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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

JOSHUA LAMAR- JAMES STEWART,

Defendant-Appellant

Supreme Court No. 162497
COA NO. 343755
Wayne CC. 16-005731-01-FC

Brief of *Amici Curiae* The Georgetown Juvenile Justice Clinic & Initiative and Leading Youth Defenders: The Gault Center and The Detroit Justice Center

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STATEMENT OF QUESTION PRESENTED

Did the police violate the constitutional rights of 18-year-old Joshua Lamar-James Stewart by using coercive tactics that made it impossible for him to knowingly, voluntarily, and intelligently waive his rights? Was Joshua Lamar-James Stewart's confession a product of these coercive tactics and is it inadmissible?

INTEREST AND IDENTITY OF *AMICI CURIAE*[1]

Amici curiae Georgetown Law Juvenile Justice Clinic & Initiative and Leading Youth Defenders: The Gault Center and The Detroit Justice Center file this brief to offer social science research relevant to the Court's evaluation of the constitutionality of the interrogation in this case. *Amici* are leaders in the field of youth defense and have a strong interest in ensuring that states, such as Michigan, have access to this research when addressing the constitutionality of interrogation practices.

Georgetown Law Juvenile Justice Clinic & Initiative

The **Georgetown Law Juvenile Justice Clinic** was founded in 1973 to represent children accused of offenses in the District of Columbia. Clinic faculty, fellows, and students provide highly effective holistic representation to their clients by protecting the rights and interests of youth in the juvenile legal system, advocating on behalf of youth in related special education and school disciplinary hearings, and lobbying for mental health services, drug treatment, and other interventions that are appropriately matched to the needs of the child. In 2015, the Clinic established the **Georgetown Law Juvenile Justice Initiative** to explore and advance new policies and programs to assist young people and to train youth defenders across the nation. Operating at the national, regional, and local level with a primary focus on racial justice, the mission of the Juvenile Justice Initiative is to advocate for a smaller, better, and more just juvenile legal system in the District of Columbia, the Mid-Atlantic region, and across the country.

The Gault Center

The Gault Center, formerly the National Juvenile Defender Center, was created to promote justice for all children by ensuring excellence in youth defense. The Gault Center provides support to public defenders, appointed counsel, child advocates, law school clinical programs, and nonprofit law centers to ensure quality representation for youth in urban, suburban, rural, and tribal areas. The Gault Center has developed national standards for the performance of youth defense

[1] Counsel for *amici* authored this Brief in full. No person or entity, including counsel or *amici*, made a monetary contribution intended to fund the preparation or submission of the brief.

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attorneys; conducts assessments of states' youth defense delivery systems; and developed a 42-lesson, skills-based youth defense specialization training program. The Gault Center also provides training and technical assistance to thousands of youth defense attorneys and juvenile court stakeholders each year. The Gault Center is committed to promoting racial justice, eliminating racial and ethnic disparities, and advocating for overrepresented populations of youth in court. The Gault Center advocates for the use of youth-affirming language, including omitting the use of the word "juvenile" when referring to young people; this prompted the organization's decision to become The Gault Center in 2022. The Gault Center (as the National Juvenile Defender Center) has participated as *amicus curiae* before the United States Supreme Court and federal and state courts across the country.

Detroit Justice Center

The Detroit Justice Center (DJC)[2] is a non-profit social justice law firm advocating alongside Metro-Detroit communities to create economic opportunities, transform the criminal punishment system, and promote just cities. We seek to create a "just city" by working towards two goals that are often considered separately, but that fully intersect: (1) how to build equitable communities free from racial and socio-economic discrimination and (2) how to transform our criminal legal system. We believe we cannot build inclusive cities where everyone can feel safe and thrive without remedying the effects of mass incarceration.

DJC works to challenge entrenched opinions that incarceration serves as a solution. In furtherance of this goal, DJC utilizes the following three-pronged approach: (1) defense (e.g. representing system-involved clients and advocating for systemic change), (2) offense (e.g. developing creative economic innovations such as worker-owned co-ops and community land trusts that empower community members, with an emphasis on formerly incarcerated individuals) and (3) dreaming (e.g. envisioning, articulating and actualizing what we could "build instead" if we prioritized communities over incarceration).

Since its inception in 2018, DJC has consistently shared its research and perspectives to protect the rights of youth and young adults of color and to encourage the court to consider systemic racism's harmful impacts on matters before the court. Earlier in 2022, the DJC submitted a brief of *amici curiae* in the case of *People v Poole*,[3] where we shared research about the adultification of Black youth[4] with this Honorable Court, and urged the Court to hold that

[2] *See* The Detroit Justice Center website at https://www.detroitjustice.org/.
[3] *People v Poole*, ___ Mich ___ (2022); Docket No 161529.
[4] *See e.g.* S. Diaz, *Black Children are Children: Tamir Rice and the Adultification of Black Bodies,* ACLU of Ohio (2016), https://www.acluohio.org/en/news/black-children-are-children-tamir-rice-

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mandatory life without the possibility of parole for those with ever-developing adolescent brains was unconstitutional. Such efforts, along with those of several other interested organizations and allies, contributed to the Court's ultimate extension of *Miller v Alabama*[5] protections to 18-year-olds.

The DJC has also led several "Know Your Rights" empowerment workshops, where our attorneys have taught hundreds of youth and young adults throughout Metro Detroit about their constitutional protections when interacting with police officers. With this present brief, the DJC continues its commitment to expanding the public safety conversation to explore how we can divest from carceral structures to invest in communities, while simultaneously protecting the constitutional rights of those currently impacted by racial bias in the criminal punishment system.

SUMMARY OF ARGUMENT

The tactics used by the officers in the interrogation of Joshua Lamar-James Stewart created an unconstitutional and coercive atmosphere that was particularly conducive to a false confession and made it impossible for Joshua[6] to knowingly, voluntarily, and intelligently waive his rights. *Amici* submit this brief to offer social science and psychological research to aid the Court in evaluating the constitutionality of the *Miranda* wavier and voluntariness of the confession of Joshua. This research is particularly relevant in evaluating the coercive impact of the interrogating officer's use of the "n-word' and other tactics, including the use of profanity, threats of physical violence, and deceit.

Years of research demonstrate that implicit racial bias negatively affects police officers' judgments, causing them to view Black men as more culpable in criminal matters and contributing to the use of increasingly coercive interrogation tactics. In this case, the officers' assessment of Joshua's initial responses and credibility during interrogation were likely influenced by implicit racial bias. The officer's use of the "n-word" also likely reflects his own racial bias. Throughout the interrogation, officers drew upon racial stereotypes and preconceptions concerning the alleged criminality of Black boys and men and remained unmoved by Joshua's initial and repeated denial

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and- adultification-black-bodies*;* Keisha Dauphin, *Racial Adultification and the American Criminal Justice System, Master's Theses and Projects (2020),* https://vc.bridgew.edu/theses/91.

[5] *Miller v Alabama*, 567 US 460 (2012).

[6] *Amici* have deliberately chosen to use Joshua's first name throughout this brief. Although Joshua was prosecuted as an adult, he is an 18-year-old teenager whose brain is still forming. Referring to adolescents as "Mr. Stewart," increases the likelihood that they will be perceived as older and more experienced than they actually are, as described in Section I. C. 3. of the brief.

