IN THE SUPREME COURT OF
THE STATE OF TENNESSEE

STATE OF TENNESSEE, Appellee v. ANTONIO TURNER-ADKISSON, Appellant	)))))))	Case No. No. W2022-01009-CCA-R3-CD Gibson County No. 19840

BRIEF OF *AMICI CURIAE* THE INNOCENCE PROJECT AND THE TENNESSEE INNOCENCE PROJECT IN SUPPORT OF APPELLANT

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INTRODUCTION

Due to the cognitive limitations of a young person's developing brain, children are at an increased risk of falsely confessing during police interrogation. Indeed, approximately one out of every three known false confessions were elicited from children aged eighteen years old or younger. *See* Innocence Project, *DNA Exonerations in the United States (1989-2020)*, https://www.innocenceproject.org/dna-exonerations-in-the-united-states/ (last viewed Nov. 18, 2024). These *documented* false confessions "most surely represent the tip of an iceberg," Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3, 3 (2010), since DNA testing is unavailable to establish innocence in most criminal cases, nor do documented false confessions include those disproved before trial. Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. Am. Acad. Psychiatry & L. 332, 332 (2009).

Significantly, in nearly all of the proven cases of false confessions, including confessions elicited from innocent children, the "confessions . . . [were] deemed voluntary and hence admissible at trial."[1] Saul Kassin,

[1] The voluntariness inquiry asks courts to determine whether, in light of the totality-of-the-circumstances, "a defendant's will was

Duped: Why Innocent People Confess—and Why We Believe Their Confessions 307 (2022). Once admitted into evidence, "confessions have more impact on verdicts than do other potent forms of evidence[,] . . . and . . . [jurors] do not adequately discount confessions—even when they are retracted and judged to be the result of coercion." *Id.* at 433-34 (internal citations omitted). Even in the face of compelling evidence of innocence, false confessions can convince factfinders of the innocent confessor's guilt. Indeed, twenty-two percent of individuals who falsely confessed and were later exonerated by DNA testing *had exculpatory DNA evidence available at the time of trial* but were nonetheless wrongfully convicted. *DNA Exonerations in the United States (1989–2020)*, *supra*.

False confessions not only convict the innocent, but are also a threat to public safety, since the true perpetrator is left free to commit additional crimes. *See id.* (noting that the real perpetrator was identified in 75% of false confession cases that were uncovered through post-conviction DNA testing, and that, while the innocent person was wrongfully prosecuted and incarcerated, those true perpetrators went on

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overborne by the circumstances surrounding the giving of a confession." *State v. McKinney*, 669 S.W.3d 753, 765 (Tenn. 2023) (internal citations and quotation marks omitted).

to commit "48 additional crimes for which they were convicted, including 25 murders, 14 rapes, and 9 other violent crimes"). Preventing the elicitation and admission into evidence of false confessions is therefore not only critical to help protect against the injustice of wrongful conviction, but also to help protect the local community. Deterring the use of interrogation tactics that lead to false confessions is thus a critical safeguard against such tragic outcomes.

As the United States Supreme Court has long recognized, youth, "as a class," are especially vulnerable to suggestion and police coercion and are at an "acute" risk of "confess[ing] to crimes they never committed." *J.D.B. v. North Carolina*, 564 U.S. 261, 269, 272 (2011) (internal citation and quotation marks omitted). Courts and legislatures—as well as the foremost experts in the study of false confessions, and even a leading law enforcement training organization—have all recognized the dangerously coercive power of police deception in interrogation, particularly when used against children and adolescents. Here, during a six-hour, middle-of-the-night interrogation, police lied to a teenager about the evidence against him and convinced him, falsely, that he could be executed if convicted. Despite the use of such profoundly

coercive, deceptive tactics, the intermediate appellate court found that Appellant was not in "custody" for purposes of *Miranda*, that his implicit, unspoken *Miranda* waiver was valid, and that his statements were voluntarily provided.

To help protect young people from this type of coercion, which place innocent children at grave risk of false confession, *amici* urge this Court to reverse the ruling below and, in so doing, hold that, under Article I, § 9 of the Tennessee Constitution, confessions elicited from children following police lies about evidence and false threats of the death penalty are *per se* involuntary and inadmissible. Further, *amici* urge the Court to provide guidance to lower courts engaging in *Miranda* custody and waiver assessments, to ensure that a young person's age and corresponding vulnerabilities are adequately considered in those inquiries.

