RECEIVED by MSC 7/10/2025 9:53:18 AM

**STATE OF MICHIGAN**
**IN THE SUPREME COURT**

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

**v.**

**JOHN HAROLD SANDERS** **No. 167899**
**Defendant-Appellant.**

_____/

**L.C. 13-224-FC**
**COA No. 371677**
_____/

# BRIEF BY PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN AS AMICUS CURIAE IN SUPPORT OF THE PEOPLE OF THE STATE OF MICHIGAN

**J. DEE BROOKS**
**President**
**Prosecuting Attorneys**
**Association of Michigan**

**KYM L. WORTHY**
**Prosecuting Attorney**
**County of Wayne**

**JON P. WOJTALA**
**Chief, Research, Training, and Appeals**

**TIMOTHY A. BAUGHMAN (P 24381)**
**Special Assistant Prosecuting Attorney**
**5301 Russell St. Fl. 2**
**Detroit, Michigan 48211**
**Phone: (313) 224-5792**
**tbaughma@waynecountymi.gov**

RECEIVED by MSC 7/10/2025 9:53:18 AM

## Table of Contents

Table of Authorities . . . . . -iii-

Statement of the Question. . . . . -1-

Statement of Facts. . . . . -2-

Argument

I. Under *Brown v. Illinois,* a voluntary confession made by a person taken into custody without probable cause may be subject to suppression unless it is sufficiently an act of free will to purge the primary taint, while under *People v. Cipriano,* a confession taken when there is a delay in arraignment of a person properly arrested on probable cause is admissible if voluntary, the delay being a factor in the voluntariness calculus. *Riverside v. McLaughlin* later held that a person arrested on probable cause must be taken before a magistrate for a judicial determination of probable cause within 48 hours, absent extenuating circumstances. Defendant was arrested on probable cause but not taken before a judge for arraignment for some 64 hours. *Riverside* does not modify the *Cipriano* voluntariness test.. . . . . -3-

Introduction. . . . . -3-

Discussion. . . . . -5-

A. *Manning* was correctly decided, and thus *Cipriano* supplies the test for assessing admissibility of a confession and delay in arraignment, with the delay a factor in the voluntariness inquiry . . . . . -5-

1. The *Cipriano* test for the statutory violation is voluntariness . . . . . -5-
2. *Brown v. Illinois* applies to arrests illegal at the outset . . . -8-
3. *Riverside* applies to a lawful arrest where there is then a delay in a judicial determination of probable cause and does not disturb *Cipriano* . . . . . -9-

B. A confession is the fruit of a Riverside violation only if it is involuntary. . . . . -14-

C. *Cipriano* was properly applied here . . . . . -16-

Relief. . . . . -17-

RECEIVED by MSC 7/10/2025 9:53:18 AM

RECEIVED by MSC 7/10/2025 9:53:18 AM

## Table of Authorities

**Case** **Page**

**Federal Cases**

Anderson v. Calderon,
232 F.3d 1053 (CA 9, 2000), overruled in part on other grounds by Bittaker v. Woodford, 331 F.3d 715 (CA 9, 2003). . . . . 14

Barnes v. Anderson,
116 F.3d 1477 (CA 5, 1997) . . . . . 13

Brown v. Illinois,
422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975). . . . . 8, 9, 10, 16

Brown v. Jackson,
501 F. App'x 376 (CA 6, 2012) . . . . . 12

Davis v. Jones,
306 F. App'x 232 (CA 6, 2009) . . . . . 13

Gerstein v. Pugh,
420 U.S. 103, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975) . . . . . 9, 12

Greenlaw v. United States,
554 U.S. 237, 128 S. Ct. 2559, 171 L. Ed. 2d 399 (2008). . . . . 4

Hudson v. Michigan,
547 U.S. 586, 126 S. Ct. 2159, 165 L. Ed. 2d 56 (2006). . . . . 14

Miranda v. Arizona,
384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). . . . . 6, 8

New York v. Harris,
495 U.S. 14, 110 S. Ct. 1640, 109 L. Ed. 2d 13 (1990). . . . . 16

Powell v. Nevada,
511 U.S. 79, 114 S. Ct. 1280, 128 L. Ed. 2d 1 (1994). . . . . 11, 16

Riverside Co v McLaughlin,
500 U.S. 44, 111 S. Ct. 1661, 114 L. Ed. 2d 49 (1991). . . . . 3, 7, 9, 10, 11, 12, 13,14

Segura v. United States,
468 U.S. 796, 104 S. Ct. 3380, 82 L. Ed. 2d 599 (1984). . . . . 16

United States v. Brown,
984 F.2d 1074 (CA 10, 1993) . . . . . 15

United States v. Castro,
881 F.3d 961 (CA 6, 2018) . . . . . 15

United States v. Ceccolini,
435 U.S. 268, 98 S. Ct. 1054, 55 L. Ed. 2d 268 (1978). . . . . 16

