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SUPREME COURT OF THE
STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN HAROLD SANDERS,

Defendant-Appellant.

Supreme Court No. 167899

Court of Appeals No. 371677

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DEFENDANT-APPELLANT'S REPLY TO PLAINTIFF-APPELLEE'S BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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ARGUMENT

I. The government's analysis lacks substance and inaccurately interprets the vital issues related to the instant matter.

We begin by composting some of the analytical litter strewn about by the government. First, despite the government's attempts to lure attention away from the violations that occurred here, "[u]nder the balancing analysis of *Cipriano*[1], officers obtaining confessions do run a greater risk of having them suppressed as involuntary when the arraignment is unnecessarily delayed." *People v Manning*, 243 Mich App 615, 641; 624 NW2d 746 (2000). Second, it is elementary that coercion can be mental as well as physical and that blood drawn from a suspect is not the only hallmark of an unconstitutional inquisition. *Jackson v Denno*, 378 US 368, 389; 84 S Ct 1774; 12 L Ed 2d 908 (1964). Indeed, the lack of physical signs of maltreatment is certainly not the only way to assess whether coercion has taken place. Third, the Supreme Court has recognized that there are some unavoidable delays related to processing a suspect following his arrest. *Riverside Co v McLaughlin*, 500 US 44, 57; 111 S Ct 1661; 114 L Ed 2d 49 (1991). However, the government makes a tacit admission that there was no bona fide emergency or other extraordinary circumstance to justify the delay here. (Government's Brief on Appeal, Page 38.) Remarkably, they are more transparent about the fact that certain interrogation techniques "undermine a defendant's free will." (Government's Brief on Appeal, Page 36, quoting *People v Stewart*, 512 Mich 472, 495-496; 999 NW2d 717 (2023)). But they are quick in their attempt to discredit this Court's recognition of that violation. To be sure, all of these points favor Mr. Sanders' position. And when the totality of circumstances in the instant matter is analyzed and each factor given the *proper* weight, there can be no doubt that the trial court erred in ruling Mr. Sanders' statement admissible.

Early on, the government urges this Court not to focus solely on the length of delay, "but rather on what occurred during the delay and its effect on the accused." (Government's Brief on Appeal, Page 11.) And then the government spends the next

[1] *People v Cipriano*, 431 Mich 315; 429 NW2d 781 (1988)

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several pages railing against purported "stopwatch justice." (Government's Brief on Appeal, Page 25.) But this diatribe cannot be allowed to distract this Court from applying the appropriate weight to each of the factors detailed in Mr. Sanders' brief on appeal. Indeed, as explained in his brief, some factors deserve more weight than others and when given that proper weight, the only outcome that preserves Mr. Sanders' constitutional rights is suppression of his involuntary statements. See US Const, Ams IV, V, XIV; Const 1963, art 1, §§ 11, 17.

Notably, the government does an about-face when its aversion to a quantitative over qualitative review dissipates when the government ultimately tries to justify the length of the illegal detention by discussing Mr. Sanders' chronological age, minimizing the number of hours spent interrogating him, and counting the number of times *Miranda* warnings were administered and when that occurred. (Government's Brief on Appeal, Pages 34-36.) All of these examples are quantitative—not qualitative—because one requires a stopwatch, calendar, or an abacus to measure them.

The government next turns our attention to how it believes other jurisdictions would deal with an interrogation like Mr. Sanders was subjected to by Detective Lewandowsky. Indeed, the government had to admit that some jurisdictions suppress an inculpatory statement obtained on the heels of a *McLaughlin* violation unless it was "attenuated from the taint of the *McLaughlin* violation." (Government's Brief on Appeal, Page 12, 23.) But that necessary attenuation is absent in the current matter.

It should also be noted that by suppressing Mr. Sanders' statement, the Court would not be writing on a blank slate. And the decision would have great utility outside of the instant matter since all parties would know what is required of them and what outcome will follow if they violate those requirements. As the government correctly stated, "the exclusionary rule provides a deterrent effect." (Government's Brief on Appeal, 24.) But while the government's candor on this score is refreshing, that trait is wholly absent from their remaining analysis.

