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STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

-vs-

Supreme Court No. 167391
Court of Appeals No. 367926
Circuit Court No. 23-000412-01-FC

DAREN DONELL FENDERSON,
Defendant-Appellant.

_____/

Daren Fenderson's Reply

Oral Argument Requested

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Table of Contents

Index of Authorities i
Reply 1
Summary and Relief Requested 7

RECEIVED by MSC 10/30/2025 3:17:21 PM

Index of Authorities

Page(s)

Cases

Michigan v Mosely, 423 US 96 (1975) 4
Miranda v Arizona, 384 US 436 (1966) 2, 4
Mueller v Brannigan Brother Restaurants and Taverns LLC, 323 Mich App 566 (2018) 6
Oregon v Bradshaw, 462 US 1039 (1983) 3, 4, 5
People v Adams, 245 Mich App 226 (2001) 3
People v Bosca, 310 Mich App 1 (2015) 5
People v Daoud, 462 Mich 621 (2000) 2

RECEIVED by MSC 10/30/2025 3:17:21 PM

Reply

Daren Fenderson replies to the government's supplemental brief:

The government's analysis ignores the totality of the circumstances, focusing on only a small portion of the exchange between Mr. Fenderson and Detective Beasley, ignoring and omitting critical coercive comments and conduct by the police and disregards the trial court's well-supported findings of fact.

The government fails to acknowledge or address the misleading statements made by Detective Beasley that directly undermined the *Miranda* warnings. Detective Beasley conveyed to Mr. Fenderson that his right to counsel depended on his ability to afford an attorney, directly saying to Mr. Fenderson, "You don't get one…We tried to call one and ain't nobody available. You ain't got no money. So…". (Appendix A at 2:29-2:30, 5:15-5:17). In its brief, the government emphasizes Detective Beasley's last statement before the second waiver in isolation. But the validity of a *Miranda* waiver depends on the totality of the circumstances and the entirety of the police conduct. Here, as discussed at length in Mr. Fenderson's supplemental brief, that course of conduct included the following:

- Demanding that Mr. Fenderson agree he would provide the confession police wanted if they brought in counsel, (Appendix A at 2:29-2:30);
- Isolating Mr. Fenderson for hours, (Appendix A at 2:30-5:15); and
- Asking questions implying, and then telling Mr. Fenderson directly, that he did not have the right to counsel because he could not afford to hire an attorney, (Appendix A at 5:15-5:17).

The government fails to explain how the above conduct did not directly undermine the *Miranda* advice of rights or the very statement by Detective Beasley upon which they attempt to hang their hat.

Further, the government ignores the evidence of Mr. Fenderson's mental state during the interrogation, isolation, and when police extracted the second waiver. (Appendix A at 5:17-5:19). Mr. Fenderson was distraught, crying, and repeatedly expressed his confusion, telling police he did not understand what was going on and that he was confused. (Appendix A at 5:17-23). Instead of providing clarification, Sargent Brown encouraged Mr. Fenderson to sign the second waiver, saying, "The one thing is thing, get through this right here first, and then we can always work on the rest." (Appendix A at 5:21-23). The government ignores the visible evidence of Mr. Fenderson's mental state – a critical aspect

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of the totality of the circumstances analysis required to establish the validity of the second waiver. See *People v Daoud,* 462 Mich 621, 634, 636 (2000). Instead, the government focused exclusively on a few statements Mr. Fenderson made, well after Detective Beasley told Mr. Fenderson that he does not get an attorney, emphasizing that Mr. Fenderson did not have the money to hire one. (Appendix A at 5:15).

Most importantly, the government, like the Court of Appeals majority, fails to accord the factual findings of the trial court the necessary level of deference. The trial court determined that the conduct of the officers amounted to a "scare tactic," and that finding is subject to the clearly erroneous standard of review. See *People v Armstrong*, __ Mich __ (2025) (Docket No. 165233), slip op at 3. The trial court's findings of facts are well supported by the record. After being told detectives were going to call an attorney, and being left alone in the interrogation room for hours, Mr. Fenderson asked, "Where's my lawyer?" (Appendix A at 5:15). The detective said, "You don't get one." (Appendix A at 5:15). Mr. Fenderson expressed confusion, and the detective clarified that they did not have a lawyer for Mr. Fenderson. (Appendix A at 5:15). The detective said, "Ain't nobody coming and you ain't got the money." (Appendix A at 5:15). Mr. Fenderson repeatedly said he was confused and did not understand, but the detective and other officers involved did not ever provide clarification necessary to ensure Mr. Fenderson understood his right to counsel. (Appendix A at 5:15-5:21).