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of any guilty knowledge and involvement in a criminal act. The officers' misconduct and dangerous beliefs reflect a growing body of research documenting the many ways in which people are affected by implicit bias and subconsciously rely on stereotypes to make judgments about Black people.

Additional research presented in this brief demonstrates how direct and vicarious police encounters negatively affect the mental and physical health of Black people like Joshua. Over-policing increases the likelihood that community members will experience police brutality and evokes memories of America's long history of police violence against the Black community. These direct and vicarious encounters are often experienced as traumatic events that disrupt a Black person's ability to knowingly, intelligently, and voluntarily waive their *Miranda* rights, as well as freely and voluntarily give a statement during police interrogation. Researchers have also found that the psychological phenomenon known as stereotype threat impacts and often dictates the ways Black men respond to police presence, increasing their anxiety and interfering with their ability to resist police coercion.

Joshua's interrogation was tainted by myriad dishonest and escalating tactics. The officers used everything from profanity, threats of physical violence, racially dehumanizing language, and deception with Joshua in the early hours of a sleep deprived morning. Drawing upon the research and facts contained within this brief, *amici* argue that this Court should hold that Joshua's statement to police was the product of police coercion, involuntarily given, and inadmissible. Any other ruling would, in effect, endorse law enforcement's use of a racial slur and likely lead to an increase of such language during interrogations and other police encounters, perpetuating considerable harm to Black communities across Michigan and denigrating the integrity of the legal process.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amici adopt the facts and procedural history described in Defendant-Appellant's Supplemental Brief and the interrogation transcript. Briefly restated, Joshua Lamar-James Stewart was arrested under suspicion of armed robbery on May 6, 2016 when he was 18 years old. He was subsequently interrogated by two veteran police officers during the early morning hours of the following day before having an opportunity to speak to an attorney or his mother. When the

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interrogation began, Joshua was asked to read and sign some "paperwork." (3a)[7]. This "paperwork" turned out to be Joshua's *Miranda* warnings and waiver. The officers did not explain the *Miranda* warnings and waiver to Joshua nor did they confirm he understood his rights. (5a-6a).

After the waiver was quickly signed, officers misrepresented the nature of the interrogation and allowed Joshua to believe he was being questioned in relation to a stolen car. (6a). When Joshua did not answer questions to the officers' satisfaction, they threatened him and his codefendant with physical harm. (33a, 130a). Throughout the course of the interrogation officers repeatedly made use of lies and deception, false promises, profanity, name calling, and the "n-word" to induce Joshua's confession. (62a, 82a, 102a, 142a-144a, 57a, 129a, 102a, 84a-85a). After nearly three hours of these escalating, sustained, and coercive interrogation tactics, Joshua admitted involvement in the armed robbery.

During pretrial hearings, Joshua's motion to suppress his statements to police was denied by the trial court, and he was subsequently convicted largely on the basis of his custodial statements. Upon conviction, Joshua sought reversal from the Michigan Court of Appeals but was again unsuccessful. The Court must now determine if Joshua's confession was given after a knowing, voluntary, and intelligent waiver of his rights and not gained through coercion and deception by the interrogating officers.

ARGUMENT

I. AS A BLACK ADOLESCENT MALE, JOSHUA IS ESPECIALLY VULNERABLE TO COERCIVE TACTICS, SUCH AS THE USE OF RACIAL SLURS, IN A CUSTODIAL INTERROGATION LEADING TO AN INVOLUNTARY WAIVER OF HIS *MIRANDA* RIGHTS .

A. Joshua Did Not Knowingly, Intelligently, and Voluntarily Waive His Right Against Self-Incrimination as Required by the Federal and State Constitutions.

The Constitution of the State of Michigan and the United States Constitution protect the rights of individuals from the overwhelming power of the state in police interrogations. Const

[7] Citations to the interrogation transcript contained within this brief are from *Interrogation of Mr. Stewart, May 7, 2016*, Joshua Lamar-James Stewart's Appendix to Supplemental Brief, 1a-197a, filed in this Court by Marilena David on June 30, 2022.

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1963, art 1, § 17; US Const, Ams V, XIV. The right against self-incrimination guaranteed by the Fifth Amendment may only be waived if the waiver is made voluntarily, knowingly, and intelligently.[8] The validity of a *Miranda* waiver is determined by analyzing the totality of the circumstances which requires an evaluation of a suspect's age, experience with law enforcement, education, background, and intelligence, and "whether he has the capacity to understand the warnings given to him." *Fare v Michael C*, 442 US 707, 725 (1979).

Officers failed to adequately advise Joshua of his rights prior to proceeding with the interrogation, and Joshua did not knowingly, intelligently, and voluntarily waive his *Miranda* rights. The presentation of Joshua's *Miranda* rights lasted only a couple of minutes and involved no serious check on his comprehension of his rights. Officer MacDonald described Joshua's *Miranda* waiver as mere "paperwork," implying it was an insignificant component of the interrogation process. (3a). Joshua was subsequently instructed to read and initial the *Miranda* waiver prior to asking questions (5a), which further communicated to Joshua that the waiver was purely an administrative document and not something of constitutional importance.[9] Once Joshua read his *Miranda* rights aloud, he immediately asked why he was being detained. (6a). Joshua was under the impression he was being interrogated due to a stolen vehicle. *Id*. Although Officer MacDonald knew the focus of the investigation concerned a homicide, he willfully misrepresented the nature of the interrogation saying, "Yeah. I'm going to talk to you about the – the stolen car." *Id*. Not until later in the interrogation did Officer MacDonald acknowledge the true nature of his questioning. (29a). Unfortunately, by this time Joshua had succumbed to Officer MacDonald's deceptive tactics and unknowingly and involuntarily waived away the very rights that would have protected him from police overreach.[10]

Additionally, officers did not consider Joshua's youthfulness, background, and experience, nor did they consider whether he possessed the capacity to adequately understand his *Miranda* rights, let alone waive them. Officer MacDonald only asked Joshua what grade he had last completed and if he could read and write before proceeding with the interrogation. (4a). This amounted to a mere surface-level check of comprehension. When Joshua informed officers he was attending an "alternative" school, there was no inquiry as to why he attended such a school or if his attendance was due to a learning disability that would have affected his ability to understand

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[8] *Edwards v Arizona*, 451 US 477, 482 (1981) (Not only must waivers of counsel be voluntary, knowing, and intelligent, but they must be decided based upon the "particular facts and circumstances surrounding that case, including the background [and] experience…of the accused").

[9] *Interrogation of Mr. Stewart*, 5a ("So all I want you to do is read one through five and then next to each one [you're] going to put your initials…*then* if you have any questions, you just ask me") (emphasis added).

[10] *Colorado v Spring*, 479 US 564, 582 (1987) (Footnote 8 – "In certain circumstances, the Court has found affirmative misrepresentations by the police sufficient to invalidate a suspect's waiver of the Fifth Amendment privilege.").

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his rights. *Id.* Furthermore, officers did not ask if Joshua understood his rights or had questions concerning his *Miranda* rights after reading them aloud. (5a – 6a). When Officer MacDonald pressed Joshua for a confession, Joshua asked if the statement would be going to the judge. MacDonald responded that it was going to Joshua's lawyer, to which Joshua responded "If I have a lawyer." (133a). This strongly suggests that Joshua did not understand at least one core tenet of his *Miranda* rights, namely his right to have an attorney appointed to represent him if he could not afford one. It is the confluence of these elements – the trivialization of Joshua's constitutional rights and the complete disregard for ensuring basic comprehension – which shows he did not knowingly, intelligently, and voluntarily waive his *Miranda* rights.

