STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

Michigan Supreme Court No. 160436
Court of Appeals No. 346775
Oakland County No. 2017-265355-FJ

MUHAMMAD AL-TANTAWI,

Defendant-Appellant.

BRIEF OF *AMICI CURIAE* THE INNOCENCE PROJECT AND THE CENTER ON WRONGFUL CONVICTIONS OF YOUTH

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INTERESTS OF *AMICI CURIAE*[1]

Amici are the Innocence Project and the Center on Wrongful Convictions of Youth, part of Northwestern University Pritzker School of Law's Bluhm Clinic, both non-profit organizations dedicated to providing *pro bono* legal services to individuals who may have been wrongfully convicted. Additionally, amici work to prevent future wrongful convictions by researching the primary causes of wrongful conviction and pursuing legislative, judicial, and administrative reform initiatives designed to enhance the truth-seeking functions of the criminal justice system and to prevent the admission of unreliable evidence in courts around the country.

This case calls upon the Court to determine whether a sixteen-year-old boy, surrounded by armed officers in his home, and repeatedly accused of lying about involvement in his mother's recent death, was entitled to the procedural protections of *Miranda v Arizona*, 384 US 436 (1966). Amici respectfully offer this brief to provide the Court with scientific research and reliable data regarding the heightened susceptibility of adolescents to police coercion, and the alarmingly high risk of false confession inherent in subjecting youth to precisely the sort of interrogation that occurred here, without any procedural safeguards. Amici share a deep concern that, if this Court affirms the decision below, the State of Michigan is at risk of convicting an adolescent based on a coerced, and potentially false, statement, and that such a ruling would allow law enforcement officers to subjugate the *Miranda* rule when questioning children and adolescents. Amici thus have a compelling interest in urging the Court to reverse the decision below and to announce a clear test regarding the proper application of a suspect's age to the *Miranda* custody analysis.

[1] No part of this brief was drafted by counsel for either party, nor did either party or their counsel contribute financially to its preparation. No entity contributed, financially or otherwise, to the preparation of this brief other than *amici* and counsel for *amici*.

INTRODUCTION

Due to the cognitive limitations of a young person's developing brain, adolescents, like Appellant, are at an increased risk of falsely confessing during police interrogation. In recognition of the available data regarding known false confessions and the scientific consensus regarding children and adolescents' susceptibility to false confessions, the United States Supreme Court requires that a young person's age inform the *Miranda* custody analysis.[2] *JDB v North Carolina*, 564 US 261, 272 (2011) (reasoning that "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.").

All but ignoring the *JDB* Court's ruling, the Michigan Court of Appeals held instead that "when a minor is involved, the test is not whether a reasonable minor would believe he or she is free to leave, but whether a reasonable person would believe so." *People v Altantawi*, 2019 WL 4230693, at *6 (Mich App 2019). The Court of Appeals ultimately found that Appellant—who was sixteen years old at the time—was not in custody when interrogated by armed officers in his home, because a "reasonable person" would have "felt at liberty to discontinue the interview and leave." *Id.* The decision below—which expressly denounced an age-appropriate inquiry—must be reversed, lest Michigan's youth be routinely subjected to highly coercive interrogation practices that risk false confession and subsequent wrongful conviction.

Amici respectfully urge this Court to hold that, when the subject of interrogation is a minor, the *Miranda* custody analysis must—consistent with established precedent and scientific consensus—be conducted from the perspective of a reasonable child of the subject's age. *See e.g.*,

[2] *See Miranda v Arizona*, 384 US 436, 478-79 (1966) (holding that "when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning . . . [h]e must be warned . . . that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him"). The so-called *Miranda* warnings are only required if the suspect is deemed to be "in custody." *See e.g., Howes v Fields*, 565 US 499, 509-510 (2012); *People v Barritt*, 501 Mich 872 (2017).

JDB, 564 US at 272; *In re EW*, 2015 Vt 7, ¶ 23 (2015) (applying a reasonable *juvenile* analysis). When applying an objective, age-appropriate inquiry to the facts of the instant case, it becomes clear that Appellant was in custody when he was interrogated without the provision of *Miranda* warnings, and that his statements elicited during the interrogation must therefore be suppressed.

STATEMENT OF FACTS

On August 21, 2017, Nada Huranieh fatally fell from a second-story window in her home, where she lived with her three children—Appellant, Muhammad Al-tantawi, who was sixteen years' old at the time, and his two younger sisters. Muhammad's fourteen-year-old sister discovered their mother's body, yelled for Muhammad, and together, they contacted 911. *See* 25b-26b; 165a. While receiving instructions from the 911 dispatcher, Muhammad attempted to resuscitate his mother with CPR. 20b.

The next day, after reviewing surveillance footage depicting shadows of what occurred in the moments preceding Huranieh's death, investigating officers determined that Huranieh was thrown out of the window. 121b-123b; 421b. Sergeant Richard Wehby, Detective Ryan Molloy, and Officer Nathan Hammond, each carrying a police-issued firearm, *see* 311b, went to the family's home with the intention of interrogating Muhammad, his fourteen-year-old sister, and their father, Dr. Bassel Al-tantawi, who was in the midst of a contentious divorce with Huraneih and had not been residing with the family prior to her death. *See* 39b, 181b, 301b.