The officers left Mr. Fenderson isolated for nearly three hours, one of the very police tactics with which the *Miranda* decision was concerned. *Miranda v Arizona*, 384 US 436, 455-458 (1966). While the government claims officers made inquiries over a couple of hours to find Mr. Fenderson an attorney, the only evidence offered by the government established that the officers' efforts to find an attorney for Mr. Fenderson consisted of them making a couple of phone calls requiring only about 10 to 15 minutes. (Appendix C, p 48-49). It was this discrepancy – that the police apparently spent only 10 to 15 minutes before determining that there was no attorney available, while leaving Mr. Fenderson alone in the interrogation room for over two and a half hours that led the trial court to conclude the police conduct was a scare tactic. (Appendix G, pp 120-11). When the officers finally returned to the interrogation room, they did not explain that their efforts to find an attorney were unsuccessful. (Appendix A at 5:15). Instead, Detective Beasley said nothing,

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but ordered Mr. Fenderson to be handcuffed. (Appendix A at 5:15). Mr. Fenderson reasonably asked about the attorney, at which point Detective Beasley said, "You don't get one." (Appendix A at 5:15). The trial court's finding that the police conduct amounted to a scare tactic was reasonable based on the evidence of the time officers spent isolating Mr. Fenderson and their misleading comments suggesting Mr. Fenderson did not have the right to counsel that he was advised of as part of the *Miranda* waiver because he could not afford one. The government has not shown this finding was clearly erroneous and so they cannot establish the second *Miranda* waiver was valid. See *Armstrong*, __ Mich __, slip op at 8 n 18 ("The dissent's differing interpretation of the video footage is insufficient to constitute clear error or require a remand.").

The government's analysis misapplies key authorities and overlooks critical differences between the cases cited and the police conduct in this case.

The government misapplies authorities out of context to suggest that Michigan's appellate courts have expressly approved the coercive police conduct used in this case. For example, the government relies on *People v Adams*, 245 Mich App 226, 236-239 (2001), and claims it is directly applicable to this case, when it does not address the validity of a waiver or reinitiation at all. In *Adams*, the Court of Appeals was not addressing reinitiation but was analyzing whether a suspect's question about "the way the process worked" was an unequivocal invocation of the right to counsel. *Id*. The *Adams* Court concluded the question was ambiguous and insufficient to invoke the right to counsel, so the officer's comments in response to that question were not made in violation of *Miranda*, and the statement did not require police to cease their interrogation. Here, there is no dispute about whether Mr. Fenderson invoked his right to counsel – he unequivocally did. Rather, the issue in this case is whether the police comments and conduct after invocation undermined the advice of rights and rendered the second *Miranda* waiver unknowing and involuntary. *Adams* is not applicable.

The government also relies heavily on *Oregon v Bradshaw*, 462 US 1039 (1983), claiming the facts are analogous to this case. However, the facts of the two cases demonstrate that Mr. Fenderson did not reinitiate the interrogation. Mr. Fenderson was merely asking about the counsel he was told police were finding for him while he waited

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alone for nearly three hours. In *Bradshaw,* once Mr. Bradshaw invoked his right to counsel, the officers immediately terminated the interrogation. *Id.* at 1042-1043. Sometime later, Mr. Bradshaw asked a police officer, "Well, what is going to happen to me now?" *Id.* at 1042. The officer responded by saying, "You do not have to talk to me. You have requested an attorney and I don't want you talking to me unless you so desire because anything you say—because—since you have requested an attorney, you know, it has to be at your own free will." *Id.* Mr. Bradshaw affirmed that he understood his rights and then engaged in a conversation with the officer about where he was being taken and what charges might be filed, during which the officer said that Mr. Bradshaw might help himself by taking a polygraph examination. *Id.* A full day later, Mr. Bradshaw waived his *Miranda* rights and participated in a polygraph, after which Mr. Bradshaw made inculpatory statements.

