1988). This Court gave us this test while categorically rejecting a statutory exclusionary rule, and instead enacting a considered totality of the circumstances test to determine whether the statement was voluntarily made and therefore admissible.

Buttressed by other existing Supreme Court protections, this voluntariness test should continue to be applied, both legally and logically. The Fourth Amendment violation in *McLaughlin* is temporal – a defendant has been arrested on probable cause, without a warrant, with no judicial determination of probable cause within 48 hours of his arrest. But the evidence Defendant seeks to suppress is not his person, or a piece of physical evidence, but the statement he gave to police while in custody, after the *McLaughlin* violation occurred. And the *Cipriano* test crucially recognizes the nature of what the violation is, a timing violation, and what the evidence itself is – a statement made by a person. The Fourth Amendment violation is not forgotten or set aside in this test, but it is given both context and the recognition that an

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otherwise voluntary statement is not inadmissible solely because a bright-line time limit has passed. Rather, an application of a balanced totality of the circumstances test incorporates the Fourth Amendment violation and allows the trial court to thoughtfully weigh it, as necessary, to determine admissibility of a confession. The longer the delay, the greater the probability that the confession will be held involuntary, and inadmissible.

The other analysis, proposed by Defendant, is the exclusionary rule and attenuation analysis, which would not only be an unwarranted expansion of exclusionary rule, but also does not appropriately fit a *McLaughlin* violation, in spirit or in application. *McLaughlin* itself was a civil case and it did not provide an exclusion remedy for criminal cases, and certainly did not provide for exclusion of a defendant's voluntary confession. Applying the exclusionary rule in these circumstances would be an unwarranted expansion of it, particularly in the face of the Supreme Court's explicit and repeated admonition to courts not to knee-jerk exclude evidence resulting from a Fourth Amendment violation. Here, the deterrent effect of suppression simply does not outweigh the benefit to our society: evidentiary use of a voluntary confession to murder.

Applying the appropriate *Cipriano* framework, Defendant Sanders' statement was voluntary and the trial court's decision appropriate. The People respectfully ask this Court to deny the Application.

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COUNTER-STATEMENT OF FACTS

On January 7, 2013, Detective Mark Lewandowsky was a violent crimes detective with the Lansing Police Department. 04/05/2024, *Walker* Hr'g (WH) 9-11.[1] Before that date, Lewandowsky had received a significant amount of interview training, including different types of interview techniques, like Reid and Wicklander-Zulawski. WH, 14-15. However, when he interviewed a person, he used a cumulative version of all of them; he did "not subscribe to one method or another." WH, 15. He found that every person was different and responded differently to styles of questions; he "went into those interviews open-minded and attempted first and foremost to have an adult conversation with whoever it was [he] was interviewing." WH, 16.

On January 7, Lewandowsky went to his usual Monday morning meeting with his detective bureau and had contact with Detectives Shannon Thielen and Elizabeth Reust, two detectives within the child crimes unit. WH, 21. He learned at that time there had been a suspicious infant death the Friday before and that the child had suffered significant traumatic brain injury that resulted in her death. WH, 22, 24.

The suspect in the infant's death was her father, Defendant John Sanders, who had been arrested on Friday. WH, 25-26. The autopsy of the infant was conducted Saturday and Defendant had not yet been re-interviewed with those results. WH, 28. Lewandowsky knew Detective Thielen had interviewed Defendant on that Friday, but not since the autopsy had been completed on Saturday. WH, 26-27.

[1] For reference, the People will use the same identifiers of the two-part motion hearing as Defendant: WH, Motion hearing, 04/05/2024; CH: Motion hearing, 04/19/2024.

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Lewandowsky was asked to interview him Monday morning, and agreed. WH, 27. At that time, Defendant did not yet have formal charges issued against him, or been arraigned before a judge. WH, 30-31. Believing he had 72 hours after a probable cause arrest to bring the suspect before a judge, Detective Lewandowsky began the interview with Defendant at 10am in one of the interview rooms of the police precinct.[2] It was conducted 64 hours and 35 minutes after Defendant was arrested. WH, 5, 33.

At the time of the interview, Defendant was 37 years old and enrolled at Ashford University, studying business administration. WH, 47; People's Exhibits 2 and 3. He had accumulated 14 credits and was planning on starting his own business when he graduated. People's Exhibits 2 and 3. Defendant also had an extensive previous history with the police - he had five prior felony convictions, from 1998, 2005, and 2011. 04/19/2024, Continued *Walker* Hr'g (CH), 47. At the time of the interview, Defendant was still on parole for his most recent conviction. CH, 47.

During the interview, Lewandowsky did not wear a uniform; he wore a button up dress shirt and a pair of dress pants. WH, 37. He was not wearing a badge, nor carrying a firearm. WH, 37. He introduced himself to Defendant as "Mark," and removed Defendant's handcuffs and shook his hand. WH, 37-38; People's Exhibit 2 and 3. Lewandowsky also removed any barriers between the two of them so they could sit and talk knee to knee, face to face. WH, 40. Lewandowsky's tone throughout

[2] In addition to Lewandowsky's testimony, a video and transcript of the interview was admitted into evidence at the hearing. WH, 36; People's Exhibits 2, 3.

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the interview was completely conversational; he called Defendant by his first name, "John," he did not raise his voice, threaten, belittle, or lie to Defendant. CH, 21-22, 26. Rather, he tried to build a report with Defendant, explaining how he was also a father and that he understood children were difficult. CH, 21-22, 26. Lewandowsky did not threaten Defendant in any way, let alone with physical abuse. CH, 33-34. He also did not observe any injuries on Defendant, and Defendant did not seem excessively fatigued. WH, 41. Rather, Defendant was alert, had no complaints about sleep, answered questions appropriately, and was oriented to time and place. WH, 41-42. Defendant also did not appear to be under the influence of drugs or alcohol, had no physical injuries, and did not say he was hungry or denied water. WH, 42. Lewandowsky also took a break in the interview, retrieved water for Defendant, and allowed him to use the restroom. WH, 52, 54.