Not only must *Miranda* waivers be knowingly and intelligently made, but the waiver and any subsequent statement must also be a voluntary product of an individual's own free will and deliberate choice, and not the product of intimidation, coercion, or deception. *Colorado v Connelly*, 479 US 157, 170 (1986). Joshua's waiver of his *Miranda* rights and subsequent confession were involuntary. Joshua experienced both threats of physical violence and psychological pressure at the hands of two seasoned police officers. *Id*. Throughout the interrogation, officers relied upon confrontational language to induce a confession. At one point Detective Lucie asked Joshua if he was "trying to get smart with [her]" followed by the veiled threat "you don't want to battle." (33a). Officer MacDonald was less discreet. When describing how he would be interrogating Joshua's codefendant, Officer MacDonald implied it would be physical, stating "my gloves on, his gloves on and we gone sit there, and we gone battle this bitch out." (130a). Additionally, the interrogation was littered with profanity and lies about witnesses, video evidence, and what Joshua's codefendant may have told police, along with false promises of a lighter sentence if a confession was given. (62a, 82a, 102a, 142a-144a, 57a, 129a, 102a, 84a-85a).

Joshua was not only worn down by these mentally corrosive tactics, but he was also repeatedly confronted with arguably the single-worst racial epithet in the American lexicon, "nigger." It was hurled at him nearly 50 times throughout the course of a sleep deprived, three-hour interrogation that began in the early hours of the morning. (46a, 82a, 188a). It was only through these aggressive, psychologically taxing, and coercive tactics that a confession was elicited. If law enforcement extracts a waiver or subsequent statement through any coercion, the confession should be declared involuntary and inadmissible. *Connelly*, 479 US at 170. Given the

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coercive nature of the interrogation, Joshua's statements were given involuntarily and in violation of the Due Process Clause of the 5th and 14th Amendments, and they should be suppressed.[11]

B. Officer MacDonald's Repeated Use of a Racial Slur Caused Psychological Harm to Joshua, Constituting a Coercive Interrogation Tactic.

The psychological harm caused by the "n-word" is undeniable. It is a racial slur with a long history of being used to dehumanize Black people in the United States. As the legal scholar Michele Goodwin wrote, "'nigger' was the word kissing the air as families were auctioned throughout the American South. It hovered below [B]lack lynched bodies and accompanied civilian and police brutality against [B]lacks throughout the last century." Michele Goodwin, *Nigger and the Construction of Citizenship,* 76 Temple L Rev 129, 193 (2003). From slavery through the Jim Crow era, white people used the "n-word" to perpetuate injustice and violence against African Americans by deeming them less fully human with fewer rights and protections under the law compared to their white counterparts. *Id.* The images associated with the word invoked stereotypes of deceitfulness and criminality. David Pilgrim and Phillip Middleton, *Nigger and Caricatures, Ferris State Univ Museum of Racist Memorabilia* (Sept 2001), available at http://www.ferris.edu/jimcrow/caricature. Today, the "n-word" continues to invoke otherness, inferiority, and an association with crime. Goodwin, *supra,* at 193. Based on these longstanding underpinnings of the word, it is likely that Officer MacDonald's use of this slur during the interrogation caused Joshua to fear that he was being stereotyped as criminal based on his race. This fear can cause Black men to feel anxious and hopeless, leading to cognitive overload and a reduction in their ability to fully understand and assert their *Miranda* rights. Deborah Davis and Richard Leo, *Interrogation-Related Regulatory Decline: Ego Depletion, Failures of Self-Regulation, and the Decision to Confess*, 18 J Psychol, Pub Policy, and Law 673, 673 (2012). Deborah Davis and J Guillermo Villalobos, *Interrogation and the Minority Suspect: Pathways to True and False Confession*, Advances in Psychology and Law Vol 1, New York: Springer, (2016). This psychological phenomenon, known as stereotype threat, and its implications in the interrogation context are further described in Section I.E. below.

Not only did the use of the "n-word" likely contribute to Joshua's fears that he was being stereotyped based on his race, but it also served to dehumanize Joshua. Dehumanizing language like the "n-word" can contribute to feelings of hopelessness in the interrogation context. When a person believes they are viewed as not fully human, they may reasonably conclude that no matter

[11] *Id*. at 167 ("[C]oercive police activity is a necessary predicate to the finding that a confession is not voluntary within the meaning of the Due Process Clause of the Fourteenth Amendment").

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what they do, their rights as a citizen will not be respected. They may also fear that verbal affronts, like the use of the "n-word," will escalate to physical abuse. Officer MacDonald's use of the "n-word" in his interrogation of Joshua increased the coercive nature of the interrogation. Joshua reasonably believed he had no choice but to comply with the officer's demands for a confession and that there was no use in resisting when everything that happened during the interrogation told him that he was seen as subhuman, his rights would not be protected, and if he did not comply now, the next step may be physical violence.

Although the legal standards vary, the Court can look to caselaw involving the use of the "n-word" in creating racially hostile work environments for guidance in assessing the impact of Officer MacDonald's use of this racial slur against Joshua in the interrogation environment. In one employment case, the Fourth Circuit wrote that the "n-word" is "far more than a mere offensive utterance, the word nigger is pure anathema to African Americans." *Spriggs v Diamond Auto Glass*, 242 F3d 179, 185 (4th Cir 2001). In another employment case, the Seventh Circuit opined that "perhaps no single act can more quickly alter the conditions of employment and create an abusive working environment than the use of an unambiguously racial epithet such as 'nigger' by a supervisor in the presence of his subordinates." *Rodgers v Western-Southern Life Ins Co*, 12 F3d 668, 675 (7th Cir 1993). In a case where a Black employee complained of the harm caused by his Black supervisor referring to him by racial epithets, including the "n-word," the Eighth Circuit rejected the idea that a Black person could not subject another Black person to a racially hostile work environment. *Ross v Douglas County* 234 F3d 391, 393 (8th Cir 2000). In another case involving a Black supervisor referring to a Black employee as a "nigga" multiple times in a single conversation, a jury in the Southern District of New York determined the supervisor's conduct was unlawful, regardless of the supervisor's race and his assertions that he did not intend to use the term in a derogatory manner. Abigail L Perdue, Gregory S Parks, *The Nth Degree: Examining Intra-racial Use of the N-Word in Employment Discrimination Cases*, 64(1) DePaul L Rev 65, 66 (2014), *citing Johnson v Strive East Harlem Employment Group* 990 F Supp 2d 435, 442 (SDNY 2014).

While it is clear that the "n-word" causes great harm in the workplace, the harm caused by its use in a police interrogation is arguably even greater. When a police officer uses the "n-word" while interrogating a Black teenager who is being investigated for murder and robberies, the potential consequences are far graver. While a supervisor has power over the livelihood of an employee, a police officer has immense power over the very life and liberty of a person in Joshua's position. While a supervisor's use of the "n-word" makes a workplace hostile, a police officer calling a Black teenager the "n-word" nearly 50 times during the course of a three-hour interrogation is nothing short of coercion by means of psychological manipulation.

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C. The Use of a Racial Slur Reflects Officer MacDonald's Racial Bias, Impacting Both the Delivery of the *Miranda* Warning and the Coerciveness of the Interrogation.