In contrast, Mr. Fenderson's invocation of his right to counsel was not "scrupulously honored" by police. See *Michigan v Mosely*, 423 US 96, 103-104 (1975), quoting *Miranda*, 384 US at 474, 479. When Mr. Fenderson invoked his right to counsel, Detective Beasley did not immediately cease the interrogation. (Appendix A at 2:29-2:30). Instead, he asked "You're going to tell me what I want to hear?" (Appendix A at 2:29-2:30). Then the detective asked a series of questions about whether Mr. Fenderson had a retained attorney, before saying he was going to make some calls to try to find Mr. Fenderson an attorney, telling Mr. Fenderson to "hang tight." (Appendix A at 2:29-2:30). The detective then had Mr. Fenderson wait alone in an interrogation room, without any updates about the detective's efforts, for nearly three hours. (Appendix A at 2:30, 5:15). The next time the detective walked into the interrogation room, he directed another officer to put Mr. Fenderson in handcuffs, without any explanation about his efforts to find an attorney. (Appendix A at 5:15-5:17). Mr. Fenderson naturally was confused, expressed that confusion, and asked about the attorney. (Appendix A at 5:15-5:17). This is not the sort of reinitiation contemplated in *Bradshaw*. Mr. Bradshaw's question about what was going to happen to him next was "ambiguous," but also "evinced a willingness and a desire for a generalized discussion about the investigation." *Bradshaw,* 462 US at 1045-1046. This is contrast with statements that are "merely a necessary inquiry arising out of the incidents of the custodial relationship." *Id.* Here, where Detective Beasley did not immediately cease the interrogation, but instead suggested he was going to find Mr. Fenderson an attorney, there's no sense in which Mr.

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Fenderson asking about that same attorney can fairly be construed as evincing a willingness and desire to talk about the investigation *without* that attorney.

Further, the officer in *Bradshaw* responded to Mr. Bradshaw's question by immediately reminding Mr. Bradshaw of his right to counsel and ensured Mr. Bradshaw understood that right. *Id.* at 1046. Detective Beasley did the opposite – he told Mr. Fenderson, "You don't get one," and ignored Mr. Fenderson's repeated statements that he was confused. The *Bradshaw* Court held that Mr. Bradshaw "changed his mind without any impropriety on the part of the police" and there was nothing the officers did that undermined the *Miranda* warnings. *Id.* at 1046. Here, when Mr. Fenderson invoked his right to counsel, the officers embarked upon an effort to get him to rescind his invocation by misleading and misinforming him about his constitutional rights.

Mr. Fenderson's arguments regarding Michigan's Constitution are preserved and expressly within the scope of this Court's order for supplemental briefing.

The government inaccurately claims that Mr. Fenderson's arguments based on the Michigan Constitution are not within the scope of this Court's order for supplemental briefing. This Court's order specifically and expressly asked the parties to address whether the officer's violated Mr. Fenderson's "right to be free from self-incrimination under the Fifth Amendment of the United States Constitution or Article 1, § 17 of the Michigan Constitution." (Order, 1/24/25).

Further, Mr. Fenderson preserved his arguments that the police conduct in this case violated his rights under both the United States and Michigan Constitutions. In the trial court and in the Court of Appeals, Mr. Fenderson asserted that the police conduct in this case violated his rights under both constitutions and cited the relevant provisions of both constitutions. (Appendix E, p 96; Appendix J, pp 156, 158). That is sufficient to preserve Mr. Fenderson's arguments for appellate review. *People v Bosca,* 310 Mich App 1, 46 (2015) ("To preserve an issue for appellate review, a party must object below and specify the same ground for objection that it argues on appeal"), reversed in part on other grounds nu *People v Bosca,* 509 Mich 851 (2022). While Mr. Fenderson did not brief his arguments based on Michigan's Constitution as thoroughly in the courts below, that does not mean those arguments are not preserved or improper for this Court to consider. *Mueller v Brannigan*

Brother Restaurants and Taverns LLC, 323 Mich App 566, 585 (2018) ("appellate consideration is not precluded merely because a party makes a more developed or sophisticated argument on appeal") (citations omitted).

Should the Court find that the police conduct in this case does not violate due process protections under the United States Constitution, then this Court can and should find that the conduct violates the due process protections afforded under the Michigan Constitution for the reasons discussed in Mr. Fenderson's Supplemental Brief and in the amicus brief filed by the American Civil Liberties Union.

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Summary and Relief Requested

Daren Fenderson respectfully requests that this Honorable Court reverse the Court of Appeals and affirm the trial court's order suppressing the involuntary statements Mr. Fenderson made after he invoked his right to counsel.

Respectfully submitted,

DATED: October 30, 2025 BY: /s/ Coral M. Watt

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