Shortly after the interrogating officers entered the home, a "host of detectives" arrived, 528b, along with at least four armed officers specifically tasked with preventing anyone but law enforcement from entering the property. *See* 410b, 472b, 484b. Meanwhile, inside the home, the three interrogating officers followed Dr. Al-tantawi up the internal staircase to locate Muhammad and escorted him to the first floor. 434b. Thereafter, law enforcement maintained control of

Muhammad and his father—denying them permission to go downstairs to the basement's prayer room for a religious ritual,[3] and trailing Dr. Al-tantawi's vehicle when he went to pick up Muhammad's fourteen-year-old sister from school, 465b.

After Dr. Al-tantawi left, Muhammad was surrounded by three armed officers who did not read him his *Miranda* rights, 313b-314b, nor tell him he could wait until his father returned to speak with police, 352b. During the interrogation, Muhammad was undoubtedly aware of the pervasive police presence outside his home, despite Sergeant Wehby's testimony that, from Muhammad's vantage point, he could not physically see the officers outside. *See* 135a. The interrogating officers openly communicated with or about the officers outside at least twice during the interrogation, *see* 162a, 177a, 457b, and Detective Molloy testified that from inside the home you could hear other officers' movement, *see* 136a. Surrounded by police, Muhammad did not move from his seat at the table where the interrogation occurred for the duration of the near-forty-minute interrogation. Although Sergeant Wehby testified that, during the interrogation, Muhammad got up to get himself water and use the restroom, 447b-448b, Detective Molloy testified that Muhammad never indicated that he was thirsty or needed to use the restroom, and never asked to leave the table during the interrogation, and there is no evidence in the audio recording or transcript of the interrogation that Muhammad ever used the bathroom or was otherwise allowed to leave the table. *See* 315b-16b, 324b.

The interrogating officers repeatedly rejected Muhammad's account of the events, *see* 171a-174a, accused him of lying about his mother's death, *see* 173a-178a, lied to him about the evidence they possessed, 172a, 177a-178a, and implied that Muhammad would "get in trouble" if

[3] As reflected in the transcript of the audio recording, one officer says to another "they want to go *down* and pray for a second." *See* 154a (emphasis added). The suppression hearing testimony, as well as the audio recording, reveals that Muhammad and his father did not go downstairs to pray as requested, but instead conducted the ritual in front of the officers on the first floor, in the family room. *See* 127a.

he refused to admit that he was in the room with his mother at the time of her death, 174b. Finally, through tears, Muhammad adopted his interrogators' narrative, telling police—in contrast to his earlier statements—that he was at the scene of the crime, holding a step ladder, when his mother fell out of the window, thereby implicating himself in the homicide. 176a-177a. When the officers pressed him for more, Muhammad said: "***It's, it's, what you're saying. I'm just gonna agree with what you say***." 177a (emphasis added).

Moments later, Dr. Al-tantawi returned with his daughter. 177a, 457b. Armed officers stopped him at the base of the driveway, and, for approximately ten minutes, prevented him from proceeding, until, with permission from Sergeant Wehby, two officers eventually escorted him up the driveway and back inside the home. 554b-556b. Muhammad's interrogation stopped only after Dr. Al-tantawi came inside and instructed the officers to stop questioning his son. 327b; 459b. At the conclusion of the interrogation, Muhammad was prohibited from leaving the room and, instead, was directed to sit on a sofa, where he was monitored by at least one armed officer at all times, until the arresting officer arrived and formally placed him under arrest. 515b.

ARGUMENT

I. Adolescents Subjected to Police Interrogation Falsely Confess to Serious Crimes at a Substantially Higher Rate than Adults and, Consequently, are at an Increased Risk of Wrongful Conviction

False confessions are a leading cause of wrongful convictions, accounting for nearly one-third of all known DNA exonerations, *see* Innocence Project, *DNA Exonerations in the United States* <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/> (accessed September 9, 2020), and approximately twelve percent of all known exonerations nationwide, *see* National Registry of Exonerations (NRE), *Exoneration Detail List* <https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx> (accessed September 9,

2020).[4] Approximately one out of every three known false confessions were elicited from children aged eighteen years old or younger. *See id.*; *supra DNA Exonerations in the United States*; *see also* Joshua A Tepfer, Laura H Nirider & Lynda Tricarico, *Arresting Development: Convictions of Innocent Youth*, 62 Rutgers L Rev 887, 904 (2010) (finding that a false confession contributed to 31.1% of the juvenile cases studied, as compared to only 17.8% percent of adult wrongful convictions). Teenagers who were sixteen years old at the time of their arrest and interrogation—like Appellant in this case—account for twenty percent of all known juvenile false confessors. *See supra Exoneration Detail List*. Juvenile false confessions are most prevalent in cases like the instant matter—homicide offenses involving young suspects. *See supra Exoneration Detail List* (documenting that seventy-four percent of all known false confessions elicited from youth aged eighteen years old or younger, resulted in wrongful murder convictions).[5]

These known false confession cases necessarily represent only a fraction of the actual number of innocent children who were coerced into "confessing" and who, consequently, were wrongfully convicted. As the leading experts on false confessions have explained, the known data excludes "false confessions that are disproved before trial, many that result in guilty pleas, those in which DNA evidence is not available, those given to minor crimes that receive no post-conviction scrutiny, and those in juvenile proceedings that contain confidentiality provisions," and, therefore, the proven false confessions "most surely represent the tip of an iceberg." Saul M.

[4] The Innocence Project tracks only cases in which DNA testing was central to the exoneration, while the National Registry of Exonerations (NRE) maintains data of all known exonerations, regardless of the type of exculpatory evidence that led to the exoneration.