Before the interview began, Lewandowsky read Defendant his *Miranda* warnings and Defendant agreed to waive them, which he did in writing. WH, 43-44. This was not the first time Defendant had done so; Defendant had been advised of those rights and waived them previously, including during his first interview about his daughter's death. WH, 48. Lewandowsky described Defendant's affect throughout the interview as flat, with a lack of emotion. WH, 42. He did not cry, cover his face with his hands, or make any statements about his emotional condition. WH, 43. Moreover, he did not express sadness over his daughter's death; rather, he said he was "having a bad year" because he was being charged with murder. CH, 29. Throughout the interview, Defendant changed his factual version of events multiple

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times, especially once confronted with the autopsy results. WH, 54; CH, 35. He first admitted he was playing with her and threw her up in the air at least six times and she hit her head on the ceiling. People's Exhibit 2, 3. He then said that she hit her head on the bed. People's Exhibit 2, 3. He finally admitted that the infant was crying and would not stop, so he began shaking her and her head was going side to side. She stopped crying, her "neck went limp" and "she gasped." People's Exhibit 2, 3. The interview lasted one hour and 27 minutes. People's Exhibit 2, 3.

Trial Court's Findings

Following the two day motion hearing in this case, the trial court issued a written opinion, granting the People's request to admit Defendant's statement to Detective Lewandowsky after a thorough analysis of the "the critical factors a trial court should consider in determining the voluntariness of a statement" according to *People v Cipriano,* 431 Mich 315, 331 (1998).[3] Opinion and Order, 6. The trial court found (as conceded by the People), the length of his detention and unnecessary delay in bringing him before a magistrate were factors that suggested his statement was involuntary. *Id.* at 17. However, it noted those were only factors to consider, and that it "should not, and will not, find coerciveness or involuntariness just because of the delay factor." *Id.* at 15. The trial court also weighed against the People that, although

[3] The trial court began its opinion noting its authority to hear the motion. Defendant had previously been convicted at a jury trial, but that conviction had been reversed on a successful Motion for Relief from Judgment. Thus, this motion was once again before the trial court, in a pretrial motion to admitted Defendant's statement. Order and Opinion, 1-4. Defendant did not contest the trial court's authority to re-hear this motion, nor does he contest it in this application.

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Defendant was given breaks in questioning, he "seemed tired" and was not provided with mental health assistance and was therefore not in "an optimal mental state." However, the trial court found the remainder of the factors lent a finding of voluntariness. The trial court found Defendant's age and education/intelligence weighed in favor of voluntariness: Defendant was not at a "diminished capacity of understanding what was going on around him," and he was a "high school graduate actively enrolled in college courses." *Id.* at 16. The trial court noted Defendant had an extensive criminal history and was "very familiar with interactions with law enforcement;" this weighed in favor of finding his statement voluntary. *Id.* Defendant was also advised of his *Miranda* rights, "consistent with constitutional protections," and the record showed no evidence that Defendant "was injured, in ill-health, or intoxicated during the time of the questioning." *Id.* That factor weighed in favor of the People's request for admission. Moreover, Defendant was never deprived of food, sleep, or medical attention,[4] nor was he physically abused or threatened with physical or mental abuse. *Id.* Thus, the trial court granted the People's Motion to Admit Defendant's Statement. *Id.* at 17.

Procedural History

Defendant filed an interlocutory application for leave to appeal, challenging the trial court's decision. The Court of Appeals denied the application, stating that

[4] Although making the finding that Defendant was not deprived of food, sleep, or medical attention, the trial court still found this factor "neutral" in its analysis because Defendant was not "afforded mental health treatment regarding the abrupt death of his daughter." *Id.* at 16-17.

the application "fail[ed] to persuade the Court of the need for immediate appellate review." (Mich Ct App Order, issued Nov 20, 2024.)

Defendant then filed an application for leave in this Court, and this Court directed briefing and oral argument on the following issues:

> (1) the proper analysis for determining whether statements made while detained in violation of the Fourth Amendment under *Riverside Co v McLaughlin*, 500 US 44 (1991), should be suppressed; (2) whether *People v Manning*, 243 Mich App 615 (2000), was correctly decided; and (3) whether the trial court clearly erred in concluding that the defendant's statements were voluntary. See *People v Cipriano*, 431 Mich 315 (1988).

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STANDARDS OF REVIEW

This Court reviews de novo questions of constitutional law. *People v Nutt,* 469 Mich 565, 573 (2004).

This Court reviews a trial court's decision on a motion to suppress evidence de novo. *People v Stewart,* 512 Mich 472, 480 (2023). However, this Court reviews all underlying factual findings for clear error. *Id.* "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that the trial court made a mistake." *Id.*

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ARGUMENT

I. Following the U.S. Supreme Court's guidance and this Court's own precedent, the proper analysis to apply to a statement made after a *McLaughlin* violation is the voluntariness test adopted by this Court in *Cipriano*, assessing the totality of the circumstances under which the statement was made.

The U.S. Supreme Court has told us that to protect an individual's Fourth Amendment right, a state "must provide a fair and reliable determination of probable cause for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." *Gerstein v Pugh,* 420 US 103 (1975). Fifteen years later, the Court provided a more specific timeline – "a jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein." Riverside Co v McLaughlin,* 500 US 44, 56 (1991). What the Court did not tell us, is how to analyze the admissibility of statements made by an individual who was held in custody in violation of *McLaughlin.*

The answer to that question lies within this Court's own jurisprudence, which previously rejected a statutory exclusionary rule of these types of statements in *People v Cipriano*[5] and instead adopted a voluntariness test. This is the test that has been applied for the last 35 years in this state and should remain law: an inculpatory statement obtained during an unreasonably long delay between a warrantless arrest and a probable cause hearing will be suppressed only if it was involuntary. Importantly, this balancing test acknowledges and incorporates the Fourth

[5] 431 Mich 315 (1988)

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Amendment violation by making the delay a factor to consider in the voluntariness analysis – including not just the length of the delay, "but rather on what occurred during the delay and its effect on the accused." *Cipriano,* 431 Mich 335.

The *Cipriano* voluntariness test makes both legal and logical sense. Critically, it recognizes the nature of what the violation was, a timing violation, and what the evidence itself is – a statement made by a person. The nature of a *McLaughlin* violation itself is that of time – at 47 hours and 59 minutes, Defendant's detention was lawful; at 48 hours and 1 minute it was not. But, of course, this passage of time alone does not make the arrest itself unlawful, it does not make the statement involuntary, and it does not eliminate the probable cause that existed at the time of arrest. The delay should be considered as an important factor, among many, that can still lead to an exclusion of a confession, as *Cipriano* directs. Moreover, the evidence itself requires a voluntariness balancing test. The evidence in this case, and in a *McLaughlin* violation, is a statement from a person, a human being with free will and the choice to speak or not, which necessarily includes an inquiry into his *choice* to make a statement – whether he made it voluntarily. And an analysis of whether a statement was involuntary because of state coercion under the Fifth Amendment considers the *Cipriano* test, "whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made." *Cipriano,* 431 Mich at 334. This intersection necessitates the voluntariness test analysis.