1. People of all races, including police officers, have implicit racial bias.

All people rely on assumptions and cognitive shortcuts to sort through the vast amount of information they encounter daily, fill in missing details, and categorize people and information according to cultural stereotypes. L Song Richardson & Phillip Atiba Goff, *Implicit Racial Bias in Public Defender Triage*, 122 Yale L J 2626, 2629 (2013). Implicit bias is a cognitive shortcut that involves "attitudes or stereotypes that affect our understanding, decision-making, and behavior without our even realizing it." Jerry Kang et al, *Implicit Bias in the Courtroom*, 59 UCLA L Rev 1124, 1126 (2012). Pervasive cultural stereotypes create implicit associations between Black people, men in particular, and criminality. The cognitive association between Blackness and criminality is so strong that it is said to be "bidirectional." Jennifer Eberhardt et al, *Seeing Black: Race, Crime, and Visual Processing*, 87 J Personality & Soc Psychol 876, 886 (2004). "Bidirectional" associations occur when two concepts are so intertwined in one's perception that it does not matter which one we think of first, we will always think of the other. *Id*. The cultural stereotype of Black people as criminal is so pervasive within our society that when people think of crime, they think of Black people. When they think of Black people, they think of crime. This is true regardless of race. In a 2018 study, both Black and white participants were quicker to categorize ambiguous objects as dangerous after being primed with a Black face, indicating that Black faces are generally associated with feelings of danger. Luca Guido Valla et al, *Not Only Whites: Racial Priming Effect for Black Faces in Black People*, 40(4) Basic & Applied Social Psychology 195-200 (2018).

Police officers, like all people, have implicit racial bias. By the very nature of their work, police officers must focus on crime. Because thoughts of crime invoke thoughts of Black people, they are at great risk of perceiving Black men through the lens of implicit racial bias. Marie Pryor et al, *Risky Situations: Sources of Racial Disparities in Police Behavior*, 16 Ann Rev of L and Soc Sci 343, 349–50 (2020). When individuals think of the stereotype of Black people as criminal, they are more prone to acting on their implicit racial bias and behaving in a racially disparate way. *Id.* (citing Eberhardt et al, *supra*). Officers are at greater risk of acting on this bias when they are working long or late hours and cognitively taxed by processing multiple pieces of information in high-stress environments. Pryor et al, *supra.* In this case, Officer MacDonald was working the night shift, and the three-hour interrogation at issue began at 3:40 in the morning, making him especially susceptible to acting on his implicit biases. Officer MacDonald's racial bias is both implicit and explicit and is evident here in the way he interacts with Joshua. Based on the officer's use of racial slurs, it is reasonable to conclude that he views Joshua differently because of his race.

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2. Officer MacDonald's racial bias contributed to a coercive interrogation environment and increased the risk of a false confession.

Officer MacDonald's racial bias manifested itself in the way he spoke to Joshua during the interrogation. MacDonald used a racial slur multiple times, was aggressive toward Joshua, and assumed Joshua was guilty. Each of these behaviors indicate that implicit racial bias likely contributed to Officer MacDonald's view of Joshua as dishonest, criminal, culpable, and older because of his race.

Despite Joshua's race being entirely unrelated to the crime at issue, Officer MacDonald consistently referred to him by his race, using the "n-word" nearly 50 times in the course of the interrogation, making it clear that his race was incredibly salient in the officer's perception of him. When Joshua told officers that he was simply driving someone to the hospital who looked like they needed help, Officer MacDonald instantly decided that Joshua was lying. (495a). From Officer MacDonald's perspective, a Black person, particularly one who lives in "the hood" like Joshua, would never go out of their way to help someone they do not know. (40a). In reference to Joshua's account of events, Officer MacDonald said:

> "I ain't never heard a mother fucking story like that in fucking Detroit. Where n----s just help a mother fucker in a car, shot the fuck up. You mother fucker's (sic) -- you know n-----s don't do that shit. They walk past like 'damn that n----- fucked up'…and get to stepping…that's the n---- way."

Excerpts such as this make clear that Officer MacDonald made race-based presumptions about Joshua and the type of person he is before he ever stepped foot in the interrogation room.

In addition to using Joshua's race to make assumptions about his trustworthiness, guilt, and culpability, the officers were also combative and aggressive toward Joshua. They told Joshua that they would "battle" if he did not answer their questions, (33a), and regularly cursed at the teenager during the interrogation. *See e.g.*, (33a), (35a), (38a – 43a), (45a-46a), (59a), (62a), (64a).

As a Black teenage male, Joshua is particularly vulnerable to police pressures like those utilized here, and he is more susceptible to giving a false confession as the result of these coercive tactics. Black people make up over half of all exoneration cases that involve false confessions.[12] Youth are even more vulnerable than adults. As of 2020, 67% of all exonerated youth who falsely confessed were Black, suggesting that young Black suspects may face more coercive

[12]Kristin Henning and Rebba Omer, *Vulnerable Yet Valued: Protecting Youth from the Perils of Custodial Interrogation*, 52 AZ St L J 883, 919 (2020) (citing data provided by The Nat'l Registry of Exonerations).

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interrogations and may be more vulnerable to such coercion.[13] Here, Officer MacDonald's use of racial slurs, aggression, threats, and false promises created a highly coercive interrogation that would predictably lead to Joshua giving a false confession in an attempt to appease the officers and protect himself from further harm. *See* Kristin Henning and Rebba Omer, *Vulnerable Yet Valued: Protecting Youth from the Perils of Custodial Interrogation*, 52 AZ St L J 883, 919 (2020). It is apparent from the interrogation transcript that the officers were unwilling to accept anything Joshua told them unless it implicated him in the crime. Officer MacDonald went into the interview with a preconceived notion of who Joshua was and what he had done based on his race, and he was willing to do whatever it took to get a confession out of him. Joshua's confession was a product of coercive police tactics motivated by officers' racially biased view of Joshua as guilty. The confession was not given willingly and voluntarily and should therefore be inadmissible.

3. Implicit racial bias likely contributed to Officer MacDonald's failure to recognize and treat Joshua as a teenager.

Officer MacDonald acted as though Joshua was older and more mature than he was, despite knowing Joshua was only a teenager who had not completed high school. Officer MacDonald treated him as though he were fully developed, saying things like "It's your fucking decision. But we came to you as a fucking man. You 18. You considered a fucking man. Legally. But you don't fucking act like one. Gotta fucking start manning up to shit." (82a). Such behavior is evidence that Officer MacDonald viewed Joshua as having the capacity and maturity to act like a "man" much older than he was and assumed that Joshua was guilty and therefore deserving of this harshness. *See*, Phillip Atiba Goff et al, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J Personality & Soc Psychol 533, 35 (2014).

Empirical research confirms that in addition to associating Blackness with criminality, people also tend to view Black youth as older and more culpable than their same-aged white peers. *Id.* at 540. In a series of studies conducted by Dr. Phillip Atiba Goff and his colleagues regarding the perception of "innocence," age, and culpability of Black children, both law enforcement and civilian participants perceived Black youth to be more than four and a half years older than they actually were. *Id.* at 531 and 534. Thus, officers interacting with Black youth are less likely to perceive them as innocent and may be more likely to assume that they have preexisting knowledge of the criminal legal system. *See Id.* at 540. Officers who presume the culpability of Black youth

[13] Kristin Henning and Rebba Omer, *Vulnerable Yet Valued: Protecting Youth from the Perils of Custodial Interrogation*, 52 AZ St L J 883, 919 (2020) (citing data provided by The Nat'l Registry of Exonerations).