[5] The known juvenile false confession cases that did not result in wrongful murder convictions predominantly involved wrongful rape, sexual assault, and child sexual assault convictions. NRE, *Exoneration Detail List* <https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx> (accessed September 9, 2020).

Kassin et al, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 Law and Hum Behav 3 (2009).

The alarming reality that young people falsely confess to serious crimes is aptly illustrated by the State of Michigan's wrongful conviction of Nathaniel Hatchett. In 1996, Nathaniel, a seventeen-year-old boy, was arrested for rape and related charges after a woman was sexually assaulted by a masked stranger in Sterling Heights, Michigan. *See* Innocence Project, *Nathaniel Hatchett* <https://www.innocenceproject.org/cases/nathaniel-hatchett/> (accessed September 9, 2020). When Sterling Heights Police Department officers interrogated Nathaniel, he provided a detailed, yet false, confession to the charges. *Id.* Consequently, Nathaniel, an innocent teenager, was convicted and spent the next decade in prison until he was ultimately exonerated. *Id.* The judge that wrongfully convicted Nathaniel was so persuaded by the false confession that he disregarded evidence that Nathaniel's DNA did *not* match the male DNA profile collected from the victim's rape kit, stating that Nathaniel's confession was "of overwhelming importance" in the rendering of the wrongful guilty verdict. *See* Brandon L Garrett, *The Substance of False Confessions*, 62 Stan L Rev 1051, 1101-1102 (2010).

Nathaniel Hatchett's case exemplifies the overwhelming impact a false confession has on the fair administration of justice—often elevated by factfinders above even scientific evidence of innocence. Indeed, *twenty-two percent* of individuals who falsely confessed and were later exonerated by DNA testing, like Nathaniel, had exculpatory DNA evidence available at the time of trial but were nonetheless wrongfully convicted. Innocence Project, *DNA Exonerations in the United States* <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/> (accessed September 9, 2020). Through archival analyses and controlled experiments, social scientists studying the influence of confession evidence on jurors determined that "confessions

have more impact on verdicts than do other potent forms of evidence[,] . . . and . . . people do not adequately discount confessions—even when they are retracted and judged to be the result of coercion." Saul M Kassin, *Why Confessions Trump Innocence*, 67 American Psychological Association 431, 433-34 (2012) (internal citations omitted).

Further, false confessions often thwart criminal investigations because of a confession's power to "taint[] the perceptions of eyewitnesses, forensic experts, and others[.]" *Id.* at 436-38 (noting the high prevalence of additional evidentiary errors, such as mistaken eyewitness identification, when a false confession is involved); *see also* Richard A Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J Am Acad Psychiatry Law, 332, 340 (2009). Typically, following a confession, police "close the investigation, deem the case solved, and overlook exculpatory information—even if the confession is internally inconsistent, contradicted by external evidence, or the product of coercive interrogation." *Why Confessions Trump Innocence,* at 433. Law enforcements' tendency to truncate their investigation after a confession is elicited, not only makes the wrongful conviction of an innocent person more likely, but may also allow the actual perpetrator to remain at large, without accountability. *See supra DNA Exonerations in the United States* (noting that 48 additional crimes, including 25 murders, were committed by the true perpetrators of crimes for which innocent false confessors were wrongfully convicted). Juvenile false confessions thus present a distressingly high risk of injustice not only for the young, innocent suspects, but also for the victims and the local community.

II. Social Science Explains the Phenomenon of Adolescent False Confession and Identifies Various Risk Factors for False Confession—Risk Factors which are Present in the Instant Case

A robust cannon of scientific research has identified the psychological principles that create the risk of false confession. These risk factors are categorized broadly into "dispositional"

characteristics of the confessor (such as youth or cognitive disability), and the "situational" circumstances of the interrogation itself (such as the police conduct and the environment in which the interrogation occurred). *See e.g.*, *Police-Induced Confessions: Risk Factors and Recommendations*. As detailed below, adolescence—independent of any other variable—is a dispositional risk factor for false confession. The risk of false confession, already heightened for young suspects, is further elevated when, as in the instant case, situational risk factors, such as police deception, are used to coerce a statement. The scientific findings discussed herein, which explain why young people perceive and respond to police interrogation differently than adults, compel the conclusion that the *Miranda* custody analysis must meaningfully account for a young suspect's age.

A. Adolescence, Irrespective of Other Variables, is a Dispositional Risk Factor for False Confession

Decades of scientific research on adolescents' brains and behaviors have led to "consensus on the notion that adolescents are neurobiologically distinct from both children and adults in ways that directly impact decision making." Hayley M D Cleary, *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations: New Directions for Research, Policy, and Practice,* 23 Psych, Pub Policy, and L 118, 120 (2017). Neuroimaging has revealed that the areas and systems of the brain that are responsible for future planning, judgment, and decision making—the prefrontal cortex and other regions that make up the "cognitive-control networks"—are not fully developed until a person's early to mid-twenties, resulting in adolescent and teenage immaturity and cognitive impairments. *See* Laurence Steinberg, *Risk taking in adolescence: New Perspectives from Brain and Behavioral Science*, 16 Current Directions in Psych Science 55, 55-99 (2007); Kimberly Thomas, *Reckless Juveniles,* 52 UC Davis L Rev 1665, 1675 (2019).