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The other test jurisdictions have applied to a *McLaughlin* violation is an application of the exclusionary rule - an inculpatory statement obtained during such a delay must be suppressed, unless it was attenuated from the taint of the *McLaughlin* violation. But this is an unwarranted expansion of the exclusionary rule, which the Supreme Court has explicitly counseled against. And the deterrent effect of suppression simply does not outweigh the benefit to our society: evidentiary use of a voluntary confession to murder. Moreover, it would require this Court to contort an attenuation analysis into a situation where it does not fit, when we already have a test that is more narrowly tailored and factor driven, in *Cipriano.*

A. *County of Riverside v McLaughlin*, 500 US 44 (1991) supplied a rule, but did not require the remedy of exclusion.

The standard for arrest and detention are grounded in the Fourth Amendment and common law. *Gerstein v Pugh,* 420 US 103, 111 (1975). And, "to implement the Fourth Amendment's protection against unfounded invasions of liberty and privacy, the Court has required that the existence of probable cause be decided by a neutral and detached magistrate whenever possible." *Id.* at 112. However, for decades, the Court attempted to balance the competing interests of the state's "strong interest in protecting public safety by taking into custody those persons who are reasonably suspected of having engaged in criminal activity, even without an opportunity for a prior judicial determination of probable cause," and a suspect's interest in prolonged detention based on "incorrect or unfounded suspicion." *McLaughlin,* 500 US at 51, citing *Gerstein v Pugh,* 420 US at 112, 114. The Court first sought to give us a "practical compromise," holding that a state "must provide a fair and reliable

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determination of probable cause for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest." *Gerstein,* 420 US at 125. In fact, the purpose was "to make clear that the Fourth Amendment requires every State to provide prompt determinations of probable cause, but that the Constitution does not impose on the States a rigid procedural framework." *McLaughlin,* 500 US at 53.

Because states varied in their determination of "prompt" under *Gerstein,* the Supreme Court provided further guidance, fifteen years later, in *McLaughlin.* Before announcing its rule, the Court openly stated it "hesitate[d] to announce that the Constitution compels a specific time limit," but it was "important to provide some degree of certainty so that States and counties may establish procedures with confidence that they fall within constitutional bounds." *McLaughlin,* 500 US at 56. In *McLaughlin,* the respondent brought a class action suit seeking relief under *Gerstein* for the County of Riverside's failure to provide a "prompt" judicial determination of probable cause for those arrested without a warrant. *McLaughlin,* at 44. With the task of articulating the boundaries of the Fourth Amendment, the Court found "that a jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein." Id.* at 56. If a person arrested without a warrant did not receive a probable cause determination within 48 hours, the burden shifted to the government to demonstrate the existence of a bona fide emergency or other

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extraordinary circumstance. *Id.* at 57. In *McLaughlin* – a civil case – the Court did not expound upon the proper remedy for a violation in a criminal case.[6]

Years later, the Supreme Court found the *McLaughlin* 48-hour rule was to be applied retroactively. *Powell v Nevada,* 511 US 79, 84-85 (1994). However, the Court noted it did not mean the Defendant was automatically to "be set free" or "gain other relief," and again chose not to decide what remedy to apply to a violation of the *McLaughlin* 48-hour rule in a criminal case. Justice Thomas, in his dissent, would have found the remedy for the violation was not suppression, weighing heavily the fact that Defendant's arrest had been supported by probable cause, which validated the arrest and the custody. *Nevada,* at 91 (Thomas, J. dissenting). Moreover, the Court had "never suggested that lawful custody becomes unlawful due to a failure to obtain a prompt judicial finding of probable cause – that is, probable cause does not disappear if not judicially determined within 48 hours." *Id.,* citing *United States v Montalvo-Murillo,* 495 US 71, 722 (1990) ("[A] person does not become immune from detention because of a timing violation").

Thus, *McLaughlin* set the 48-hour rule to establish a Fourth Amendment violation following a warrantless arrest, but it did not declare that the remedy of exclusion follows.

[6] Declining to assess the proper remedy also makes sense because the question of the appropriate remedy in such a situation "has long been regarded as an issue separate from the question whether the Fourth Amendment rights of the party seeing to invoke the rule were violated by police conduct." *Arizona v Evans*, 514 US 1, 10 (1995), quoting *Illinois v Gates,* 462 US 213, 223 (1983).

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B. The intersection of *Gerstein* and *McLaughlin* with Michigan law.

In Michigan, officers can make an arrest with a warrant, and without. To obtain an arrest warrant, an officer appears before a magistrate and swears to "a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the individual accused in the complaint committed that offense." MCL 764.1a.[7] As outlined by *Gerstein,* the process is not "accompanied by the full panoply of adversary safeguards – counsel, confrontation, cross-examination, and compulsory process for witnesses." *Gerstein,* 420 US at 119. Rather, it is "the same as that for arrest," which happens in a "nonadversary proceeding on hearsay and written testimony." *Id.* at 120. In our state, the finding of reasonable cause by the magistrate can be based upon one or more of the following by the officer: factual allegations contained in the complaint, sworn testimony, an affidavit, or any supplemental sworn testimony or affidavits of other individuals presented. MCL 764.1a(4).

On the other hand, a peace officer may arrest a person without a warrant if a felony, misdemeanor, or ordinance violation is committed in their presence; if the person has committed a felony (although not in the peace officer's presence); or a

[7] In 2021, the Legislature greatly reduced the amount of arrest warrants issued, ordering that a magistrate shall instead issue a summons unless an exception exists: (1) the complaint is for an assaultive crime or an offense involving domestic violence; (2) the magistrate has reason to believe the Defendant will not appear upon a summons; (3) issuing a summons would poses a risk to public safety; or (4) the prosecutor has requested a warrant. MCL 764.1a(2). A summons, as opposed to an arrest warrant, allows the defendant to appear before a court at a stated date and time, rather than subjecting them to an arrest. MCL 764.1a(3).

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felony has been committed and the officer has reasonable cause to believe the person committed it. MCL 764.15. A peace officer who has arrested a person for an offense without a warrant shall without unnecessary delay take the person arrested before a magistrate of the judicial district in which the offense is charged to have been committed, and shall present to the magistrate a complaint stating the charge against the person arrested. MCL 764.13. The statute does not define the phrase "unreasonable delay."

Thus, within this framework, the question this Court asks is what proper analysis should be used to determine whether statements made while detained in violation of the Fourth Amendment under *McLaughlin*—that is, individuals lawfully arrested with probable case, but without a warrant pursuant to MCL 764.15, and who have been detained more than 48 hours—should be suppressed? Following a majority of the jurisdictions in the country and this Court's own jurisprudence, the answer remains as it has for the last 35 years: a considered balancing test to determine if the statement made by the individual was voluntary.