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may be especially motivated to secure a confession and *Miranda* waiver from a child during an interrogation.

The delivery of the *Miranda* warnings in this case likely was impacted by the officers' perception of Joshua as older, more knowledgeable about the legal system, and less innocent due to his race. These perceptions likely contributed to the officers downplaying the significance of Joshua's *Miranda* warnings, either because they assumed, as a Black teenager, he would already have knowledge of these rights, or because they wanted to secure a waiver from someone who they had already presumed was guilty.

As a result, the officers did little to ensure that Joshua understood his rights and was able to give a knowing and voluntary waiver, as is required under the Constitution. The officers merely asked if Joshua knew how to read and write, and then had him read his rights aloud. (4a-5a). Although the officers knew that Joshua did not have a high school diploma, they did not read his rights to him, did not offer any additional explanation of his rights, and did not ask explicitly if he understood his rights. They also referred to the waiver forms as "paperwork," suggesting that they were merely a procedural formality and not a waiver of significant constitutional rights. (3a). Even when Joshua mispronounced one of the words while reading his rights aloud, the officers did not verify that he meaningfully understood what he was reading. (5a; DVD at 3:38). Ultimately, the officers' manipulative tactics were effective in ensuring Joshua waived his rights, despite clear evidence that he did not understand the waiver.

D. The Considerable Fear of Police That Black Men and Adolescents Experience Undermines Their Ability to Knowingly, Intelligently, and Voluntarily Waive Their *Miranda* Rights and Resist Police Coercion During Interrogation.

Empirical evidence confirms that Black boys and men experience considerable fear of police and resulting trauma due to the many instances of police brutality, some resulting in death, they have directly and vicariously experienced. This fear undermines their ability to make a voluntary, knowing, and intelligent waiver of their *Miranda* rights and to resist police coercion during interrogation.

Fear and a deep-seated, generational mistrust between police and Black Americans often exacerbate the psychological atmosphere that underpins custodial interrogations, disrupting Black people's ability to voluntarily waive their rights. This effect is amplified for adolescents like Joshua. This mistrust has developed over three centuries of police-community relations characterized by racialized violence under the color of state and local law. Police violence against the Black community is threaded throughout American history: slavery in the Antebellum South,

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convict leasing programs, lynching, Jim Crow, the War on Drugs and, presently, mass-incarceration. This important history is not only so pervasive that it comprises a shared community memory passed from one generation to the next, but it has also created a toxic relationship between the Black community and law enforcement. *See* Chad Posick & Akiv Dawson, *The Health Outcomes of Direct and Witnessed Interactions with the Police: Do Race and Ethnicity Matter?* 61 J Adolesc Health 183, 184 (2021).

This relationship persists today, as Black people are more likely to experience police contact than white citizens. Rory Kramer & Brianna Remster, *Stop, Frisk, and Assault? Racial Disparities in Police Use of Force During Investigatory Stops*, 52 L & Soc R 960, 960 (2018). Police contacts with Black residents are more likely to lead to use of force than contacts with white residents. Joscha Legewie, *Racial Profiling and Use of Force in Police Stops: How Local Events Trigger Periods of Increased Discrimination*, 122 Am J Sociol 379, 381-82 (2016).[14] Officers are more likely to shoot Black people than white people and are much more likely to shoot unarmed, nonattacking young people than older people. Mike Males, *Police Shooting Statistics of Unarmed Suspects Show the Young More Likely to be Killed*, Juvenile Justice Information Exchange, February 11, 2021. Black men are roughly two and a half times more likely to lose their life at the hands of police officers than are white men. Frank Edwards et al., *Risk of Being Killed by Police Use of Force in the United States by Age, Race-Ethnicity, and Sex*, 116 PNAS 16793, 16794 (2019).

Research has shown that in communities of color, like those in Detroit,[15] traumatic experiences with police begin early in life. Amanda Geller, *Youth-Police Contact: Burdens and Inequities in an Adverse Childhood Experience*, 111 Am J Pub Health 1300, 1300 (2021). This result is likely due to the over-policing of urban communities, which increases the risk of police exposure. Joscha Legewie & Jeffrey Fagan, *Aggressive Policing and the Educational Performance of Minority Youth*, 84 Am Sociological Review 220, 220-21 (2019) (discussing New York City police department that conducted more than four million pedestrian stops between 2004 and 2012, with more than half concentrated among persons younger than 25 years of age); Geller, *supra*, at 1306 (finding that extensive exposure to aggressive policing has the potential to negatively impact the immediate and long-term health of young people). Considering both the overrepresentation of police and the disproportionately high amount of police violence that occurs in communities of

[14] Explaining that, for example, in NYC's stop-and-frisk operations, 22% of stops involving Black people resulted in a physical use-of-force compared to only 16% for white people – furthermore, in the aftermath of violence meted out against police officers, physical use-of-force by police officers against Black people increases substantially, but not against other racial groups).

[15] United States Census Bureau, *QuickFacts Detroit city, Michigan* (2021). U.S. Census Bureau QuickFacts: Detroit city, Michigan (noting that as of July 01, 2021, the city of Detroit is approximately 77% Black/African-American).

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color, Black adolescents are more likely to experience police stops as aggressive and unfair. Dylan B Jackson et al, *Unpacking Racial/Ethnic Disparities in Emotional Distress Among Adolescents During Witnessed Police Stops*, 69 J Adolescent Health 248, 249 (2021).

Research on the effects of policing also reveals that police contact negatively impacts the mental and physical health of Black adolescents. Adolescents experiencing more frequent police contact report heightened levels of emotional distress. Dylan B. Jackson et al, *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 J. Adolesc Health 627, 631 (2019) [hereinafter *Police Stops Among At-Risk Youth*]. When police encounters result in the use of physical force, victims and witnesses report feelings of distrust, fear, anger, and post-traumatic stress symptoms. Thema Bryant-Davis et al, *The Trauma Lens of Police Violence Against Racial and Ethnic Minorities*, 73 J. Soc Iss 852-71 (2017). Black adolescents also experience vicarious trauma through incessant news coverage of police violence against other Black adolescents, widely disseminated through social media. Posick, *supra*, at 183; Brendesha M. Tynes et al, *Race-Related Traumatic Events Online and Mental Health Among Adolescents of Color*, 65 J Adolescent Health 371 (2019). Sleep deprivation or a generally lower quality of sleep is often a byproduct of witnessed or direct police encounters. Dylan B Jackson et al, *Police Stops and Sleep Behaviors Among At-Risk Youth*, 6(4) J Nat Sleep Foundation, 435-440 (2020).