United States v. Pulliam,
405 F.3d 782 (CA 9, 2005) . . . . . 14

United States v. Richards,
659 F.3d 527 (CA 6, 2011) . . . . . 15

United States v. Sineneng-Smith,
590 U.S. 371, 140 S. Ct. 1575, 206 L. Ed. 2d 866. . . . . 4

Utah v. Strieff,
579 U.S. 232, 136 S. Ct. 2056, 195 L. Ed. 2d 400 (2016). . . . . 8

West v. Johnson,
92 F.3d 1385 (CA 5, 1996) . . . . . 14

**State Cases**

Michigan Gun Owners, Inc. v. Ann Arbor Public Sch.,
502 Mich. 695 (2018) . . . . . 4

People v .Cipriano,
431 Mich. 315 (1988) . . . . . 3, 5, 6, 7, 9, 10, 13, 16

People v. Hawkins,
468 Mich. 488 (2003) . . . . . 6

People v. Jemison,
505 Mich. 352 (2020) . . . . . 5



RECEIVED by MSC 7/10/2025 9:53:18 AM

People v. Keller,
479 Mich. 467 (2007) . . . . . 15

People v. Mallory,
421 Mich. 229 (1984) . . . . . 8

People v. Manning,
243 Mich. App. 615 (2000) . . . . . 3, 4, 5, 7, 11, 12, 14

People v. McKinley,
496 Mich. 410 (2014) . . . . . 5

People v. Samuels,
507 Mich. 928 (2021) . . . . . 3

People v. Sanders,
—Mich.—, 2025 WL. 1013031 (No. 167899, Mich. Apr. 4, 2025). . . . . 3

People v. Walker,
504 Mich. 267 (2019) . . . . . 5

People v. Willis,
831 N.E.2d 531 (Ill., 2005) . . . . . 12, 13

People v. Worthington,
503 Mich. 863 (2018) . . . . . 4

State v. Jandreau,
288 A.3d 371 (ME, 2022). . . . . 15

State v. Nissen,
560 N.W.2d 157 (Neb., 1997). . . . . 13

**Statutes**

MCL § 764.13 . . . . . 5

MCL § 764.26 . . . . . 5

**Other Authority**

Am. Jur. 2d Appellate Review § 464. . . . . 5



RECEIVED by MSC 7/10/2025 9:53:18 AM

Timothy A. Baughman, “Appellate Decision Making in Michigan: Preservation, Party Presentation, and the Duty to ‘Say What the Law Is’,”
97 U. Det. Mercy L. Rev. 223 (2020). . . . . 5

Timothy A. Baughman, “The Emperor’s Old Clothes: A Prosecutor's Reply to Mr. Leitman Concerning Exclusion of Evidence for Statutory Violations,”
1999 L. Rev. Mich. St. U. Det. C.L. 701 (1999) . . . . . 6

George E. Dix, "Nonconstitutional Exclusionary Rules in Criminal Procedure," 27 Am. Crim. L. Rev. 53 (1989) . . . . . 6

3 LaFave, Israel, King, & Kerr, Criminal Procedure. § 9.4(a) (4th ed.) . . . . . 12

LaFave, Search & Seizure (6th ed.), § 4.6(f) . . . . . 15

McCormick On Evidence § 156 (9th ed.) . . . . . 11

Andrey Spektor, Michael A. Zuckerman, “Ferrets and Truffles and Hounds, Oh My: Getting Beyond Waiver,”
18 Green Bag 2d 77 (2014). . . . . 5

Daniel Yeager, “Arrests: Legal and Illegal,”
40 Ga. St. U. L. Rev. 389 (2024) . . . . . 11

RECEIVED by MSC 7/10/2025 9:53:18 AM

RECEIVED by MSC 7/10/2025 9:53:18 AM

## Statement of the Question

I.

**Under *Brown v. Illinois,* a voluntary confession made by a person taken into custody without probable cause may be subject to suppression unless it is sufficiently an act of free will to purge the primary taint, while under *People v. Cipriano,* a confession taken when there is a delay in arraignment of a person properly arrested on probable cause is admissible if voluntary, the delay being a factor in the voluntariness calculus. *Riverside v. McLaughlin* later held that a person arrested on probable cause must be taken before a magistrate for a judicial determination of probable cause within 48 hours, absent extenuating circumstances. Defendant was arrested on probable cause but not taken before a judge for arraignment for some 64 hours. Does *Riverside* modify the *Cipriano* voluntariness test?**

**The People answer: No**

**Defendant answers: Yes**

**Amicus answers: No**

RECEIVED by MSC 7/10/2025 9:53:18 AM

## Statement of Facts

Amicus joins the statement of facts of the People of the State of Michigan.