C. The proper analysis for this Court to apply is what the majority of our jurisdictions apply around the country: a fulsome assessment of voluntariness.

Following *McLaughlin,* the courts across the country have split on the proper analysis to apply to a statement made after a *McLaughlin* violation. The majority of jurisdictions have applied the test long applied in Michigan: an inculpatory statement obtained during an unreasonably long delay between a warrantless arrest and a probable cause hearing will be suppressed only if it was involuntary. See, e.g. *People*

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v Willis, 215 Ill 2d 514 (2005); *Bush v Alabama,* 695 So2d 70, 124 (Ala Crim App 1995); *Riney v Alaska,* 935 P2d 828, 835-35 (Alaska App 1997); *Peterson v Indiana,* 674 NE2d 528, 538-39 (Ind 1996); *Nebraska v Nissen,* 252 Neb 51, 68 (1997); *New Jersey v Tucker,* 137 NJ 259, 272 (1994).

1. This Court's jurisprudence and the legal guardrails established by the U.S. Supreme Court call for a voluntariness test.

This voluntariness test should continue to be applied, both legally and logically. This Court's own jurisprudence lands us here. In *People v Cipriano,* this Court tangled with the Michigan statutory requirement that an arrested person be brought before a magistrate "without unnecessary delay" and what the proper remedy should be when that statute was violated. 431 Mich 315, 319 (1987); MCL 764.13. Before *Cipriano,* the remedy for any incriminating statement obtained during a period of "unnecessary delay" was automatic exclusion – the "*McNabb-Mallory* rule." *Id.* at 320. This Court rejected such a remedy – rejected a statutory exclusionary rule – and much of this analysis fits precisely with why a considered balancing test is still appropriate today. This Court held "'unnecessary delay' prior to arraignment is only one factor to be considered in evaluating the voluntariness of a confession. If the totality of the surrounding circumstances indicates that a confession was voluntarily given, it shall not be excluded from evidence solely because of prearraignment delay." *Id.* at 315. Other facts to consider include:

> 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

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> 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. [*Id.* at 334.]

Although decided before *McLaughlin,* this voluntariness test from the *Cipriano* court has been applied since and continues to be the law not only in this state but in a majority of jurisdictions.

In addition to this Court's own approach to this issue for the last 35 years, the United States Supreme Court has already given robust constitutional safeguards for the most flagrant Fourth Amendment violations, and rightfully so. It has held statements which are the fruit of an illegal arrest must be suppressed. *Dunaway v New York,* 442 US 200 (1979); this bar stands even in spite of *Miranda* warnings. *Brown v Illinois,* 422 US 590 (1975). And the Fifth Amendment stands to protect individuals against self-incrimination; the use of an involuntary statement elicited by coercive state action in a criminal trial violates these constitutional protections. *People v Stewart,* 512 Mich 472, 480 (2023). *Miranda* itself triggers a number of rights simply by being in police custody, including the right to remain silent and the right to counsel. *Miranda v Arizona,* 384 US 436 (1966). And finally, the use of any involuntary statement at trial is wholly banned, whether for impeachment or the prosecutor's case in chief, as a violation of due process. *Mincey v Arizona,* 437 US 385 (1978).

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2. The nature of a *McLaughlin* violation itself, a timing violation, necessitates a balancing test.

In examining what analysis to apply to a statement made after a Fourth Amendment violation, the Supreme Court requires a look at *the nature* of the violation. First, in a *McLaughlin* violation, and in this case, Defendant was legally arrested with probable cause, but without an arrest warrant. "[W]hile the Court has expressed a preference for the use of arrest warrants when feasible, it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant." *Gerstein,* 420 US at 113. The Court has also not required suppression of voluntary custodial statements made after an arrest supported by probable cause based solely on the officers' failure to obtain a warrant. *New York v Harris,* 495 US 14, 19 (1990). Moreover, the Supreme Court has found that probable cause does not disappear if not judicially determined within 48 hours. See *United States v Montalvo-Murillo,* 495 US 722, 722 (1990) ("[A] person does not become immune from detention because of a timing violation.").

The only aspect that made this custody unlawful was the clock: at 47 hours and 59 minutes, Defendant's detention was lawful; at 48 hours and 1 minute it was not. This passage of time alone does not make the arrest itself unlawful, it does not eliminate the probable cause that existed at the time of arrest, and it does not make any subsequent statement automatically involuntary. There is no legal or logical basis for applying the exclusionary rule to a legal arrest, made with probable cause, because of a timing violation.

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Importantly, the *McLaughlin* rule itself does not trigger a defendant's release from custody. This is an important distinction because the judicial finding of probable cause itself, as outlined by *Gerstein,* is not "accompanied by the full panoply of adversary safeguards – counsel, confrontation, cross-examination, and compulsory process for witnesses." *Gerstein,* 420 US at 119. Rather, it is "the same as that for arrest," which happens in a "nonadversary proceeding on hearsay and written testimony." *Id.* at 120. And, while the procedure is important, a defendant can, as Defendant did in this case, remain in jail after his arraignment before the district court until trial – particularly where the crimes are particularly violent or severe.

3. The evidence Defendant seeks to suppress – his statement – compels an inquiry into whether it was voluntarily made.

A logical look at what the evidence Defendant seeks to suppress also requires a voluntariness balancing test. As discussed, the Fourth Amendment violation in this case is a temporal violation – custody of a defendant beyond 48 hours without a judicial determination of probable cause. However, the evidence Defendant seeks to suppress is not his person, which was held unlawfully in violation of the Fourth Amendment. Nor is it physical evidence, like a weapon or a controlled substance, a piece of evidence police can seize and the illegality is immediately apparent and which will continue to exist regardless of the length of the temporal delay, evidence which is still protected by *People v Mallory,* 421 Mich 229, 240 (1984): "[i]f the physical evidence would not have been discovered by for the exploitation by the police of the illegal prearraignment delay, suppression is required."

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The evidence in this case, and in a *McLaughlin* violation, is a step further removed – it is a statement from a person, a human being with free will and the choice to speak or not. And the impact of the Fourth Amendment violation on Defendant's choice to make a statement necessarily includes an inquiry into his *choice* to make it – whether he made it voluntarily, which connects the Fifth Amendment's protection against "an involuntary statement elicited by coercive state action." *Stewart,* 512 Mich at 480. And an analysis of whether a statement was involuntary because of state coercion under the Fifth Amendment considers the *Cipriano* test, "whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made." *Cipriano,* 431 Mich at 334.