Adolescents' neurobiological and psychosocial distinctions are manifested in various ways, including, for example, adolescents' "hypersensitivity to reward" and lack of impulse control. *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations,* at 120. Amici will focus primarily on adolescents' diminished cognitive control under stress, difficulty with "future orientation," and increased sensitivity to the power imbalance between themselves and law enforcement officers—collectively rendering adolescents underequipped to understand their options in the inherently stressful context of police interrogation and, thus, at risk of false confession even in circumstances under which a reasonable adult would more likely feel free to terminate the interrogation and leave. *Id.* at 120-22; *see also* Laurel LaMontagne, *Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, 41 W St UL Rev 29, 34-36 (2013).

i. Adolescents' Diminished Cognitive Control Under Stress

Interrogation is "stress-inducing by design[,]" as police officers intentionally "increase the anxiety and despair" of a suspect who they "presume[] guilty." *Police-Induced Confessions: Risk Factors and Recommendations,* at 7. For adults as well, but especially young people, "stress impedes judgment because it negatively impacts the abilities to weigh costs and benefits and to override impulses with rational thought." Jessica Owen-Kostelnik, N Dickon Reppucci, & Jessica R Meyer, *Testimony and Interrogation of Minors: Assumptions About Maturity and Morality*, 61 American Psychologist 286, 295 (2006). Adolescents under stress are "vulnerable to further distortion[]" of their "already skewed cost-benefit analyses[.]" *Id*. A recent study utilizing neuroimaging found that teenagers "demonstrated less cognitive control than adults under threatening conditions . . . in both brief and prolonged states of negative emotional arousal." *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations,* at 120-

121 (citing Cohen, A et al, *When is an adolescent an adult? Assessing cognitive control in emotional and nonemotional contexts*, Psychological Science 27, 549–562 (2016)).

Adolescents' limited cognitive functioning and correlated increased susceptibility in response to stress may be further exacerbated when the young person has also experienced trauma, such as the sudden death of a parent. *See* Megan Glynn Crane, *Childhood Trauma's Lurking Presence in the Juvenile Interrogation Room,* 62 South Dakota L Rev 3, at 655-57 (2017); *see also* Gisli H Gudjonsson et al, *An Investigation into the relationship between the reported experience of negative life events, trait stress-sensitivity and false confessions,* 81 Personality and Individual Differences 135 (2015) (linking the trauma of the death of a parent or sibling to an increase in self-reported false confessions). Indeed, false confessions elicited under similar circumstances to the instant matter—teenagers subjected to coercive interrogation shortly after they discover the body of a deceased loved one—is not a unique occurrence.

For example, in 1989, Huwe Burton, then sixteen years old, called 911 after he came home to discover that his mother was stabbed to death. NRE, *Huwe Burton* <https://www.law.umich.edu/special/exoneration/Pages/ casedetail.aspx?caseid=5485> (accessed September 9, 2020). Law enforcement officers focused on Huwe as a suspect and interrogated him just two days after he discovered his mother's body. *Id*. Huwe falsely confessed to killing his mother, was wrongfully convicted, and spent nearly two decades in prison before being released on parole in 2009 and, ultimately, exonerated in 2019. *Id*. Other examples include Martin Tankleff and Anthony Yarbough.[6]

[6] Martin Tankleff was seventeen years old when he found his mother stabbed to death and his father severely beaten in their shared home. NRE, *Martin Tankleff* <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3675> (accessed September 9, 2020). Martin confessed to attacking his parents during the police interrogation that occurred shortly after his mother's death, while his father was still in a coma. *Id.* Martin then spent nearly two decades in prison before his release and exoneration. *Id.* Anthony Yarbough was eighteen years old when he discovered his mother, younger sister, and sister's friend, all stabbed to death. NRE, *Anthony Yarbough*

Like sixteen-year-old Huwe Burton, Appellant was under extreme stress when questioned by police. Just one day before the interrogation, Appellant's mother—his primary caretaker—died suddenly. Appellant's younger sister, after discovering their mother's body, screamed to Appellant for help, and together, they contacted 911. *See* 25b-26b. Appellant, while receiving instructions from the 911 dispatcher, unsuccessfully attempted to resuscitate his mother. 20b. The very next day, with a heavy police presence outside his home, three officers repeatedly accused Appellant of being untruthful about the circumstances surrounding his mother's death and implied that there would be trouble if he did not admit to some involvement. 174b. Sobbing, Appellant reminded the officers of his recent trauma—telling them he was the one "pushing on her chest." 172a. An adolescent under this level of stress would likely have an impaired understanding of their options and have difficulty making a rational choice, particularly as compared to a reasonable adult. *See e.g.*, *Testimony and Interrogation of Minors: Assumptions About Maturity and Morality*, at 295.

ii. Adolescents' Difficulty with Future Orientation

Inherent in every false confession is the innocent person's failure to prioritize the long-term consequences of uttering an untrue admission of guilt during police interrogation. *See* Deborah Davis & Richard A Leo, *Interrogation-related regulatory decline: Ego depletion, failures of self-regulation, and the decision to confess,* 18 Psychol, Pub Policy, and L 673, 677 (2012). To avoid falsely confessing, an innocent suspect must repeatedly engage in "future orientation"—a term used to refer to the "constellation of abilities to think and reason about the future or connect current behavior with future events." *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations*, at 121. As noted above, scientific research has established that

<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4371> (accessed September 9, 2020). Anthony contacted the police and was interrogated later that same day. *Id.* Anthony falsely confessed to the murders and spent twenty years in prison before being exonerated. *Id.*

future orientation increases with age. *Id*. Children and teenagers are therefore more likely than adults to falsely confess without adequately accounting for the future consequences of their actions during police interrogation.