RECEIVED by MSC 7/10/2025 9:53:18 AM

## Argument

### I.

**Under *Brown v. Illinois,* a voluntary confession made by a person taken into custody without probable cause may be subject to suppression unless it is sufficiently an act of free will to purge the primary taint, while under *People v. Cipriano,* a confession taken when there is a delay in arraignment of a person properly arrested on probable cause is admissible if voluntary, the delay being a factor in the voluntariness calculus. *Riverside v. McLaughlin* later held that a person arrested on probable cause must be taken before a magistrate for a judicial determination of probable cause within 48 hours, absent extenuating circumstances. Defendant was arrested on probable cause but not taken before a judge for arraignment for some 64 hours. *Riverside* does not modify the *Cipriano* voluntariness test.**

### Introduction

The Court has ordered a MOAA, and directed that the issues to be addressed are:

- the proper analysis for determining whether statements made while detained in violation of the Fourth Amendment under *Riverside Co. v. McLaughlin*[1] should be suppressed;
- whether *People v. Manning*[2] was correctly decided; and
- whether the trial court clearly erred in concluding that the defendant's statements were voluntary under *People v. Cipriano*.[3]

---

[1] *Riverside Co v McLaughlin*, 500 U.S. 44, 111 S. Ct. 1661, 114 L.Ed.2d 49 (1991).

[2] *People v. Manning*, 243 Mich. App. 615 (2000).

[3] *People v .Cipriano*, 431 Mich. 315 (1988).
*People v. Sanders*, —Mich.—, 2025 WL 1013031 (No. 167899, Mich. Apr. 4, 2025).
Amicus would note that it is somewhat surprising that, given the Court of Appeals denial of leave to appeal in this interlocutory appeal, this Court has not first remanded these questions to that court as on leave granted to get its opinion on them before they are addressed by this Court. Cf. *People v. Samuels*, 507 Mich. 928, (2021): "On order of the Court, the application for leave to appeal the July 9, 2020 order of the Court of Appeals is

RECEIVED by MSC 7/10/2025 9:53:18 AM

Amicus submits that *Manning* was properly decided,[4] and so the test is the

---

considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration as on leave granted. Among the issues to be considered, the Court of Appeals shall address: (1) whether a trial court is required to hold an evidentiary hearing on the voluntariness of a guilty plea that is induced in part by an offer of leniency to a relative, see *People v. James*, 393 Mich. 807, 225 N.W.2d 520 (1975); and if so, (2) how a trial court is to determine whether an offer of leniency to a relative "rendered the defendant's plea involuntary in fact." As the United States Supreme Court has said in these circumstances, "[b]ecause this is a court of review, not of first view. . . it is generally unwise to consider arguments in the first instance," *Terrence Byrd v. United States*, 584 U.S. 395, 404, 138 S. Ct. 1518, 1527, 200 L. Ed. 2d 805 (2018) (cleaned up), for "the experience of [the Court's] thoughtful colleagues on the district and circuit benches could yield insights (or reveal pitfalls) we cannot muster guided only by our own lights." *Maslenjak v. United States*, 582 U.S. 335, 354, 137 S. Ct. 1918, 1931, 198 L. Ed. 2d 460 (2017) (Gorsuch, J., concurring in part). Cf. *People v. Duff*, 2024 WL 3551259, at 7 (No. 163961, Mich. July 26, 2024) ("We remand to the Court of Appeals for consideration of whether, in light of our conclusion that defendant was seized under the circumstances of the police encounter in this case, Deputy Pence had reasonable suspicion of criminal conduct when defendant was initially seized").

[4] Defendant in his application does not argue that *Manning* was wrongly decided. See defendant's application, p. 7 ("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*.' . . . And *it is precisely this intersection at issue here*" (emphasis supplied).

This Court has said emphatically that "[i]n our adversary system, *in both civil and criminal cases*, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present," quoting *Greenlaw v. United States*, 554 U.S. 237, 243, 128 S. Ct. 2559, 171 L.Ed.2d 399 (2008); otherwise, "best we ditch the adversarial system of law today, as .. . . the Court will always know not only the better answer than any supplied by the parties but even the better questions than those asked by the parties." *Michigan Gun Owners, Inc. v. Ann Arbor Pub. Sch*., 502 Mich. 695, 710 (2018) (emphasis supplied). And not long ago Justice Viviano, concurring in the denial of leave said that "it is not our role to find and develop unpreserved arguments on behalf of litigants." *People v. Worthington*, 503 Mich. 863 (2018) (Viviano, J., concurring). See also *United States v. Sineneng-Smith*, 590 U.S. 371, 140 S. Ct. 1575, 1579, 206 L. Ed. 2d 866 (2020 (""Courts are essentially passive instruments of government. . . . They do not, or should not, sally forth each day looking for wrongs to right. They wait for cases to come to them, and when cases arise, courts normally decide only questions presented by the parties" (cleaned up).

Despite these statements, the Court *does* regularly raise for the defense in criminal cases arguments and issues not raised in the application, sometimes deciding cases on these issues—sallying forth looking for wrongs to right—and, on occasion, without opportunity

RECEIVED by MSC 7/10/2025 9:53:18 AM

voluntariness of the statement, which was properly found by the trial court here.