Importantly, this balancing test acknowledges and incorporates the Fourth Amendment violation by making the delay a factor to consider in the voluntariness analysis – including not just the length of the delay, "but rather on what occurred during the delay and its effect on the accused." *Cipriano,* 431 Mich 335. The *Cipriano* test crucially recognizes the nature of what the violation was, a timing violation, and the what the evidence itself is – a statement made by a person. Moreover, within the balancing test, this Court has noted how serious that factor is: "[a]n arrested suspect should not be subjected to prolonged, unexplained delay prior to arraignment; and such delay should be a signal to the trial court that the voluntariness obtained during this period may have been impaired." *Id.* The longer the delay, the greater the probability that the confession will be held involuntary, and inadmissible. The Fourth Amendment violation is not forgotten or set aside, but it is given context, and

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recognizes that an otherwise voluntary statement is not inadmissible solely because a bright-line time limit has passed. An application of a balanced totality of the circumstances test incorporates the Fourth Amendment violation and allows the trial court to thoughtfully weigh it, as necessary, to determine admissibility of a confession.

Moreover, as *McLaughlin* actually envisioned, there are civil remedies available to a defendant. *McLaughlin* itself was a civil case, and civil rights suits are available to those subject to unreasonably long delays. See *United States v Fullerton,* 187 F3d 587, 592 (1999).

D. Although some courts have applied exclusionary rule to a *McLaughlin* violation, doing so in Michigan would be an unwarranted expansion and would not adequately address the nature of the Fourth Amendment violation.

The other test that jurisdictions have applied to a *McLaughlin* violation is an application of the exclusionary rule: an inculpatory statement obtained during such a delay *must be suppressed*, unless it was attenuated from the taint of the *McLaughlin* violation. See *Chavez v Florida,* 832 So2d 730, 756-757 (Fla 2002); *Powell v Nevada,* 113 Nev 41, 46 (1997); *Tennessee v Huddleston,* 924 SW2d 666, 674 (Tenn 1996). That is, the statement is automatically excluded, unless the confession is "sufficiently an act of free will to purge the primary taint" of the *McLaughlin* violation; it is the harsh application of the exclusionary rule. While Defendant argues the test is simply "examining whether there were intervening events breaking the chain of causation between the unlawful detention and the statement," (Defendant's

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Brief, 4) he does not discuss the specific factors for the trial court to apply, nor does he dispute how such a test is ill-suited for such a violation.

1. Applying the exclusionary rule would be in stark tension with the Supreme Court's repeated admonition that exclusion is a last resort and is intended to forestall gross police misconduct.

In *Brown v Illinois,* the Supreme Court applied the exclusionary rule to statements made by a defendant arrested *without probable cause* and without a warrant (that is, illegally). The Court turned to *Wong Sun v United States,* 371 US 471, 488 (1963), and found that even if the statements were voluntary, "in order for the causal chain, between the illegal arrest and the statements made subsequent thereto, to be broke, *Wong Sun* requires not merely that the statement meet the Fifth Amendment standard of voluntariness but that it be 'sufficiently an act of free will to purge the primary taint.'" *Brown,* 422 US at 602, citing *Wong Sun,* 371 US at 486. When applying this to a voluntary statement, the Court offered four factors to consider: (1) the presence or absence of *Miranda* warnings; (2) the temporal proximity of the arrest and the confession; (3) the presence of intervening circumstances; and (4) the purpose and flagrancy of the official misconduct. *Brown,* 422 US at 603-604. The voluntariness of the statement is a threshold requirement and the burden of showing admissibility rests on the prosecution. *Id.*

But the legal and logical application of a voluntariness test like *Cipriano* is also supported by the fact that application of the exclusionary rule here is an unwarranted expansion of the rule, which the Supreme Court has explicitly counseled against. Not only would applying the exclusionary rule now be contradictory to this

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Court's own precedent, when it expressly rejected the statutory exclusionary rule over 35 years ago, it is also not required by the Fourth Amendment. A Fourth Amendment violation is "fully accomplished" by the illegal search or seizure, and excluding evidence cannot undo the invasion of the defendant's rights. *United States v Leon,* 468 US 897, 906 (1984). Rather, it is a judicial creation, and "the *sole* purpose of the exclusionary rule is to deter misconduct by law enforcement." *Davis v United States,* 564 US 229, 246 (2011) (emphasis in original). Moreover, the Court has counseled against expanding it beyond the context where it currently applies. See *Lego v Twomey,* 404 US 477, 488-489 (1972). The exclusionary rule applies only where its deterrent benefits outweigh its substantial social costs. *Leon,* 468 US at 907. And "[t]he rule's costly toll upon truth-seeking and law enforcement objectives presents a high obstacle for those urging its application." *Herring v United States,* 555 US 135, 141 (2009). (cleaned up). To that end, exclusion "has always been [a] last resort, not [a] first impulse." *Utah v Strieff*, 579 US 232, 237 (2016), quoting *Hudson v Michigan*, 547 US 586, 591 (2006).

Though the exclusionary rule provides a deterrent effect, it also can "impede unacceptably the truth-finding functions of judge and jury" by excluding truthful probative evidence, *United State v Payner,* 447 US 727, 734 (1980), like, here, the confession to a murder. The Court recognized exclusion "requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence," compromising the essential truth-seeking function of the courts. *Davis*, 564 US at 237.

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The societal cost of suppressing a defendant's voluntary confession to a murder because of a time limit expiration is steep. As the Supreme Court made clear in *McLaughlin,* the 48-hour mark imposed was merely to provide guidance for the states in a civil case where the plaintiffs were seeking remedies; not to impose "stopwatch justice." *Commonwealth v Bennett,* 498 PA 656, 972 (1982) (MCDERMOTT, J., concurring). To apply the exclusionary rule to a case for a defendant who was held for 48 hours and 30 minutes as opposed to a defendant held 47 hours and 30 minutes leads to unreasonable results that are not in step with this Court's considered prior rulings. "Stopwatch justice exacts a considerable toll on society when one who is actually guilty of the crimes charged escapes conviction and punishment for his guilty conduct because of what is termed in lay parlance, a 'technicality.'" *Id.*

The exclusionary rule is certainly properly applied to flagrantly abusive violations of the Fourth Amendment, like illegal arrests in *Dunaway* and *Brown.* But, as Justice Powell noted in his concurrence in *Brown,* not all violations of the Fourth Amendment are equal, and violations less flagrant require a more considered analysis. *Brown,* 422 US at 610-612 (POWELL, J., concurring). Rather, the exclusionary rule deprives the prosecution of reliable and probative evidence, and the deterrence rationale of the exclusionary rule is properly applied to illegal arrests, but not every violation of the Fourth Amendment. *Id.* Moreover, Justice Powell recognized the "wide range of situations that defy ready categorization," and the "inevitably fact-specific nature of the inquiry" places "primary reliance on the 'learning, good sense, fairness and courage' of judges who must make the

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determination in the first instance.'" *Id.* This is exactly what *Cipriano* requires, a thoughtful balancing of the circumstances and factors focused on the concern: whether the confession was voluntary. *Cipriano* should remain the proper test to apply in Michigan for a *McLaughlin* violation.