The government contends that a "majority" of jurisdictions across the country have adopted a voluntariness approach when analyzing statements taken after a

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McLaughlin violation. (Government's Brief on Appeal, Page 16, 18.) Shortly thereafter, they seek to blunt the force of the detectives' concerted, illegal efforts by emphasizing that Mr. Sanders does not seek suppression of a tangible piece of evidence but, instead, evidence that the government incorrectly stated was "a step further removed." (Government's Brief on Appeal, Pages 20-22.) To be sure, the government's attempt to paint a statement as less worthy of protection than tangible physical evidence by describing it as "a step further removed" is bait that should not be taken. (Government's Brief on Appeal, Page 21.) While statements may not be "tangible," they most certainly carry an equal—if not greater—weight. For good measure, the government posits that Mr. Sanders should seek a civil remedy. (Government's Brief on Appeal, Page 22.) But the stakes could not possibly be higher for Mr. Sanders, and a civil remedy is a decidedly underwhelming remedy for a Constitutional violation of this magnitude. To be clear, the government plans to use the statement at bar to convict Mr. Sanders of a capital offense—not to find him responsible for a civil infraction.

There is an oblique reference to the factors that the Supreme Court uses to determine whether the primary taint has been purged from an allegedly voluntary statement. (Government's Brief on Appeal, Page 22, citing *Brown v Illinois*, 422 US 590, 603-604; 95 S Ct 2254; 45 L Ed 2d 416 (1975)). Not surprisingly, in this section, the government did not bother to address one of the most salient factors used for analysis—specifically, the presence of intervening circumstances that would justify the violation. (Government's Brief on Appeal, Pages 23, 27-28.) The government cannot address this because no such circumstance exists.

Regarding the "flagrancy of the official misconduct," the government insists that this matter be remanded for an investigation into whether the problem involved systemic, recurrent police conduct. (Government's Brief on Appeal, Page 27, quoting *Utah v Strieff*, 579 US 232, 241; 136 S Ct 2056; 195 L Ed 2d 400 (2016)). This, however, is unnecessary. Plenary review of Detective Lewandowsky's testimony reveals that it was *standard operating procedure* for the Lansing Police Department

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to hold people in Mr. Sanders' position for as many as 72 hours. (CH, 7-8; WH, 27.)[2] It was *not* akin to "an isolated instance of negligence that occurred in connection with a bona fide investigation." (Government's Brief on Appeal, Page 28-29.) Instead, Detective Lewandowsky's Monday morning interrogation was the icing on the coercive cake that his two colleagues baked over the weekend.

Curiously, the government opines that the Supreme Court did not tell lower courts how to analyze the admissibility of statements made by an individual who was held in custody in violation of *McLaughlin*. (Government's Brief on Appeal, Page 10.) The government then later advances the argument that this Court should essentially do nothing if it finds Mr. Sanders' statement was involuntary under both *Cipriano* and *Brown*[3]. (Government's Brief on Appeal, Page 31.) The practical result of maintaining the status quo and not announcing a clear standard for Michigan, though, is untenable. Officers would continue to feign ignorance of the law, prosecutors would continue to be at liberty to use that as a sword or shield, and the rights of people in Mr. Sanders' position would continue to be violated provided the officers do not use or threaten physical abuse and they do not belittle the accused. (See Government's Brief on Appeal, Page 35.) If their reasoning were sound, their conclusion would be as well. But it is not.

Switching gears, the government practices reverse alchemy when it again attempts to turn Detective Lewandowsky's deliberate ignorance of the then-decades-old 48-hour rule into a mere mistake. (Government's Brief on Appeal, Page 39.) The assertion that his intent was irrelevant is chilling. (Government's Brief on Appeal, Page 39.) This is particularly so when considered in conjunction with the incessant reference to the supposedly voluntary confession to a murder. (Government's Brief on Appeal, Page 12, 24, 25.) The focus on the crime that Mr. Sanders was suspected of committing is telling. Said differently, from the government's perspective,

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

[3] *Brown v Illinois*, 422 US 590; 95 S Ct 2254; 45 L Ed 2d 416 (1975)

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Constitutional protections can be suspended and courts should look the other way when the alleged crime is sufficiently serious. However, while recognizing that a consequence may be that not only innocent citizens are set free, the Court of Appeals for the Sixth Circuit ordered that "the police must abide by the Fourth Amendment protections afforded to all of the inhabitants of this great country, guilty and innocent alike." *United States v Wilson*, 506 F3d 488, 496 (6th Cir 2007). And this holds true no matter what charges the accused faces.