Adolescents' inability to prioritize long-term consequences of their actions also distorts their perception of the duration of an interrogation. Lengthy interrogations increase the risk of false confession for suspects of any age, particularly when accompanied by sleep deprivation or prolonged isolation from the suspect's loved ones. *Police-Induced Confessions: Risk Factors and Recommendations*, at 16. However, even a relatively short period of interrogation—such as the forty-minute interrogation in this case—may be perceived by adolescents as endless, putting additional pressure on young suspects to adopt interrogators' narratives. *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations*, at 121. Accordingly, adolescents, like Appellant, are more likely than adults to falsely confess even during a short interrogation, in order to put an end to the source of their current, seemingly-endless, stressor—the police questioning—without adequate consideration of their future. Evincing this failure to orient toward the future, many teenagers who have falsely confessed explained that they did so to put an end to the interrogation or, in the context of a police-station interview, so that they would be permitted to go home. *Id.* at 120; *see also* Steven A Drizin & Richard A Leo, *The Problem of False Confessions in the Post-DNA World*, 82 NC L Rev 891, 969 (2004).

iii. Adolescents' Sensitivity to Power Imbalance with Authority Figures, Increasing the Risk of a "Compliant" False Confession

Social science research has consistently demonstrated the "powerful phenomenon" of individuals' obedience to "authority figures because of their authoritative status per se." Allison D Redlich & Gail S Goodman, *Taking responsibility for an act not committed,* 27 Law and Hum Behav 141, 152, (2003). Compliance with authority figures, like police officers, is exacerbated

for adolescents, who are so "sensitive to the power imbalance between themselves and authority figures[,]" that the police "interrogation interaction itself—by virtue of the process and the social and legal roles of those involved—likely fosters perceived compulsory compliance" with the interrogating officers. *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations,* at 5. Adolescents subjected to police questioning are therefore more likely than adults to view themselves as without any option but to submit to questioning and acquiesce to interrogators' demands to "admit" wrongdoing when instructed to do so, regardless of actual guilt or innocence.

Because adolescents are "predisposed" to accede to police officers' suggestions and comply with demands for a confession, they are thus vulnerable to providing "coerced-compliant" or "compliant" false confessions. *See False Confessions: Causes, Consequences, and Implications,* at 336. Compliant confessions refer to false inculpatory statements elicited by police, from an innocent suspect who confesses to put an end to the interrogation through compliance, or to seek a perceived or implied reward. *Testimony and Interrogation of Minors: Assumptions About Maturity and Morality,* at 296.[7] Paradoxically, factually innocent individuals are at risk of providing a compliant confession *because of their innocence* and corresponding naïve belief that the truth will prevail regardless of the words they may utter in an interrogation room. *Police-Induced Confessions: Risk Factors and Recommendations,* at 22-23 (explaining that "innocence itself may put innocents at risk").

[7] Social scientists have identified three categories of false confessions—(1) "voluntary," meaning spontaneously provided without questioning or pressure from authorities; (2) "coerced-compliant," described above; and (3) "coerced-internalized," which is provided by a suspect who ultimately "comes to believe that they may have committed the crime in question, sometimes confabulating false memories in the process." *Police-Induced Confessions: Risk Factors and Recommendations*, at 14-15.

Here, Appellant's statement bears similarities to a compliant false confession.[8] As highlighted above, Appellant expressly told the interrogating officers that he would adapt his statement to comply with the officers' version of events, stating: "[i]t's, it's what you're saying. *I'm just gonna agree with what you say*." 177a (emphasis added). Moreover, Appellant's final statement was largely a recitation of the officers' repeated suggestions that Appellant was in the room when his mother accidentally fell from the window. An innocent confessor's adoption of facts or narratives suggested to them by police is not uncommon in compliant false confessions. *See, e.g.*, *The Substance of False Confessions*, at 1080-1082 (detailing instances in which suggestion by police was apparent in recordings of several analyzed false confessions); *People v Thomas*, 22 NY3d 629 (2014) (noting that Adrian Thomas, who falsely confessed to killing his infant child, provided a statement that was entirely "suggested to [him] by his interrogators").

B. Various "Situational" Risk Factors that Increase an Adolescent's Risk of False Confession are Present in this Case

Despite the overwhelming scientific consensus that children are ill-equipped to respond rationally to police interrogation, most police "[i]nterrogation manuals recommend that police use the same techniques with children as with adults." Barry C Feld, *Police Interrogation of Juveniles An Empirical Study*, 97 J of Crim L and Criminology 219, 222 (2006). An innocent adolescent, already uniquely vulnerable to coercion because of the cognitive limitations discussed above, is placed at an even greater risk of false confession when "situational" risk factors are involved. In

[8] The State, in its reply brief, takes issue with the characterization of Appellant's statement as a "confession," and the comparison of Appellant's statement to a false confession, arguing that the statement is more accurately described as an "apparent false claim of innocence." Plaintiff-Appellee Supplemental Brief to the Supreme Court 6/23/2020, at 29 n 24. Characterizing Appellant's statement as such has no bearing on the *Miranda* custody analysis. Moreover, distinguishing Appellant's inculpatory admission from other known false confessions on such a basis is inapposite. Although Appellant never stated that he was responsible for his mother's death, the statement elicited by the officers squarely inculpates him in the alleged homicide and, if the Court of Appeals' decision is affirmed, the State will undoubtedly present the factfinder with Appellant's statement in their case in chief. Appellant's statement is thus properly categorized as a confession.

this case, the interrogating officers employed two high-risk tactics on the sixteen-year-old Appellant: the "false evidence ploy" and "minimization."