## Discussion

### A. *Manning* was correctly decided, and thus *Cipriano* supplies the test for assessing admissibility of a confession and delay in arraignment, with the delay a factor in the voluntariness inquiry

#### 1. The *Cipriano* test for the statutory violation is voluntariness

MCL § 764.13 and MCL § 764.26 require that a person arrested be brought before a magistrate for arraignment "without unnecessary delay." Nothing in these statutes indicates any legislative intent that a violation of the statute should provide

---

for briefing and argument by the appellee. See e.g., *People v. McKinley*, 496 Mich. 410 (2014). Given that this is so—and it is certainly sometimes appropriate for the Court to direct briefing on additional *arguments* (see Timothy A. Baughman, "Appellate Decision Making in Michigan: Preservation, Party Presentation, and the Duty to 'Say What the Law Is'," 97 U. Det. Mercy L. Rev. 223, 245-57 (2020); Andrey Spektor, Michael A. Zuckerman, "Ferrets and Truffles and Hounds, Oh My: Getting Beyond Waiver," 18 Green Bag 2d 77, 79 (2014)(discussing the "oft-forgotten distinction between 'issues' and 'arguments'"))—amicus suggests that the Court at some point set out for the bench and bar just when the raising of an argument, and most especially an issue, by the Court not raised by the appellant is appropriate, and, most particularly, establish that the raising of additional arguments by the appellee to *support* a judgment is permissible so long as supported by the record, something that is routine in the rest of the country (see 5 Am. Jur. 2d Appellate Review § 464: "Because a cross-appeal is not necessary if an appellee desires only to defend the judgment rendered below, an appellee's answering brief may raise for the first time new arguments or new reasoning to support the judgment") but denied in Michigan to prosecutors. See e.g. *People v. Walker*, 504 Mich. 267, 276 (2019) ("The prosecution argues for the first time in its supplemental brief to this Court that defendant waived any challenge to the instruction by approving of the instruction before it was given. The prosecution abandoned this theory"); *People v. Jemison*, 505 Mich. 352, 359 fn 4 (2020) ("because the prosecution did not raise this argument before the Court of Appeals, we decline to address it").

It is, amicus submits, inappropriate for the judiciary to act as a "self-directed board of legal inquiry and research" for the appellant while denying to the appellee additional arguments in *support* of the judgment, arguments raised by the appellee him or herself and *not* the Court; the former should be rare, the latter should always be permissible, especially given this Court's duty under MCL § 769.26. See also MCR 7.307(B) ("A party is not required to file a cross-appeal to advance alternative arguments in support of the judgment or order appealed. A cross-appeal is required to seek new or different relief than that provided by the judgment or order appealed").

RECEIVED by MSC 7/10/2025 9:53:18 AM

some exclusionary remedy regarding a voluntary confession taken from an in-custody accused.[5] Referring to exclusion of a voluntary confession on the sole ground of a delay in arraignment as perhaps "burning the barn to get rid of the mice," this Court in *Cipriano* noted that a principal concern of delay in arraignment—that it causes a delay in informing the accused of his rights[6]—was eradicated by the *Miranda* decision (and the defendant was given warnings here twice and executed waivers):

> Concerns which troubled the *McNabb* Court in 1943 have been addressed and remedied for the most part by subsequent changes in constitutional doctrines.. . . *Miranda v. Arizona*. . . reduced the significance of one basis for the *McNabb* decision—that a delay in an initial hearing represented a potential delay in informing a suspect of his rights by a judicial officer. Nowadays the fact of police custody triggers a number of rights, including the right to counsel, which the police dare not ignore. . . . The Supreme Court has, through the Fourth Amendment, restricted pickup for questioning. . . . custodial questioning on less than probable cause was held to be violative of the Fourth Amendment.[7]

---

[5] "[W]hen addressing the appropriate remedy for a statutory violation, the exclusion of evidence is not the go-to, or default, remedy. Instead, the drastic remedy of excluding evidence can only come into play if the legislative intent, gleaned from the words of the statute, permits its use." *People v. Hawkins*, 468 Mich. 488, 500 (2003). Further, see *People v. Cipriano*, 431 Mich. 315, 333 (1988) ("We note that Michigan's prearraignment delay statutes have never included a directive by the Legislature that failure to comply will render inadmissible a confession voluntarily given. Of course, the Legislature could provide sanctions for violations, and it could define more specifically the parameters of 'unnecessary delay'"). And see George E. Dix, "Nonconstitutional Exclusionary Rules in Criminal Procedure," 27 Am. Crim. L. Rev. 53, 74 (1989); Timothy A. Baughman, "The Emperor's Old Clothes: A Prosecutor's Reply to Mr. Leitman Concerning Exclusion of Evidence for Statutory Violations, "1999 L. Rev. Mich. St. U. Det. C.L. 701, 728 (1999).

[6] See *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 1622, 16 L. Ed. 2d 694 (1966): "These supervisory rules, requiring production of an arrested person before a commissioner 'without unnecessary delay' and excluding evidence obtained in default of that statutory obligation, were . . . responsive to the same considerations of Fifth Amendment policy that unavoidably face us now as to the States.'