Again, during the *Walker* hearing, Detective Lewandowsky testified that he had "completed all of the Reid and Reid investigative courses" as well as the "Wicklander-Zulawski" method. (WH, 15.) The government offers little in response to the detailed explanation of how Detective Lewandowsky's iteration of interrogation did not veer from the steps laid out in the textbook that elucidates the Reid Technique. As such, his supposedly "unequivocal" denial of using the Reid Technique is not convincing. (Government's Brief on Appeal, Page 36.) "Full stop." (Government's Brief on Appeal, Page 36.) The government argues that simply because Mr. Sanders "believes [Detective] Lewandowsky used this technique does not make it true." (Government's Brief on Appeal, 36-37.) However, the reverse can also be argued—just because the detective "unequivocally denied" using the technique does not make it true, either. Full stop. Additionally, our analysis offers support from the record itself that each step was, indeed, performed—despite the detective's and government's claims to the contrary.

As a last resort, the government turns to a couple of cases in which the unwarranted pre-arraignment delay was even longer than the one here. (Government's Brief on Appeal, Page 38.) Glaringly absent from the government's analysis, though, is a single vowel or consonant explaining whether the suspects in those two cases were skewered multiple times using the Reid Technique, like Mr. Sanders was here. Hence, the government argues that Mr. Sanders' statement should not be suppressed because even though Detective Lewandowsky and his cohorts cheated, they did not cheat hard enough.

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Lastly, the government's insistence that the detectives here displayed only "laudable qualities" during the interrogations does not comport with the record. (Government's Brief on Appeal, Page 38.) Indeed, Detective Reust called Mr. Sanders "an absolute monster that should have never been left alone with this baby." (Exh. F, 1:27:00 – 1:27:10.) And she stated multiple times that Mr. Sanders was not a "real man" because he would not admit to injuring and killing his infant daughter. (Exh. F, 1:27:20, 1:27:57, 1:29:01, 1:35:22, 1:35:42.) These mischaracterizations are anything but "laudable" and they must be considered as they certainly influenced the atmosphere at issue here.

CONCLUSION AND RELIEF REQUESTED

The Constitution is not an obstacle that must be navigated around at all costs to take a man to trial, and the Constitution does not somehow become less important because of the charges lodged by the government. Very much to the contrary, the Constitution must be the guiding force behind all government actions, and the criminal justice system cannot properly function without strict adherence to constitutional principles. As Justice Thurgood Marshall so eloquently expressed, "Because the strongest advocates of Fourth Amendment rights are frequently criminals, it is easy to forget that our interpretations of such rights apply to the innocent and the guilty alike." *United States v Sokolow*, 490 US 1, 11; 109 S Ct 1581; 104 L Ed 2d 1 (1989) (MARSHALL, J., dissenting).

Regardless of what one may feel about the charges lodged against Mr. Sanders, his constitutional rights remain the same as any citizen. With this thought in mind, there is no rationale that comports with constitutional principles that would allow the unconstitutionally seized and obtained evidence here to be admitted at a criminal trial against Mr. Sanders. Accordingly, Mr. Sanders respectfully requests that this Court reverse the trial court's erroneous ruling and suppress his coerced statements for the foregoing reasons.

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Respectfully submitted,

CHARTIER & NYAMFUKUDZA, P.L.C.

Dated: 07/10/2025 /s/ *Mary Chartier*

Mary Chartier

Dated: 07/10/2025 /s/ *Takura Nyamfukudza*

Takura Nyamfukudza

WORD COUNT CERTIFICATION

Per MCR 7.312(A), the number of countable words in the Statement of Argument (including footnotes) and Conclusion and Relief Requested is 2102.

Dated: 07/10/2025 /s/ *Mary Chartier*

Mary Chartier

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing was served on the attorneys of record, and, if required, all parties in the above case, by mailing same to them at their respective addresses as disclosed by the pleading of record with postage fully prepaid on July 10, 2025, by ___ US First Class Mail ___ Fax ___ Hand Delivery ___ Express Mail __X__ Other (MiFile).

/s/ *Kim Barrus*

Kim Barrus

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TABLE OF EXHIBITS

Exhibit F	Video Recording of Detective Reust and John Sanders, dated 01/04/2013