The "false evidence ploy" has been used in the majority of known, police-coerced false confession cases. *Police-Induced Confessions: Risk Factors and Recommendations,* at 12. The tactic exacerbates the stress of the interrogators' accusations of guilt by lying to the suspect about evidence that does not exist, for example, fabricating a positive eyewitness identification or inventing inculpatory forensic evidence. *Id.* at 28. After learning of the (false) evidence, a suspect will likely feel "trapped" based on the perceived "inevitability of evidence against them" and, consequently, view compliance with officers' suggestions and admission of guilt as the only option. *Id*. The presentation of false evidence is regarded as a "controversial tactic," especially in light of the outsized role it has played in inducing innocent suspects to falsely confess. *Id.* The powerful, coercive impact of the false evidence ploy on adults, has been shown to have a "magnified" impact on teenaged suspects. *See Taking responsibility for an act not committed,* at 152.

The interrogating officers in this case falsely told Appellant that they would soon be in possession of video evidence that would clearly depict the crime and conclusively identify the perpetrator. *See* 172a (Sergeant Wehby stating, falsely,[9] that the surveillance video was "shipped"

[9] This is not the first documented instance in which Sergeant Wehby has used controversial and unlawful interrogation tactics to elicit a homicide confession. In 2010, as part of an investigation into a 1978 murder, Sergeant Wehby lied to the suspect during a custodial interrogation, by falsely "rais[ing] the specter" that the petitioner's hairs and DNA may be at the crime scene. *See Cooper v. Chapman*, 970 F.3d 720, 725 (6th Cir. 2020). During this interrogation, Wehby also used minimization tactics similar to those used here, suggesting that if the petitioner confessed to involvement in the homicide he "could potentially be portrayed as the 'fall guy,' who just happened to be at the scene of the crime when someone else shot" the victim. *Id.* Furthermore, although petitioner was denied relief because the Court concluded that he was not prejudiced by the erroneous admission of his confession, the State of Michigan conceded that Sergeant Wehby violated petitioner's right to remain silent during the custodial interrogation that led to a full confession. *Id.* at 728. Specifically, the State and the Court acknowledged that petitioner unequivocally and repeatedly asserted his right to silence, yet "Wehby persisted, . . . [and] . . . [t]he questioning continued[.]" *Id.* at 726. As the dissenting Justice summarized, "local detectives elicited from [petitioner] a confession that he aided and abetted the murder of [the victim] after [petitioner] *plainly invoked his right to remain silent*[.]" *Id.* at 733 (Nelson Moore, J., dissenting) (emphasis added).

to the "state lab," where "they're gonna blow it up[,] [a]nd it's gonna show who was there"). In reality, officers did not send the surveillance video to the laboratory, and the video—which depicts mere shadows of the perpetrator and the crime—cannot possibly be forensically enhanced to show an ID-quality image of the perpetrator. In another false characterization of the video evidence, officers stated they were "99.9% sure" that the perpetrator was male, and suggested that they knew Appellant was the only male in the house at the relevant time and, therefore, implicated in his mother's murder. *See* 169a, 172a. When the officers were not satisfied with Appellant's initial statements, they continued to implore him to admit guilt by lying about the purportedly "picture perfect" video evidence of the crime. 177a-178a.

In addition to the presentation of false evidence, police are trained to use "minimization" tactics on both children and adults. *See Police-Induced Confessions: Risk Factors and Recommendations,* at 10; Fred Inbau et al, *Criminal Interrogation and Confessions* (Chicago: Jones & Bartlett Learning, 2013), pp 238-39.

> [M]inimization tactics are designed to provide the suspect with moral justification and face-saving excuses for having committed the crime in question. Using this approach, the interrogator offers sympathy and understanding; normalizes and minimizes the crime, . . . and offers the suspect a choice of alternative explanations—for example, suggesting to the suspect that the murder was spontaneous, provoked, peer-pressured, or *accidental*[.] . . . Research has shown that this tactic communicates by implication that leniency in punishment is forthcoming upon confession.

Police-Induced Confessions: Risk Factors and Recommendations, at 10, 27 (emphasis added). Because of adolescents' cognitive limitations under stress, as well as their "hypersensitivity to rewards" and "preference for immediate rewards" without adequate future orientation, the use of minimization tactics that imply leniency in exchange for a confession, place adolescent suspects at a heightened risk of providing a coerced, and potentially false, confession. *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations,* at 120.

In an effort to elicit an inculpatory statement, interrogators here pressed an "accident" narrative at least four times before Appellant finally adopted their version of events—that he was in the room holding a step ladder when his mother fell from a window. *See* 169a (suggesting that "somebody could be helping somebody with something, holding the ladder"); 171a (proposing that Appellant was "helping [his] mom clean out the windows, and she was having trouble with the screen . . . and [Appellant] was trying to hold the ladder, and she slipped and fell"); 172a (suggesting that Appellant was not holding the ladder "good enough" or "turned around to look at [his] phone, and . . . was supposed to be holding the ladder. And she fell"); 175a (assuring Appellant that "it's still an accident if you're looking at your cell phone, and she slips."). Further, the officers implied that there would be "trouble" if Appellant did not admit involvement, and that the officers would "try and help" Appellant if he placed himself at the scene of the crime. 174a.