[7] *People v. Cipriano*, 431 Mich. 315, 330–331 (1988).

RECEIVED by MSC 7/10/2025 9:53:18 AM

This Court noted that the "vast majority of state courts [like their federal counterparts] have [opted] for a traditional due process voluntariness test of the admissibility of confessions," and concluded that "a confession obtained from a suspect in violation of his statutory right to prompt arraignment is not ipso facto inadmissible; rather, arraignment delay is taken into account as one relevant factor in evaluating the overall voluntariness of the confession,"[8] so that the test is whether, "considering the totality of all the surrounding circumstances, the confession is 'the product of an essentially free and unconstrained choice by its maker,' or whether the accused's "will has been overborne and his capacity for self-determination critically impaired."[9] Certainly, a delay in arraignment is one of the "surrounding circumstances," and this Court said that it is a relevant factor in the voluntariness determination.

*Riverside*—not a criminal case, and thus not considering any remedy in a criminal case—has since held that after a warrantless arrest a delay in a judicial determination of probable cause of more than 48 hours is presumptively unconstitutional under the Fourth Amendment. And so, does *Riverside* in some way overrule *Cipriano* as to remedy for a violation, the violation being constitutional as well as statutory, or does it, as the Court of Appeals said in *Manning*, "dovetail"[10] with it?

---

[8] Id, at 324.

[9] Id, at 333-334.

[10] "We conclude that *Riverside Co*. does not supplant *Cipriano* and that, indeed, the two opinions dovetail." People v. Manning, 243 Mich. App. 615, 617, 624 N.W.2d 746, 747, 2000 WL 1858993 (2000)

RECEIVED by MSC 7/10/2025 9:53:18 AM

### 2. *Brown v. Illinois* applies to arrests illegal at the outset

The matter begins with *Brown v. Illinois*,[11] which concerns an "illegal arrest" in the constitutional sense, one "without probable cause and without a warrant,"[12] and the making of inculpatory statements after *Miranda* warnings, the issue being "whether the statements were to be excluded as the fruit of the illegal arrest, or were admissible because the giving of the *Miranda* warnings sufficiently attenuated the taint of the arrest";[13] that is, "so long as, in the traditional sense, [the statements were] voluntary and not coerced in violation of the Fifth and Fourteenth Amendments."[14] The Court stressed that its holding was a simple one: "We emphasize that our holding is a limited one. We decide only that the Illinois courts were in error in assuming that the *Miranda* warnings, by themselves, under *Wong Sun* always purge the taint of an illegal arrest," while also "*declin[ing] to adopt any alternative per se or 'but for' rule*" of exclusion.[15] And so *Brown* is an illegal-as-unconstitutional arrest case, where custody should never have occurred because obtained without probable cause.[16]

---

[11] *Brown v. Illinois*, 422 U.S. 590, 591, 95 S. Ct. 2254, 2256, 45 L. Ed. 2d 416 (1975).

[12] Id., 95 S. Ct. at 2254.

[13] Id.

[14] Id., 95 S. Ct. at 2258.

[15] Id, 95 S. Ct. at 2261, 2262-2263 (emphasis supplied).

[16] Three factors are suggested in the attenuation inquiry: 1) the "temporal proximity" between the unconstitutional conduct and the discovery of evidence to determine how closely the discovery of evidence followed the unconstitutional seizure of the person; 2) the presence of intervening circumstances; 3).the purpose and flagrancy of the official misconduct. See *Utah v. Strieff*, 579 U.S. 232, 239, 136 S. Ct. 2056, 2061–62, 195 L. Ed. 2d 400 (2016); *People v. Mallory*, 421 Mich. 229, 243 (fn 8) (1984)

RECEIVED by MSC 7/10/2025 9:53:18 AM

Defendant here has never claimed that his arrest was without probable cause, raising only the claim that because of a delay in a judicial determination of probable cause greater than 48 hours, his statements are inadmissible given *Riverside*.

### 3. *Riverside* applies to a lawful arrest where there is then a delay in a judicial determination of probable cause and does not disturb *Cipriano*

*Riverside* is not a confessions case, nor is it concerned with illegal arrests, where the custody of the accused is *itself* illegal from the outset because of a lack of probable cause justifying it. *Riverside* was a civil suit challenging the County of Riverside's policy regarding the arraignment of prisoners that excluded arraignments on weekends and holidays, while "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty."[17] The United States Supreme Court held that the Fourth Amendment requires that in most cases a judicial officer must make the decision of whether probable cause for custody exists—rather than just leaving it to the police—within 48 hours of the arrest. This time limit is presumptive and can be overcome by either party; that is, the prosecution can justify a longer period, and the accused can demonstrate that arraignment could have occurred in a shorter period.