2. The exclusionary rule is a poor fit as a remedy for a 48-hour *McLaughlin* violation, both in spirit and application.

The exclusionary rule does not appropriately fit in application to a *McLaughlin* violation and it was never intended to – *McLaughlin* was a civil case and the remedy was not an exclusion of a defendant's *voluntary confession of the murder of an infant*. The deterrent effect simply does not outweigh the benefit of our society. Applying the exclusionary rule under these circumstances would "require[] courts to ignore reliable, trustworthy evidence bearing on guilt or innocence," compromising the essential truth-seeking function of the courts. *Davis*, 564 US at 237. It would have the effect of "burning the barn to get rid of the mice." *Shope v State,* 41 MD App 161, 170 (1979).

Application of the exclusionary rule to this scenario would require this Court to contort the *Brown v Illinois* attenuation factors to fit this situation. This Court should not shoehorn the *Brown* analysis into a *McLaughlin* test when we already have one that is more narrowly tailored and factor driven, in *Cipriano*. For example, the second factor in *Brown* —"the temporal proximity of the arrest and the confession"—plainly should not apply to a *McLaughlin* violation as *there was no illegal arrest*, and the arrest does not become illegal simply because of a timing violation. Moreover, trying to apply that factor to a *McLaughlin* violation requires a

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reverse analysis than was applied initially in *Wong Sun*. In *Brown,* the closer proximity between the illegal arrest and the confession weighs *against* admissibility, whereas in the case of a *McLaughlin* violation, a court applying the test would be apparently required to flip it. That is, because the violation is governed by precise hours, the *longer* the temporal proximity between the Fourth Amendment violation and the confession, the more the temporal factor weighs against admissibility. Quite simply, that contortion would require forcing the *Brown* analysis into this circumstance. It is not the right tool for the job of determining whether a confession should be admissible.

The third factor—the presence of intervening circumstances—is also ill-suited. Again, because in *Brown* the police lacked probable cause to arrest the defendant, when our courts look to "intervening circumstances" that would break the causal chain between the unlawful arrest and subsequent confession, examples have included: discovery of preexisting warrants that justified the arrest; *Utah v Strieff,* 579 US 232, 240-241 (2016); or that the police have established probable cause to arrest while the defendant was in custody and before he made the challenged statement. See *People v Washington,* 99 Mich App 330, 336 (1980); *People v Kelly,* 231 Mich App 627, 635 (1998).

But in a *McLaughlin* violation, the defendant was arrested *with* probable cause and his detention only becomes unlawful with the passage of time; these circumstances will not apply. Or, for example, in *Wong Sun,* an intervening circumstance was that the defendant was released from detention prior to his

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confession. Or in *Rawlings v Kentucky,* 448 US 98, 108-109 (1980), the defendant made a spontaneous statement in response to discovered drugs at the scene of the crime. But the nature of a *McLaughlin* violation requires continued custody for over 48 hours; a defendant will never have the option to voluntarily walk in to a police station to give a statement nor give a spontaneous statement at the scene of the crime. Moreover, other intervening circumstances, like a defendant's request for an attorney, would be an assertion his *Miranda* rights and the interrogation would cease at that time. This factor simply does not fit the actual circumstances of a *McLaughlin* violation.

And if this Court is to address the last factor, the "the purpose and flagrancy of the official misconduct," in this case, it must be remanded to the trial court to engage in a broad scale inquiry into whether the problem involved "systemic or recurrent police conduct." *Utah v Strieff,* 579 US 232, 241-242 (2016). In application, this factor could lead to vastly different results and broadly expand the scope of a trial court's hearing to review the recurrence or systemic violation of *McLaughlin.* No such record evidence exists in this case. In fact, the record showed Detective Lewandowsky's understanding of how much time he had was negligent, based on Michigan statutes that do not explicitly lay the 48-hour rule, but do mention 72 hours as the timeline for how long someone can be held in a local "lockup" facility. MCL 764.13; MCL 764.15b. While his belief was in error, it was not the broadscale inquiry required if this Court imposes the exclusionary rule. Instead, it was more akin to the

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mistaken police action in *Strieff*, 579 US at 242: "an isolated instance of negligence that occurred in connection with a bona fide investigation."

3. In contrast to the poor fit of *Brown*, the *Cipriano* factors account for all of the relevant circumstances in determining whether a defendant's statement should be admitted.

Rather than shoehorning the exclusionary rule and attenuation analysis where it does not fit, the application of the *Cipriano* voluntariness test is already narrowly tailored to the violation itself and the evidence, but also includes within it the *Brown* factors, with more discrete ways to apply them. The first factor of the *Brown* test is the presence or absence of *Miranda* warnings; this is in the *Cipriano* test. The temporal proximity between the arrest and the confession factor is more detailed and flexible in *Cipriano*; it specifically requires a look at the length of the *detention* of the accused before he gave the statement in question and whether there was an *unnecessary delay* in bringing him before a magistrate before he gave the confession. The longer the delay, the greater the probability that the confession will be held involuntary, and inadmissible.

And for the third and fourth *Brown* factors, the presence of intervening circumstances and the purpose and flagrancy of the official misconduct, the *Cipriano* test covers them, but with more direction for the trial court to follow. For example, in addition to the litany of factors listed in *Cipriano,* including the repeated and prolonged nature of the questioning, the accused's health, and physical abuse, this Court also said that it is to "address any other factual circumstances, psychological effects, and coercive tactics employed by the officers that may have contributed to an

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overbearing of the defendant's free will." *People v Stewart,* 512 Mich 472, 495 (2023). The voluntariness test already in existence and applied in this state not only incorporates the relevant pieces of *Brown*, but does so in a more narrowly tailored and focused way to allow for an individualized assessment by the trial courts.