The interrogating officers' use of these minimization tactics and their lies about the video evidence, particularly in conjunction with the officers' implication that Appellant was the only possible suspect and their repeated rejection of Appellants' exculpatory statements, appeared calculated to forecast to Appellant that he was "trapped," and that his only option was to provide a statement that mirrored the officers' suggested version of events.

When psychologically manipulative police tactics, such as the false evidence ploy and minimization, are utilized against an adolescent suspect, an adolescent's existing risk of false confession is amplified. As the science discussed above reveals, adolescents' cognitive disadvantages pervade their perception of and reaction to police interrogation and thus, each aspect or circumstance regarding an interrogation has a demonstrably distinct impact on a typical child or adolescent as compared to a reasonable adult. Accordingly, a young person's age cannot be dismissed as a singular, isolated factor in the *Miranda* custody analysis. Instead, each relevant

factor in the *Miranda* custody inquiry—including the use of psychologically coercive tactics like those used here—must be analyzed from the perspective of a reasonable child of the suspect's age.

C. The Michigan Court of Appeals' Majority Opinion Contravenes *JDB v North Carolina*, and, in so doing, Increases the Risk that Michigan Law Enforcement Officers Will Continue to Extract Coerced, and Potentially False, Statements from Children and Teenagers

The United States Supreme Court has recognized that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Graham v Florida*, 560 US 48, 68 (2010). In consideration of such science, and consistent with decades of jurisprudence regarding the "common sense" notion that children perceive police interrogation differently than adults,[10] the Court in *JDB v North Carolina* held that a child's age is an objective factor that must be considered in the *Miranda* custody analysis. 564 US 261, 277 (2011). In support of its holding, the Court explicitly recognized that youth, "as a class," *id.* at 272, are vulnerable to suggestion and police coercion and are thus at an "acute" risk of "confess[ing] to crimes they never committed," *id*. at 269 (internal citation and quotation marks omitted). Because of children's categorical vulnerabilities, "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go." *Id.* at 272.

In reaching its conclusion that Appellant was not in custody for *Miranda* purposes when interrogated by officers in his home, the Michigan Court of Appeals' majority opinion effectively ignored the *JDB* Court's ruling—relegating this binding precedent to a brief footnote and distinguishing it based on the facts of the instant case. *See People v Altantawi*, No 346775, 2019

[10] *JDB*, 564 US at 280; *see also Haley v State of Ohio*, 332 US 596, 599 (1948) ("That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens."); *Gallegos v Colorado*, 370 US 49, 54 (1962) ("a 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police"); *Roper v Simmons*, 543 US 551, 569 (2005) (reasoning that "juveniles [children under 18 years old] are more vulnerable or susceptible to negative influences and outside pressures"); *Miller v Alabama*, 567 US 460, 477 (2012) (discussing the psychological "incompetencies associated with youth—for example, his inability to deal with police officers").

WL 4230693, at *7, n 3 (Mich App 2019). The Court of Appeals relied instead upon a misapprehension of *Yarborough v Alvarado*, 541 US 652 (2004), asserting incorrectly that "the United States Supreme Court held that when a minor is involved, the test is not whether a reasonable minor would believe he or she is free to leave, but whether a reasonable person would believe so." *Id*. at *6 (citing *Alvarado*, 541 US at 667). As the *JDB* Court recognized, the *Alvarado* Court, applying the deferential standard of review for federal habeas corpus petitions, held only that the state court in that case did not unreasonably apply the clearly established law at the time, when it found that a seventeen-year-old suspect was not in custody for *Miranda* purposes. *See JDB*, 564 US at 276; *see also Alvarado*, 541 US at 663-64. *Alvarado* however does not stand for the broad proposition that the Court of Appeals' incorrectly pronounced. Indeed, the *JDB* Court rejected the "reasonable person, not reasonable minor" test that the Michigan Court of Appeals endorsed, finding that application of "a reasonable person of average years" inquiry to the facts of that case would result in "absurdity." *JDB* 564 US at 275-76.

The *Miranda* warnings—which were not provided here—were established to ward against police coercion and false confessions by assuring that suspects are aware of and may exercise their constitutional rights. *See Miranda*, 384 US at 455, n 24 (describing the "heavy toll" custodial interrogation takes on individuals and discussing a known false confession). Of course, providing adolescents with *Miranda* warnings prior to police questioning will not, by itself, function as a panacea for the grave problem of juvenile false confessions.[11] However, for all the reasons

[11] Children and adolescents have limited comprehension of the *Miranda* warnings, particularly when under the stress of interrogation. *See e.g*., Richard Rogers et al, *Decrements in Miranda Abilities: An Investigation of Situational Effects Via A Mock-Crime Paradigm*, 35 Law and Hum Behav 392, 400 (2011). Even when adolescents comprehend the literal meaning or words of *Miranda* warnings, they nonetheless may not have a "rational" understanding of their rights, meaning they may not comprehend the "relevan[ce] to the situation they are in" nor appreciate that they may actually exercise such right, in the face of a police officer's request for compliance. *Police-Induced Confessions: Risk Factors and Recommendations,* at 6; *Police Interrogation of Juveniles An Empirical Study,* at 53 ("Juveniles . . . have greater difficulty [than adults] conceiving of a right as an absolute entitlement that they can exercise without adverse consequences."). Accordingly, many experts recommend that young people be provided

discussed above, the critical prophylactic measures dictated by *Miranda* and its progeny are all the more vital when the subject of interrogation is a child or adolescent.