Unnecessary delay in arraignment concerning individuals arrested without a warrant, then, had no constitutional basis when *Cipriano* was decided, but now is not only a statutory violation but a Fourth Amendment violation as well. Unlike an arrest absent probable cause at the outset, though, where a confession may be—but is not necessarily, see *Brown v. Illinois*—the fruit of the illegal arrest because the accused should not have been taken into custody by the police at all, a confession that occurs during a period of unnecessary delay in arraignment *where the arrest was achieved on probable cause* is only the fruit of the unnecessary delay if that delay was used as a tool that coerced the confession. In short, a violation of

---

[17] *Gerstein v. Pugh*, 420 U.S. 103, 114, 95 S. Ct. 854, 863, 43 L. Ed. 2d 54 (1975).

RECEIVED by MSC 7/10/2025 9:53:18 AM

*Riverside* should result in the suppression of a confession if the delay resulted in an involuntary confession, meaning that the confession was the fruit of the delay. If the custody itself was achieved without probable cause, then it is *Brown v. Illinois* that applies. Custody without probable cause is different from custody *with* probable cause but with a delay in having the determination of probable cause confirmed by a judicial officer. *Cipriano* remains the law.

Defendant conflates the question of delay with that of exclusion. He says in the statement of the issue to be reviewed in his application that "To admit statements made by a defendant while detained for more than 48 hours before arraignment, the burden is on the government to prove the existence of a bona fide emergency or that other extraordinary circumstances necessitated the delay."[18] But nothing in *Riverside* or any other case suggests that this is the test for admissibility of a confession when there has been an improper delay in a judicial determination of probable cause—again, the case is not a criminal case—rather, to *justify a period of detention greater than 48 hours as constitutional*, the prosecution must "demonstrate the existence of a bona fide emergency or other extraordinary circumstance."[19] If the prosecution does so, there then simply *is no error*; if it does not, *then* the admissibility question arises. Defendant would have it that if the prosecution cannot make this showing, an automatic rule of exclusion follows, which is not even the case for error under *Brown v. Illinois* for an arrest without probable cause at the outset. Here, there is no question that a delay in a judicial determination of probable cause occurred without a showing of a bona fide emergency or other extraordinary circumstance necessitating the delay, which is the predicate for *raising* the question of admissibility but not a rule that *resolves it*. The rule that resolves it is found in *Cipriano*—voluntariness.

---

[18] Defendant's application, p. v.

[19] *Riverside*, 111 S. Ct. at 1670.

RECEIVED by MSC 7/10/2025 9:53:18 AM

The Court of Appeals in *Manning* well made this point: "The issue here is not simply whether Manning's Fourth Amendment rights were violated by the delay. The delay here was clearly more than forty-eight hours and the burden would be on the government to prove that extraordinary circumstances necessitated this delay. The issue instead is whether [the] statements should be suppressed because of the delay"[20]; that is to say, "whether a *Riverside Co*. Fourth Amendment violation is one factor to be considered among the other *Cipriano* factors or whether such a violation automatically results in suppression of the confession."[21] The court held for the former. As the court observed, the Supreme Court did not in *Riverside*, nor since, establish the remedy with regard to confessions for a *Riverside* violation.[22] The court concluded that:

> 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*.[23]

---

[20] *People v. Manning*, 243 Mich. App. 615, 626 (2000).

[21] Id, at 626-627.

[22] See *Powell v. Nevada*, 511 U.S. 79, 84, 114 S. Ct. 1280, 1283, 128 L. Ed. 2d 1 (1994).

And see 1 *McCormick On Evidence* § 156 (9th ed.) ("Must a confession be suppressed if it was obtained while the suspect was still in custody and after the 48-hour period for a *Gerstein* hearing expired? That is a question of Fourth Amendment law that the Supreme Court has left open," citing *Powell v. Nevada*); Daniel Yeager, "Arrests: Legal and Illegal," 40 Ga. St. U. L. Rev. 389, 423 (2024) ("the Court did not take up what the remedy would be for such a violation. See *Powell v. Nevada* . . . elaborating that 'the appropriate remedy for a delay in determining probable cause' is 'an issue not resolved by *McLaughlin*')."

[23] Id., at 638.

RECEIVED by MSC 7/10/2025 9:53:18 AM

The court thus reversed the suppression of the statement given after 81 hours, as the suppression was based solely on the delay, when the trial court "should have instead considered whether the statement was voluntary based on the totality of the circumstances."[24]

Other jurisdictions support this view: "many jurisdictions have concluded that 'an inculpatory statement obtained during an unreasonably long delay between a warrantless arrest and a probable cause hearing must be suppressed only if it was involuntary.'"[25]

> - It is undisputed that Brown's confession was given after he had been held for 51 hours without being arraigned. This fact is troublesome, but not determinative. As the Michigan Court of Appeals noted, the delay in arraignment is not, in itself, a sufficient basis for suppressing the statement, but merely one factor to be considered in evaluating the overall voluntariness of the statement.[26]
>
> - [T]he defendant was held for more than 87 hours after his warrantless arrest before he was presented to a judge for a probable cause determination. He confessed after 73 hours. . . the State has never contended or attempted to show that this delay was defensible due to an emergency or extraordinary circumstance. . . . The defendant's detention thus ran afoul of *Gerstein* and *McLaughlin*, and we must decide the proper remedy. . . . The vast majority of jurisdictions have approached this problem, like the trial court did here, as a simple matter of voluntariness. . . . we ask simply whether the confession was voluntary—whether the inherently coercive atmosphere of the police station was the impetus for the confession or whether it was the product of free will. . . . If so, it is admissible. If not, it is inadmissible. While we appreciate the appellate court's well-reasoned scholarship, the voluntariness test and the flexibility it offers in responding to

---

[24] Id., at 644.