An application of a balanced totality of the circumstances test incorporates and accounts for the nature of the Fourth Amendment violation and allows the trial court to thoughtfully weigh it, as necessary, to determine admissibility of an otherwise voluntary confession. Rather than applying the exclusionary rule and the *Brown* factors which simply do not fit the bill, this approach allows for what this Court has historically preferred: a balancing test. This is what the Court of Appeals did in *People v Manning,* 243 Mich App 615, 637-38 (2000). Assessing the Supreme Court precedent the Court found:

> To our eye, this looks remarkably like an invitation to use precisely the sort of balancing test that the Michigan Supreme Court used in *Cipriano.* The harm caused by excluding a voluntary confession solely on the basis of the delay would outweigh the benefit of this exclusion in deterring unreasonable delays. Other remedies, such as the civil suit in *Riverside Co.*, are available to persons held beyond the requirements of *Riverside Co.* Moreover, the delay will be a factor in the *Cipriano* analysis, increasing the possibility that the confession will be found involuntary. A sufficiently long delay in itself will be enough to make a confession involuntary under *Cipriano.* Thus, *Riverside Co.* need not, and does not, supplant *Cipriano.*" [*Id.*]

The *Manning* court's application of the voluntariness test to a *McLaughlin* violation was correct, and should remain. Furthermore, if this Court is to apply the exclusionary rule, it should remand to the trial court for factual findings and application.

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E. If application of either standard would lead to the same result, announcing one as the controlling standard would be dicta.

If this Court finds the trial court committed clear error in finding Defendant's statement was not voluntary, this Court need not adopt a changed test because the inquiry ends, regardless of which test is used. If Defendant's statement was not voluntary, it fails *Cipriano* and is inadmissible and also fails the threshold requirement of the attenuation analysis. *Brown,* 422 US at 604 ("The voluntariness of the statement is a threshold requirement."). If application of either standard would lead to the same result, announcing one as the controlling standard would be dicta.

Over 100 years ago, this Court noted the "well-settled rule that any statements and comments in an opinion concerning some rule of law or debated legal proposition *not necessarily involved nor essential to determination of the case* in hand are, however, illuminating, but obiter dicta, and lack the force of an adjudication." *People v Case*, 220 Mich 379, 382–383 (1922) (emphasis added). This Court recently affirmed and applied the principle, recognizing that obiter dicta "are statements that are *unnecessary to determine the case at hand* and, thus, lack the force of an adjudication." *Estate of Pearce v Eaton Co Rd Comm*, 507 Mich 183, 197 (2021) (emphasis added).[8] For an example, in *People v Goecke*, this Court declined to adopt an objective, rather than subjective, standard for the third form of malice commonly known as "depraved heart murder." 457 Mich 442, 464 (1998). Where the application

[8] As Justice Michael Cavanagh put it, "[d]icta is normally reserved to express the views of an individual author on matters that go beyond the facts of a particular case." *People v Puertas*, 462 Mich 885 (2000).

of either standard would not have changed the outcome, this Court declined to resolve the open question. *Id.* at 464. Instead, this Court simply stated that "under either a subjective or an objective standard, sufficient proofs were presented to support a bindover on the charge of second-degree murder in *Goecke* and to sustain the defendants' convictions in *Baker* and *Hoskinson*." *Id.* at 464. If this Court finds Defendant's statement was not voluntary, it fails both the voluntariness test and the attenuation test, and this Court need not resolve the question it has posed.

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II. Applying *Cipriano*, the trial court did not commit clear error in finding defendant's statement voluntary.

Citizens are protected against self-incrimination and afforded due process of law under both the United States and Michigan Constitutions. US Const, Ams V and XIV; Const 1963, art 1, §17. "The use of an involuntary statement elicited by coercive state action in a criminal trial violates these constitutional protections." *People v Stewart,* 512 Mich 472, 480 (2023) (citation omitted). To determine whether a statement was involuntary because of state coercion, a reviewing court must consider "whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made." *Cipriano*, 431 Mich at 334. While all relevant circumstances must be considered, this Court has specifically directed consideration of the following factors:

> 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. [*Id.* at 334].

Under this test, certainly the delay in arraignment could become so long that it renders a confession involuntary, but this decision still lies with the trial court.

In this case, the totality of the circumstances showed Defendant's confession to Detective Lewandowsky was voluntary. This Court recently reviewed an involuntary confession in detail in *People v Stewart,* 512 Mich 472 (2023), providing

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an excellent framework from which to contrast the defendant's voluntary interview in this case. Beginning with the most basic factors of age and education or intelligence level, these weigh heavily in favor of voluntariness. In *Stewart,* the defendant was 18 years old, interviewed for three hours in the middle of the night, and had recently received a cancer diagnosis. In contrast, Defendant Sanders was a 37-year-old intelligent man, who was employed, the father of three children, and enrolled in classes at Ashford University, studying business administration and taking fourteen credits. In contrast to *Stewart,* Defendant also had previous experience with police: he had been previously read his *Miranda* rights, twice in this exact case, and had five prior felony convictions at the time of the interview, including two of them within the last two years and for which Defendant was still on probation. As to the length of the interview and timing, following this Court's note in *Stewart,* where this Court found the three-hour interrogation was not excessively long, Defendant Sanders' interview was an hour and twenty-seven minutes. Moreover, it occurred during the day, unlike the middle of the night interview in *Stewart*. All those factors weighed in favor of voluntariness.

The record showed Defendant Sanders was not injured, intoxicated, drugged, or in ill health, nor was he deprived of food, sleep, or medical attention. Defendant also suffered no sleep deprivation, or lack of any other basic necessities like food or water. In fact, Lewandowsky brought him a glass of water during the interview. Defendant argues repeatedly that he was in "ill health" due to "significant psychological distress that constitutes a genuine health impairment," but this

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argument has no basis in the record. This Court has the benefit of a video recording of Defendant's interview and to view Defendant's physical responses, tone, and demeanor. The undeniable record showed Defendant *was* calm and his affect was flat – he did not cry, cover his face with his hands, or make any statements about his emotional condition. In fact, Defendant did not say he was sad about his daughter dying; rather, he said he was having a bad year because he was being charged with murder. CH, 29. Defendant's argument that he was suffering trauma and "was without access to adequate grief counseling, support, or spiritual guidance necessary to cope with the news of his daughter's passing, " (Defendant's Brief, 19-20), is without any basis in the record, and without any testimony from Defendant at the *Walker* hearing. He asks this Court to disregard a factual finding of the trial court (which found the factor "neutral"); to do so, this Court then must assume any defendant charged with murder was in ill health because of the grievous crime they committed, and the terrible loss they inflicted on their family and their community. His arguments about suffering "psychological devastation" are conjecture; this Court is bound by what is actually within the record.