The Michigan Court of Appeals' custody test, if left undisturbed, will result in police officers treating child and adolescent suspects as if they were adults, and subjecting young people to the dangerous coercion that the *Miranda* warnings are meant to curtail, without the protections of *Miranda*. Such a ruling not only would be "nonsensical," *JDB* 564 US at 275-76, but would invariably result in an increase of coercive police interrogation of juveniles without the provision of *Miranda* warnings, and a resulting uptick in juvenile false confessions in Michigan.

D. This Court Must Announce a *Miranda* Custody Test that Meaningfully Accounts for a Suspect's Age

Adolescents' increased susceptibility to police coercion is "a reality that courts cannot simply ignore." *JDB*, 564 US at 277. A minor's age—which has been proven and recognized by courts to impact a young suspect's perception of, response to, and judgment during an interrogation—cannot be considered in a vacuum, or relegated to a footnote, as merely one of several factors in the *Miranda* custody test. As the *JDB* Court instructed, the relevant circumstances of an interrogation are not to be isolated and evaluated "one by one[,]" but, rather, each objective circumstance, including age, must be understood as impacting how the other factors or circumstances are "internalize[d] and perceive[d]" by the suspect. *Id.* at 278. To assure that the immutable characteristics of youth are meaningfully considered by law enforcement and courts conducting *Miranda* custody analyses, this Court must reverse the Michigan Court of Appeals' decision and hold that the custody analysis requires an objective inquiry into all relevant

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access to counsel to assist the young suspect in understanding and determining whether or not to waive their *Miranda* rights. *See e.g.*, *Applying the Lessons of Developmental Psychology to the Study of Juvenile Interrogations,* at 127 (recommending consideration of "mandatory assistance of counsel" to "compensate for youths' deficits in the interrogation room"); *Children Under Pressure,* at 52-53 (advocating for a *per se* ban on *Miranda* waivers for juveniles, without consultation with an attorney).

circumstances of the interrogation, viewed through the lens of a reasonable child of the suspect's age.

As applied to this Court's *Miranda* custody test, the analysis for minors would require courts

> to determine, in light of all of the objective circumstances surrounding the interrogation: (1) whether a reasonable [*child of the suspect's age*] would have felt that he was not at liberty to terminate the interrogation and leave; and (2) whether, [*viewed through the lens of a reasonable child of the suspect's age,*] the environment presented the same inherently coercive pressures as the type of station house questioning at issue in *Miranda v Arizona*, 384 US 436 (1966).

People v Barritt, 501 Mich 872 (2017) (clarifying this Court's two-pronged *Miranda* custody analysis). While age will not be dispositive in every case, *JDB*, 564 US at 277, this Court must require that each factor and the ultimate inquiries in the objective, totality-of-the-circumstances custody analysis be assessed *from the perspective of a reasonable child of the subject's age*.

A custody inquiry that is oriented from the young suspect's perspective is a logical application of *JDB* and, accordingly, is not a novel approach. Courts across the country addressing the *Miranda* custody question, have appropriately inquired whether, in light of the objective circumstances surrounding the interrogation, a reasonable child of the subject's age would have felt free to terminate the police questioning and leave. *See e.g.*, *In re EW*, 2015 Vt 7, ¶ 23 (2015); *United States v IMM*, 747 F3d 754, 766 (9th Cir 2014); *NC v Com*, 396 SW3d 852, 862 (Ky 2013); *State v Cooks*, 2019-01684; 284 So 3d 632 (La 2019). *Accord In re Elias V*, 237 Cal App 4th 568, 591 (2015) (finding a child's statement involuntary after "viewing the interrogation *through the lens of this thirteen-year*-old student") (emphasis added).

Applying an age-appropriate test to the facts of the instant case, it becomes imminently clear that Appellant was in custody when questioned by police. From the moment officers arrived to interrogate Appellant, until the time he was formally arrested, the officers controlled the

movement of this sixteen-year-old and his father. A reasonable sixteen-year-old—who is likely to view even a relatively short interrogation as a stressful, compulsory demand to comply with police—questioned by three armed officers who prevented him and his father from moving about their home freely, who were clearly coordinating with other law enforcement officers directly outside the home, and who repeatedly accused him of lying about involvement in his mother's homicide, would not have felt at liberty to terminate the questioning and leave. Moreover, the interrogators' conduct in this case, detailed above, exemplifies the psychologically coercive interrogation practices that expose youth to a dangerously high risk of false confession. A reasonable sixteen-year-old, who will necessarily have diminished cognitive control under stress, difficulty with future orientation, and a predisposition to comply with police, who is then manipulated by officers using the false evidence ploy and minimization tactics, faces precisely the same sort of inherently coercive pressures as the station-house questioning at issue in *Miranda.* Accordingly, this Court must reverse the decision below and find that Appellant's statement is inadmissible in the trial against him.

CONCLUSION

For all of the reasons detailed above, *amici curiae* respectfully request that, to help protect youth from future coercive interrogations and false confessions, this Court reverse the decision below, find that Appellant was in custody when questioned by police, and clarify that the *Miranda* custody inquiry requires an objective analysis of all the relevant circumstances, viewed from the perspective of a reasonable child of the suspect's age.

Respectfully Submitted,

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s/David A. Moran

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