[25] 3 LaFave, Israel, King, & Kerr, *Criminal Procedure.* § 9.4(a) (4th ed.), citing *People v. Willis*, 831 N.E.2d 531 (Ill., 2005).

[26] *Brown v. Jackson*, 501 F. App'x 376, 379 (CA 6, 2012), citing *Manning*.

RECEIVED by MSC 7/10/2025 9:53:18 AM

factual nuance more appropriately balance the rights of the accused with the requirements of law enforcement.[27]

- Because *McLaughlin* was a civil rights action that did not consider the effect of pre-arraignment delay on the voluntariness of a statement made to authorities, it supplemented, but did not supplant, the following balancing test outlined *in Cipriano*: "[W]e believe 'unnecessary delay' in arraignment is only one of the factors that should be considered in evaluating the voluntariness of a confession."[28]

- Although a delay of more than forty-eight hours between an arrest and probable cause hearing is a presumptive violation of the Fourth Amendment, *County of Riverside v. McLaughlin*. . . the delay is only one aspect of the totality of the circumstances a court should consider when assessing the voluntariness of the confession under the Fifth and Fourteenth Amendments.[29]

- [T]he failure to hold a probable cause hearing within a reasonable time is but one factor in the totality of the circumstances analysis to determine the voluntariness of the statements.[30]

- [W]e upheld the admissibility of the confession, despite its having been given before the arrested accused was taken to a magistrate and following what we assumed was an unreasonable delay in doing so, because "[i]n our reading of the record we find nothing to indicate that De La Rosa's confession was anything other than the product of his free and voluntary choice.". . . Our review of the entire record here leads to the same conclusion as to West's confession. Notwithstanding the delay between arrest and arraignment, under all the circumstances reflected by the record here,

---

[27] *People v. Willis*, 831 N.E.2d 531, 537–38, 542 (Ill., 2005).

[28] *Davis v. Jones*, 306 F. App'x 232, 237 (CA 6, 2009).

[29] *Barnes v. Anderson*, 116 F.3d 1477 (CA 5, 1997).

[30] *State v. Nissen*, 560 N.W.2d 157, 171 (Neb., 1997).

RECEIVED by MSC 7/10/2025 9:53:18 AM

> West's confession is shown to be the product of his free and voluntary choice.[31]

The question remains open for decision, and exclusionary rule principles demonstrate that a *Riverside* violation remains a factor in a voluntariness inquiry.

**B. A confession is the fruit of a Riverside violation only if it is involuntary**

The sine qua non for exclusion of evidence under the Fourth Amendment is causation; the unconstitutional conduct must be the but-for cause of the discovery of the evidence in question, and even then exclusion is not automatic. But-for causation is "a necessary, not a sufficient, condition for suppression," and so in the case of a knock-and-announce violation, evidence will not be suppressed because the evidence is discovered by proper execution of a valid warrant (and if not, issues as to these are raised independently from the knock-and-announce issue).[32] Here, if the delay was not used as a tool to coerce a confession—and it was not—then the necessary causal connection is missing. The need for a causal connection is why evidence is not suppressed when evidence is found in a search of proper scope but the search

---

[31] *West v. Johnson*, 92 F.3d 1385, 1404–1405 (CA 5, 1996).

As *Manning* acknowledges, there is some authority the other way. See e.g., "[W]e conclude that the appropriate remedy for a *McLaughlin* violation is the exclusion of the evidence in question—if it was "fruit of the poisonous tree." This approach ensures that courts will not suppress evidence causally unrelated to the Fourth Amendment violation. At the same time, this test protects the arraignment right in question by barring any exploitation of the delay that causally produces a statement. Our conclusion rests upon *Brown v. Illinois* . . . A confession obtained during an unreasonable detention is subject to suppression unless it 'was sufficiently an act of free will to purge the primary taint of the unlawful invasion.'"*Anderson v. Calderon*, 232 F.3d 1053, 1071, 1072 (CA 9, 2000), overruled in part on other grounds by *Bittaker v. Woodford*, 331 F.3d 715 (CA 9, 2003). Amicus admits to being somewhat flummoxed by the supposed distinction between a voluntary confession and one that is "sufficiently an act of free will to purge the primary taint of the unlawful invasion." One might suppose a voluntariness hearing is for the purpose of determining whether the confession *was* an act of free will or coerced (with delay in arraignment a factor).