Black people have experienced violence, both directly and vicariously, for centuries. This has an acute generational impact on the Black community, imbuing the relationship between law enforcement and community members with the memory of past trauma and reasonable fear of how police will behave today. Posick, *supra*, at 183. Joshua was not immune to either the memories of past trauma shared with him by community members or to the fear created by his own direct and vicarious experiences with police while growing up Black in the city of Detroit. The Detroit Police Department's (DPD) relationship with its Black community contains a long and bloody history stretching as far back as the Truman administration. From 1957 to 1973, Detroit police killed 188 civilians (110 unarmed), with 111 of those killings occurring between 1971 and 1973. Matthew D Lassiter & The Policing and Social Justice History Lab, *Detroit Under Fire: Police Violence, Crime Politics, and the Struggle for Racial Justice in the Civil Rights Era*, University of Michigan Carceral State Project (2021).[16] Out of the 188 civilians, 126 were Black (79%), despite Black residents making up only 29% of the total Detroit population in 1960 and 44% by 1970. Only 31

[16] Detroit Under Fire: Police Violence, Crime Politics, and the Struggle for Racial Justice in the Civil Rights Era · Home · Omeka Beta Service (umich.edu) (noting that out of the 188 civilians killed by the Detroit police department, 151 of them were killed by on-duty police officers with the remaining 37 by off-duty officers. Furthermore, it should be noted that during the year range of 1971-1973, where the Detroit police were declared the deadliest police department in the nation, it also coincided with a substantial increase in the Black population of Detroit and a sharp decrease in the white population).

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of those killed were white, and 29 were an undetermined race. *Id*. Thus, police killed Black community members at rates nearly double that of their percentage of the total population through the late 1960s and roughly six times the rate of white people. *Id*. Detroit police were also notorious for maintaining an illegal practice of making investigative arrests without probable cause. *Id*. From 1948 to 1956, DPD made 67,301 non-traffic arrests, nearly half of which were made without a warrant and without meeting the legal standard of probable cause. *Id.* This practice primarily targeted Black community members. Instances of police brutality and misconduct became so prevalent that by the early 1960s the NAACP declared the DPD to be suffering from a complete disregard of the constitutional rights of its Black citizens. *Id*. By 1973, a state investigation into the DPD uncovered rampant corruption, abuse of power, drug dealing, and other crimes, which resulted in the indictment of ten officers, although law enforcement estimated more than 200 DPD officers were involved in corruption and criminality. *Id*.

Unfortunately, the DPD's abuse of authority and violence continued well into the late 1990s when from 1995 to 2000, 40 people lost their lives at the hands of officers. George Hunter & Christine Ferretti, *Federal Oversight Forced Reforms on Detroit's Often Violent Police Department*, The Detroit News, June 09, 2020. This misconduct, which extended into Joshua's lifetime, prompted the Department of Justice (DOJ) to intervene, and from 2003 to 2014, the DPD was under the oversight of the DOJ. The United States Department of Justice, *Justice Department Announces Successful Resolution of Consent Judgment Involving Detroit Police Department*, August 25, 2014.[17]

In light of the pervasive media attention surrounding DPD's problematic history – including a continual stream of misconduct allegations that persist today – it is reasonable to conclude that Joshua was well aware of DPD's reputation and that he had been negatively affected by direct and vicarious contact with law enforcement. George Hunter, *Detroit Police Probe Yields Allegations of Widespread Corruption in Drug Unit*, The Detroit News, December 11, 2019 (reporting on Detroit Police Department Internal Affairs investigation going back ten years and uncovering alleged corruption that narcotics officers planted evidence, lied to prosecutors to secure search warrant affidavits, robbed drug traffickers and embezzled funds); Bryce Huffman, *DPD Complaint Investigators Vow 'More Efficient' Process*, Bridge Detroit, July 22, 2022 (noting that at the time of this article, there existed a backlog of uninvestigated officer misconduct complaints in excess of 800 dating back three years).

[17] Justice Department Announces Successful Resolution of Consent Judgment Involving Detroit Police Department | OPA | Department of Justice

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Joshua's experiences were then amplified by the psychological battlefield he was subjected to during interrogation. *See* Geller, *supra*, 1301 (noting that instances of police intrusion generate elevated levels of anxiety and post-traumatic stress disorder). A sleep deprived Joshua began his interrogation at 3:40 am without having been afforded any phone calls to his mother or other family members, although he had been arrested the day before. Throughout the three-hour long interrogation, officers employed myriad tactics including verbal abuse, deceit, threats, and an abhorrent reliance on racial slurs to spur a confession. Considering such tactics, it is likely that Joshua internalized his interrogation as an aggressive and racially-charged police encounter that left him intimidated, frightened, and unable to voluntarily waive his *Miranda* rights. *See* Dylan B Jackson, *The Case for Conceptualizing Youth-Police Contact as a Racialized Adverse Childhood Experience*, 111 Am J Pub Health 1189, 1189 (2021). Aggressive youth-police encounters are traumatic, as they are often experienced as frightening, overwhelming, or life-threatening and have the capacity to trigger recurring negative emotions and physiological symptoms. *Id.*

In addition to the often-debilitating trauma Black teenagers experience due to over policing, teenagers like Joshua are especially vulnerable to *Miranda* waivers and coerced confessions because their brains are not fully formed. The prefrontal cortex, the part of the brain responsible for making judgement, does not reach full maturity until the mid-twenties. Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice Policy*, 83 NC L Rev 793, 812 (2005) (noting the development of the prefrontal cortex continues through adolescence and is one of the last regions of the brain to reach full development). In the intervening time, an adolescent does not have the same capacity to make reasoned decisions as fully-developed adults, especially while under stressful conditions. Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann Rev Clinical Psych 459, 464-65 (2009). This becomes especially troubling in the context of a custodial interrogation where emotions are heightened. Not only are adolescents' brains still developing, but young people have also been socialized to comply with the demands of adult authority figures, including answering their questions. Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 LAW & PSYCH. REV. 53, 62 (2007) (citing Thomas Grisso et al., *Juveniles' Competence To Stand Trial A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L and Human Behavior 333, 357 (2003)) (explaining that youth tend to heed authority figures when making choices). In the context of custodial interrogation, teenagers are incredibly vulnerable to *Miranda* waivers that are not knowing, intelligent, or voluntary and to being coerced into confessing by police officers.

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E. Black Men and Adolescents, Like Joshua, Are Significantly More Likely to Feel Anxious in Police Encounters and Fear That They Will Be Perceived as Guilty, Which Heightens the Coercive Nature of Interrogation.

As discussed in Section I.B. above, Black people live with the fear of being stereotyped as criminal solely because of their race. Goff et al., *supra*, at 536. This fear is called "stereotype threat." Aware that officers are likely to perceive them as guilty, Black men and adolescents often experience anxiety during police encounters and work to dispel these stereotypes and make themselves appear innocent. Davis and Leo, *supra*, at 673. Unfortunately, this conscious effort to appear innocent can result in a phenomenon known as "stereotype threat response" in which the attempts to disprove a stereotype can actually manifest in the exact behaviors the individual seeks to avoid, thereby making them appear guilty. Kimberly Barsamian Kahn, Jean M McMahon, and Greg Stewart, *Misinterpreting Danger? Stereotype Threat, Pre-Attack Indicators, and Police-Citizen Interactions*, 33 J Police & Crim Psych 45–54 (2018).

1. Stereotype threat response can cause Black people to display behaviors that may be interpreted as suspicious.

In the context of police interrogations, stereotype threat can cause innocent Black men to experience higher sensitivity to emotional cues, which can cloud their thinking and cause cognitive overload. Cynthia Najdowski, *Stereotype Threat in Criminal Interrogations: Why Innocent Black Suspects are at Risk for Confessing Falsely*, 17 J Psycho, Pub Policy, and Law, 562–591 (2011). Black people who are afraid of being stereotyped spend mental energy worrying about how they are perceived and appear anxious. Davis and Leo, *supra*, at 689-90. Additionally, the psychological effects of stereotype threat can manifest as nonverbal behaviors that could be interpreted as deceptive or suspicious, including fidgeting, chewing on a lip, playing with hair, nail biting, nervous smiling, stiff posture, and averting eyes, among others. Jennifer Bosson, Ethan Haymovitz and Elizabeth Pinel, *When Saying and Doing Diverge: The Effects Of Stereotype Threat On Self-Reported Versus Non-Verbal Anxiety*, 40 J Exp Soc Psychol 247–255 (2004). These physical manifestations of stereotype threat response can be interpreted as signs of a guilty conscious by an outside observer. Barsamian Kahn, McMahon and Stewart, *supra*, at 45-54.