Defendant does not deny he was read his *Miranda* rights on two separate occasions, by two separate detectives, and waived them. He was not physically abused, or threatened with abuse. And, contrary to the combative tone in *Stewart,* where officers told him to "man up," and isolated and belittled him, Lewandowsky was the opposite. The video showed he tried to make the interview as comfortable as possible – he introduced himself as "Mark," referred to Defendant as "John," removed

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Defendant's handcuffs, and removed any barriers between the two of them so they could sit and talk knee to knee, face to face. WH, 37-38, 40. Lewandowsky's tone was modulated, he did not yell, and he tried to build a report with Defendant Sanders, including that both men were fathers and an acknowledgement that children can be difficult. CH, 21-22, 26. He was respectful, calm, never made a single threat, never physically abused Defendant, and never promised leniency or lied about the evidence.

Most of Defendant's argument about Lewandowsky's interview is a deflection from the actual record the trial court had before it. A review of the video interview with Lewandowsky reveals a calm and measured voluntary interview between two grown men. To deflect from that uncontradicted evidence, Defendant adds two new arguments to this appeal that he did not make before the trial court or the Court of Appeals, and which the trial court never considered in its analysis. He creates a narrative that Lewandowsky used a "Reid technique" and colluded with Detective Reust to maliciously emotionally batter Defendant into making a confession. This Court has recognized that certain interrogation strategies can "undermine a defendant's free will and so must be considered in the voluntariness analysis;" however, this Court refused to adopt a per se rule and instead accounts for them in a totality of the circumstances analysis. *Stewart,* 512 Mich at 495-496, n 9.

And, in this case, pages of Defendant's argument are dedicated to assumptions not supported by the record, and a deflection from the actual interview of Defendant that now seeks to suppress. First, Lewandowsky unequivocally denied using the "Reid Technique." Full stop. Simply because Defendant believes Lewandowsky used

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this technique does not make it true. But another new argument Defendant adds to this appeal (and was not raised in the trial court or in the Court of Appeals), is his attempt to manufacture a collusion between Lewandowsky and Reust. The record showed Defendant was interviewed by Detective Reust (as part of the initial interview done by Detective Thielen). And while a second interview by another detective could factor into a voluntariness analysis, Reust's interview was not challenged by Defendant as involuntary, occurred within 48 hours of Defendant's arrest (and was therefore not a *McLaughlin* violative interview), and most importantly, was not argued by Defendant in the trial court nor considered by the trial court in its analysis or opinion. Moreover, Lewandowsky testified he did not watch any of Reust's interview previous to his interview with Defendant. In fact, he said, "I knew they had interviewed him, but I did not know what the content of it was." CH, 41. This Court is reviewing the trial court's factual findings for clear error; to raise new issues before this Court that were not actually raised, argued or considered before the trial court raises a question as to why he waited to raise them only here. Regardless, they hold no support within the record nor should they hold weight with this Court.

Turning to the actual record before this Court, the video record shows, in contrast to *Stewart,* there was no promise of leniency, no lies about the existing evidence against Defendant Sanders, nor was the tone combative in any manner. Rather, a look at Defendant's arguments about Lewandowsky's interview – which *is* the factual record before this Court – concede Lewandowsky showed understanding

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and sympathy and tried to make the interrogation "more personal." Defendant's Brief, pp 30-31. And, to give these otherwise laudable qualities of a detective interview (as opposed to combative, threatening interviews, like in *Stewart*) a negative spin, Defendant argues they are "textbook" manipulation tactics. Under the defendant's reading, an officer acting too threatening renders a confession involuntary, and an officer acting too kind renders a confession involuntary. That cannot be the case. The much more simple and obvious answer is that it was just good police work and led to a voluntary statement from a defendant admitting to the crimes he committed.

The two factors identified by the trial court that weighed against the People were the length of detention before he gave the statement in question, and the unnecessary delay in bringing Defendant before the magistrate before he gave the confession. In this case, Defendant's interview with Lewandowsky occurred 64 hours and 35 minutes after he was arrested. While this factor weighed against a finding of voluntariness, this Court has found statements voluntary after an even longer delay. See *People v Harrison,* 431 Mich 315 (1988) (finding a statement given after a 96 hour pre-arraignment delay was still voluntary); *People v Cipriano,* 431 Mich 315 (1988) (finding a statement given after a 48 hour delay was still voluntary).

Moreover, while context does not excuse the error, it does combat Defendant's narrative that this was all part and parcel of a malicious scheme against Defendant. Defendant's first interview was January 4, 2013, with Detective Thielen, where he had been read and waived his *Miranda* rights (another *Cipriano* factor). Then, over

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the weekend, a forensic autopsy was completed on the child. Come Monday morning, the police reports were all finalized and, at a briefing, the detectives realized Defendant had not been interviewed again after the autopsy had been completed. That morning, Lewandowsky interviewed Defendant once more and Defendant again read and waived his *Miranda* rights, for the second time. And while the matter of the autopsy being conducted and the results being available was not enough to justify the delay past 48 hours, it does provide important context, because *McLaughlin* does not bar the police from continuing an ongoing investigation while the arrestee is being held and awaiting a probable cause determination:

> In fact, the practical reality of law enforcement is that an investigation often *will* be ongoing during the pendency of an initial detention—a reality that is ultimately protective of both the defendant's interests in being free from extended seizure (because the investigation may exonerate a detainee) and society's interest in the prompt and efficient investigation of crime. The period immediately after a seizure can be critical as the police investigate the scene of a crime, take witness statements, evaluate suspects, and assess the quality of potential leads. Such investigative efforts can be essential to developing a careful and detailed picture of the circumstances of a suspected crime, especially because the quality of this information often diminishes rapidly with time. Accordingly, neither *Gerstein*'s "practical compromise," nor *McLaughlin*'s "balance [of] competing interests," demands that all investigative activity cease the moment an arrest is made. [*United States v Pabon*, 871 F3d 164, 183 (CA 2, 2017).]

And while Defendant argues Lewandowsky knew of the 48-hour rule and chose to ignore it, or that the delay in the interview was malicious, the actual record shows the detective was just mistaken. The real question is not the intent of the detective, but what impact the delay had on the voluntariness of Defendant's statement, in combination with the rest of the other factors. Based on that balancing test, the trial

court correctly found Defendant's statement was voluntary. This Court should deny leave.

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RELIEF REQUESTED

WHEREFORE, Plaintiff-Appellee respectfully requests that this Court deny leave.

Respectfully submitted,

/S/ Elizabeth L. Allen

Dated: June 26, 2025

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STATEMENT OF WORD COUNT

There are 10,474 countable words in this brief.

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