[32] *Hudson v. Michigan*, 547 U.S. 586, 592, 126 S. Ct. 2159, 2164, 165 L. Ed. 2d 56 (2006). See *United States v. Pulliam*, 405 F.3d 782, 791 (CA 9, 2005), referring to the requirement of an "indispensable causal connection" between the unlawful act and discovery of the evidence before suppression is appropriate.

RECEIVED by MSC 7/10/2025 9:53:18 AM

undertaken exceeds the permissible scope, as then only that found in the improper search is suppressed, and the same holds true if a warrant is overbroad in its description.

- Infirmity due to overbreadth does not doom the entire warrant; rather, it requires the suppression of evidence seized pursuant to that part of the warrant, but does not require the suppression of anything described in the valid portions of the warrant.[33].

- At least eight circuits have held that where a warrant contains both specific as well as unconstitutionally broad language, the broad portion may be redacted and the balance of the warrant considered valid.[34]

And Professor LaFave has said that "it would be harsh medicine indeed if a warrant issued on probable cause and particularly describing certain items were to be invalidated in toto merely because the affiant and magistrate erred in seeking and permitting a search for other items as well. In the usual case, of course, all the evidence seized under a warrant tainted by some constitutional defect is suppressed simply because the seizure of every item is entirely attributable to the defect. When the warrant's fault is not so pervasive, however, the same objectives of deterrence and integrity may be served in the same way and to the same degree by limiting suppression to the fruits of the warrant's unconstitutional component."[35]

So here. If the arrest was without probable cause—not an issue here—then *Brown v. Illinois* is applied. If the arrest was with probable cause—and the arraigning magistrate so found and detained the defendant—then *Cipriano* applies, and if there is the necessary causal connection between the delay and the

---

[33] *United States v. Richards*, 659 F.3d 527, 537 (CA 6, 2011) (cleaned up); *United States v. Brown*, 984 F.2d 1074, 1077 (CA 10, 1993); *United States v. Castro*, 881 F.3d 961 (CA 6, 2018) *State v. Jandreau*, 288 A.3d 371, 381 (ME, 2022).

[34] *United States v. Brown*, 984 F.2d at 1077–1078 (collecting cases). And see *People v. Keller*, 479 Mich. 467 (2007).

[35] 2 LaFave, Search & Seizure (6th ed.), § 4.6(f), "Partial Invalidity"

RECEIVED by MSC 7/10/2025 9:53:18 AM

confession—which is to say the confession is rendered involuntary by the delay—then and only then is suppression warranted.[36]

### C. Cipriano was properly applied here

Amicus joins the arguments of the People on this point.

---

[36] And see Justice Thomas dissenting from the remand for the state court to determine the issue of suppression after a reversal of its retroactivity decision:

> Our decisions make clear "that evidence will not be excluded as 'fruit' [of an unlawful act] unless the illegality is at least the 'but for' cause of the discovery of the evidence." *Segura v. United States*, 468 U.S. 796, 815, 104 S.Ct. 3380, 3391, 82 L.Ed.2d 599 (1984). As *Segura* suggests, "but for" causation is a necessary, but not sufficient, condition for suppression: "[W]e have declined to adopt a per se or but for rule that would make inadmissible any evidence ... which somehow came to light through a chain of causation that began with a [violation of the Fourth or Fifth Amendment]." *New York v. Harris*, 495 U.S. 14, 17, 110 S.Ct. 1640, 1642, 109 L.Ed.2d 13 1990) (internal quotation marks omitted). See also *United States v. Ceccolini*, 435 U.S. 268, 276, 98 S.Ct. 1054, 1060, 55 L.Ed.2d 268 (1978).
>
> Contrary to petitioner's arguments, the violation of *McLaughlin* (as opposed to his arrest and custody ) bore no causal relationship whatsoever to his November 7 statement. The timing of the probable-cause determination would have affected petitioner's statement only if a proper hearing at or before the 48–hour mark would have resulted in a finding of no probable cause.

*Powell v. Nevada*, 511 U.S. 79, 89–90, 114 S. Ct. 1280, 1286, 128 L. Ed. 2d 1 (1994) (Thomas, J., dissenting from the remand).

RECEIVED by MSC 7/10/2025 9:53:18 AM

## Relief

WHEREFORE, the amicus requests that leave be denied and the trial court affirmed.

Respectfully submitted,

J. DEE BROOKS
President
Prosecuting Attorneys
Association of Michigan

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

JON P. WOJTALA
Chief, Research, Training, and Appeals

**/s/** Timothy A. Baughman
TIMOTHY A. BAUGHMAN (P24381)
Special Assistant Prosecuting Attorney
5301 Russell St. Fl. 2
Detroit, Michigan 48211
Phone: (313) 224-5792
**tbaughma@waynecountymi.gov**

## CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief contains 5278 countable words.

/s/ Timothy A. Baughman
TIMOTHY A. BAUGHMAN
Special Assistant Prosecuting Attorney

TAB/jf