Throughout the interrogation in this case, Officer MacDonald repeatedly indicated that he believed Joshua to be lying, despite Joshua's insistence that he was telling the truth. *See, e.g.*, (20a), (28a). (38a), (40a). Joshua feared that the officers were stereotyping him as guilty, stating "I'm scared though…" and "You probably won't believe me." (127a). Additionally, Officer MacDonald continuously referred to Joshua as the "n-word," which has a long history of association with stereotypes of criminality described in Section I.B. above. Extreme interrogation

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tactics, including lies about the existence and quality of evidence and false promises, increased with each denial, ultimately resulting in a coercive interrogation environment.

2. Stereotype threat can lead to feelings of hopelessness, contributing to the coerciveness of the interrogation.

Awareness of stereotypes associating race with criminality can instill feelings of hopelessness in Black men during interrogations. Davis and Leo, *supra,* at 673. Knowing that they may be perceived as guilty regardless of their actual guilt or innocence, Black men are likely to feel that their claims of innocence will be ignored during police encounters. *Id.* These feelings of hopelessness can lead Black suspects to confess, even when they are not guilty, in an attempt to protect themselves from the threat of greater punishment for failure to confess.

In this case, Joshua's feelings of helplessness are apparent throughout the interrogation. *See e.g.,* (127a) ("I'm scared though…") ("you probably won't believe me"). It is evident that Officer MacDonald assumes Joshua is lying about his account of events from the beginning of the interrogation. *See e.g.*, (80a), (81a), (96a). When Joshua insists that he is telling the truth, Officer MacDonald makes clear that he is "not going to believe that…bullshit." (40a). Knowing that the officers believed him to be guilty made Joshua more vulnerable to giving a false confession. This vulnerability was exacerbated by the officers threatening that Joshua would receive a 20-year sentence if he did not confess. (84a). The officers then told Joshua about a woman in a similar position to him who confessed to being involved in a crime and got only two years. (108-09a). These coercive interrogation tactics, combined with the underlying knowledge that the officers would perceive him as guilty because of racial stereotypes, coerced Joshua to confess.

3. The stress caused by stereotype threat can be mentally and cognitively taxing, interfering with Black people's ability to think clearly and resist pressure and making them vulnerable to invalid *Miranda* waivers and coerced false confessions.

Stereotype threat can impair one's ability to think clearly and resist pressures in an interrogation setting. *See* Davis and Leo, *supra,* at 673–704. The awareness of negative racial stereotypes can increase cognitive stress in Black suspects as they work consciously to control the behaviors and emotions associated with a stereotype threat. *Id.* This hyper-vigilance and the accompanying self-regulatory efforts impact the ability of Black people to resist police pressures during interrogations and make them more vulnerable to invalid *Miranda* waivers and coerced confessions. The cognitive effects of stereotype threat likely impaired Joshua's ability to understand the significance of a *Miranda* waiver, to think through the long-term consequences of

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a confession, and ultimately to resist the aggressive and intimidating police tactics used against him.

F. Threats to Joshua's Masculinity Further Contributed to the Coerciveness of the Interrogation.

In addition to the racial stereotypes at play during the interrogation, Officer MacDonald threatened Joshua's masculinity. Black teenagers, like Joshua, are particularly concerned about their social status and care a lot about maintaining respect. Jennifer L. Woolard, Samantha Harvell, and Sandra Graham, *Anticipatory Injustice Among Adolescents: Age and Racial/Ethnic Differences in Perceived Unfairness of the Justice System*, 26(2) Behavioral Sciences and the Law 207, 209 (2008); Norman J. Finkel, *But It's Not Fair! Common Sense Notions of Unfairness,* 6(4) Psychology, Public Policy, and Law 898, 903-4 (2000). The interrogating officer's challenges to Joshua's manhood contributed to the coercive environment and, not surprisingly, evoked a visceral response from Joshua and secured a confession from him. Officer MacDonald taunted Joshua with claims that he "won't even man up," saying "You considered a fucking man. Legally. But you don't fucking act like one. Gotta start manning up to shit." (82a). By speaking to Joshua this way, Officer MacDonald attempted to engage Joshua in a "masculinity contest," or a "face-off between men where one party is able to bolster his masculine esteem by dominating the other." Frank Rudy Cooper, *"Who's the Man?": Masculinities Studies, Terry Stops, and Police Training,* 18 Columbia J. Gender and Law 671, 675 (2009). When police officers engage young men in masculinity contests such as this, it is in effect "bullying." *Id.* at 678-679. It is likely that Joshua subconsciously felt as though he needed to re-assert his masculine identity by meeting the officer's demands for a confession. Phillip Atiba Goff and Hilary Rau, *Predicting Bad Policing: Theorizing Burdensome and Racially Disparate Policing Through the Lenses of Social Psychology and Routine Activities*, 687(1) The Annals of the American Academy of Political Science 67-88, 74-76 (2020).

II. ENDORSING LAW ENFORCEMENT'S USE OF A RACIAL SLUR IN INTERROGATION WOULD CAUSE HARM TO BOTH INDIVIDUALS AND COMMUNITIES AND SIMULTANEOUSLY UNDERMINE THE FAIRNESS AND LEGITIMACY OF THE LEGAL SYSTEM

A. Endorsing the Use of Racial Slurs in Interrogation Will Damage the Mental Health of Black Communities.

If the Court holds that using a racial slur in an interrogation is not coercive, the Court will effectively be endorsing the use of racial slurs in all police interactions, which could increase the

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frequency of such language not only in interrogations but also in on-the-street police encounters. This result will have a detrimental impact on the mental health of Black people across the community. As discussed in Section I.B., police encounters harm the mental health of young Black men. Even when they are simply stopped by police, young Black males experience higher levels of anxiety and trauma than those who are not stopped. Amanda Geller et al. *Aggressive Policing and the Mental Health of Young Urban Men*, 104 Am J Pub Health 2321, 2324-25 (2014). Research shows that young men who experience harsh language, even language that is not explicitly racial like the slur used in this case, are more likely to experience post-traumatic stress symptoms after the interaction. *Id.* at 2324. Endorsing the use of racial slurs in interrogations could deepen and expand the community-wide harms of policing on the mental health and well-being of Black residents.

B. Using Racial Slurs in Interrogations Erodes the Trust Communities Have in Police, Contributing to a Low Respect for the Law and Reduced Willingness to Cooperate in Future Investigations, Which Reduces Public Safety.

Endorsing the use of a racial slur as if it were a non-coercive interrogation tactic would not only harm the mental health of individuals and communities, but it would also weaken public safety and diminish community trust in law enforcement. Courts must make the bounds of lawful interrogation clear to prevent harmful and racially discriminatory use of discretion by police officers. If this Court finds that an officer's repeated use of a racial slur during an interrogation was within the bounds of the law, the community's trust in law enforcement and the legal system would diminish.

Communities of color that experience frequent police intrusion, including the use of racially-charged language, "become increasingly distrustful and cynical toward law enforcement." Susan A. Bandes et al, *The Mismeasure of Terry Stops: Assessing the Psychological and Emotional Harms of Stop and Frisk to Individuals and Communitie*s, 37 Behav Sci Law 176, 184 (2019). This type of cynicism "may rationalize the weakening or dissolution of social norms and encourage rejection of the obligations of legal compliance and cooperation with police personnel." *Id*. at 185. Not only may individuals be more likely to engage in criminal behavior due to decreased respect for the law, but witnesses may become unwilling to cooperate. When this dissolution occurs in under-resourced communities, "crime and violence are more likely to proliferate, reducing police effectiveness and rendering communities even more unsafe." *Id.* While this most significantly and obviously impacts the Black community, it may also decrease trust other communities have for the police by causing them to fear they could also be subjected to discriminatory language during interactions with officers.

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This distrust of law enforcement, which would be exacerbated by lack of accountability for using racial slurs, impacts young people even more acutely. When young people believe they have been racially profiled or that their interaction with police officers are fundamentally unfair, the detrimental mental health impacts associated with police interaction may be amplified. *Police Stops Among At-Risk Youth*, *supra*, at 628; Naomi F Sugie & Kristin Turney, *Beyond Incarceration: Criminal Justice Contact and Mental Health*, 82 Am Socio Rev 719, 723 (2017). Not only do young people care deeply about fairness, but witnessing or experiencing negative and demeaning interactions with the police and other procedural injustices during adolescence can shape lifelong views about the legitimacy of law enforcement and the legal system. Erika K Penner et al, *Procedural Justice Versus Risk Factors for Offending: Predicting Recidivism in Youth*, 38 L & Hum Behav 225, 225 (2014) (noting that adolescents are particularly sensitive to issues of fairness and respect).; Thomas C O'Brien and Tom R Tyler, *Rebuilding Trust Between Police & Communities Through Procedural Justice & Reconciliation*, 5 Behavioral Science and Police 35, 50 (2109); Lorraine Mazzerolle et al, *Shaping Citizen Perceptions of Police Legitimacy: A Randomized Field Trial Of Procedural Justice*, 51 Criminology 33, 60 (2013). Procedural injustice can impact a person's willingness to comply with the law throughout their lives.

C. False Confessions—Including Those Caused by the Use of Racial Slurs in Interrogation—Harm Communities for Generations and Waste Public Resources.

As discussed in Section I.C.2. above, coercive interrogation tactics, including the use of racial slurs, increase the risk that Black youth, like Joshua, will be coerced into making a false confession. The harm that false confessions have on Black individuals and communities is immense. Confessions almost always lead to convictions, ensuring that people who falsely confess will be drawn deeper into the system. *See* Saul M Kassin, *Confession Evidence: Commonsense Myths and Misconceptions*, 35 Crim Just & Behav 1309, 1315 (2008). Adolescents, like Joshua, who falsely confess may end up serving long prison sentences and are no longer able to contribute to the economic viability of the community. The highly controlled environment of a prison deprives young people of the opportunity to develop essential skills like problem solving, self-control, time-management, and independence.[18] These missed opportunities create overwhelming

[18] The highly controlled environment of a youth or adult prison denies teenagers necessary opportunities to practice problem solving, self-control, time-management, and independence that are essential to healthy development. This is especially true for youth in the adult system where there are even fewer developmentally appropriate opportunities for education, work, or mentorship. When youth are released, they will face the additional obstacle of a criminal record impacting their ability to find employment and housing. This combination of factors leads to economic instability, lack of positive peer support, and little access to necessary mental health treatment, all of which can

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obstacles for young people once they are released. Incarcerated youth and adults are deprived of the opportunity to develop community and social connections and maintain family relationships. Children of wrongfully convicted parents suffer immensely from their parents' absence in their lives. The Innocence Project, *After 15 Years Apart, Wrongfully Convicted Darril Henry is Spending Father's Day with His Children* (June 19, 2020), available: https://innocenceproject.org/fathers-day-new-orleans-darrill-henry-wrongful-conviction/.

The public at large is also harmed by coerced confessions. After release, wrongfully convicted adults and young people face additional obstacles to finding employment and limited access to mental health treatment to recover from the trauma of incarceration. Henning and Omer, *supra*, at 919. This combination of factors leads to economic instability and lack of positive peer support, which can increase risk of engaging in criminal activity and thereby decrease public safety. *Id.* Additionally, coerced confessions deprive victims of the closure they need to heal and the expense of both prosecuting and then overturning wrongful convictions wastes public resources.

D. The Use of Racial Slurs in Interrogation Interject Racial Bias into Subsequent Trials, Putting Due Process Rights at Risk.

The use of a racial slur not only impacts the individual being interrogated, but likely also impacts juries if the interrogation tape is played at trial, as happened in Joshua's case. Social psychologists Jeff Greenberg and Tom Pyszcyznki performed a study in 1985 to determine how hearing racial slurs impacts third-party listeners. *The Effect of an Overheard Ethnic Slur on Evaluations of the Target: How to Spread a Social Disease*, 21(1) J Experimental Soc Psych 61-72 (1985). White college students were asked to judge debates between white and Black contestants. Immediately following the debates, the college students heard people either refer to the Black contestants as the "n-word," criticize them in a nonracist manner, or make no comment at all. The study found that the college students who overheard the Black contestants called the "n-word" exhibited a significant tendency to lower their evaluation of the Black contestants. These results suggest that the use of the "n-word" can lead to prejudiced actions by the listener, as well as the speaker. The researchers noted that this prejudice has implications in various settings, including parole board meetings and jury deliberation. *Id.*

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contribute to engaging in criminal activity and decreasing public safety. Additionally, the community is harmed by the expense of both prosecuting and then overturning wrongful convictions and lack of closure for victims.

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It is likely that hearing a Black person referred to as the "n-word," especially in the context of a police interrogation, can reinforce implicit associations between Black men and crime. This would impact the jury's evaluation of the accused person's guilt or innocence. Such evidence should be excluded as more prejudicial than probative. If the Court endorses the use of the "n-word" in interrogation, the due process rights of Black individuals will be placed in jeopardy when the interrogation tape is played at trial.

CONCLUSION

Officer MacDonald's egregious use of the "n word" while interrogating Joshua, combined with other coercive tactics, resulted in Joshua making both a *Miranda* waiver that was not knowing, intelligent, or voluntary and a subsequent involuntary statement. As a Black teenager in Detroit, a city with a long history of police harming Black men and boys, Joshua was especially vulnerable to this type of police coercion. Law enforcement failed to consider Joshua's age and his capacity to understand and appreciate his rights, and they exacerbated the already racially-charged dynamic by exerting extreme pressure on him while in custody. Law enforcement turned Joshua's constitutional rights into a mere "form of words," the exact harm the U.S. Supreme Court aimed to prevent when it instituted the *Miranda* requirement. *Miranda*, 384 US at 444. This Court must hold that Joshua's confession was inadmissible as it was involuntary and extracted by racially-charged coercion.

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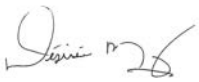

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief contains 9,555 countable words. The document is set in 12-point type with 17-point line spacing and 12 points of spacing between each paragraph.



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