STATEMENT OF RELEVANT FACTS

At approximately 2:00 a.m., on September 27, 2017, police officers arrived at the home of 17-year-old high school student Antonio Turner-Adkisson (hereinafter "Antonio")—who had never before been in legal trouble of any kind—to question him about a shooting that had occurred at a nearby apartment complex the evening before. *State v. Adkisson*, No. W2022-01009-CCA-R3-CD, 2024 WL 1252173, at *10 (Tenn. Ct. App. Mar. 25, 2024) (McMullen, P.J., dissenting). Although the officers told Antonio he was not under arrest, they read him his *Miranda* rights and took him to the police station for questioning. *Id.* Antonio never expressly waived those rights, was not given an opportunity to consult with his mother, and was not provided with a *Miranda* waiver form. Antonio was then taken to the station in the police vehicle, and his mother followed in a separate car. *Id.*

At the police station, Antonio was separated from his mother and taken into a small, windowless room, where he was interrogated for the next six hours. *Id.* at *11-14 (McMullen, P.J., dissenting). Alone with the lead interrogator, Investigator Williams, Antonio was then read his *Miranda* rights again, but despite his youth, not asked whether he

understood his rights, whether he wished to waive them, or provided an opportunity to consult with his mother, who was present in the police station but prevented from entering the interrogation room. Instead, immediately after "rapidly" reading Antonio his *Miranda* rights, Investigator Williams threatened him with the death penalty while implying that, by speaking with officers, he could curry favor with the district attorney.[2] This threat was made despite the fact that Antonio was categorically ineligible for capital punishment as a seventeen-year-old. *See Roper v. Simmons*, 543 U.S. 551, 578 (2005) (holding that the Eighth Amendment prohibits imposition of the death penalty on offenders who were under the age of eighteen at the time of the crime).[3]

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[2] Williams warned that Antonio was "looking at possibly the death penalty," *Adkisson*, 2024 WL 1252173, at *11 (McMullen, P.J., dissenting), and went on to say "whereas anything we discuss right now, I can talk to the [district attorney] about in the future." *Id.* at *15 (McMullen, P.J., dissenting).

[3] Contrary to the Court of Appeals' majority decision, this incorrect statement of law was never corrected or clarified during the interrogation. Rather, after over an hour of coercive interrogation, when Chief Sellers entered the room, Antonio responded to a threatening remark by adding that Investigator Williams told him he "might get the death penalty." *Adkisson*, 2024 WL 1252173, at *12 (McMullen, P.J., dissenting). To Which Sellers responds: "I don't know about that. We don't know about that. But you're in a lot of damn trouble. What you've got to do is help yourself." *Id.*

Antonio then began to talk, insisting that he was not involved in the shooting. His assertions of innocence were met with accusations that he was lying and would not be believed by a jury,[4] as well as a barrage of coercive, deceptive tactics. Significantly, Investigator Williams used what is known as the "false evidence ploy"—the tactic of lying to a suspect about incriminating evidence. Investigator Williams claimed that police had video evidence of Antonio that did not exist. *See Adkisson*, 2024 WL 1252173, at *11 (McMullen, P.J., dissenting) ("I would believe [Antonio's assertion of innocence] if I didn't see you on video. The Meadows has got video. Marshall Gardens has got video pointing towards the shooting"). No such video was collected or entered into evidence at trial; indeed Williams acknowledged on cross-examination that such a video did not exist. Tr. Transcript, Vol. 4, pp. 478-79.

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[4] *Adkisson*, 2024 WL 1252173, at *11 (McMullen, P.J., dissenting) (Williams insisting that Antonio's statement that he ran away from the shooting was "bullshit" and threatening to charge Antonio with two counts of first degree murder after "the first lie [he] prove[s]"); *id.* at *12 (McMullen, P.J., dissenting) (Williams saying he "[didn't] believe [Antonio] was putting [himself] where [he] need[s] to be"); *id.* (Chief Sellers saying "But do you think twelve men and women in a jury box are going to believe that?"); *id.* (McMullen, P.J., dissenting) (Williams saying he is "on the verge of proving" that Antonio was with the co-defendant); *id.* at *13 (McMullen, P.J., dissenting) (Williams saying it is "not matching up" when Antonio repeated he did not have a gun).)

Additionally, throughout the interrogation, both Investigator Williams and Police Chief Bobby Sellers—who entered the interrogation room at approximately 3:00am—repeatedly implied that Antonio would be treated with leniency if he confessed, as they falsely suggested at least four times that confessing would "help" Antonio.[5] The officers exploited Antonio's youth and inexperience both with (false) threats of execution and false suggestions that his youth would lead to leniency *if* he confessed. At one point, Investigator Williams told Antonio he could "whisper in [the district attorney's] ear" that Antonio was cooperative, scared, remorseful, and "just a kid." *Adkisson*, 2024 WL 1252173, at *13 (McMullen, P.J., dissenting) . To receive such leniency, Antonio was told he needed to tell the "truth"—meaning confess to the version of events that officers insisted upon: that he was guilty of homicide. *Id.* (McMullen, P.J., dissenting)

[5] *See Adkisson*, 2024 WL 1252173, at *11 (McMullen, P.J., dissenting) (Investigator Williams telling Antonio that if he is honest, Investigator Williams will help Antonio as much as he can); *id.* at *12 (McMullen, P.J., dissenting) (Chief Sellers saying "[Y]ou're in a lot of damn trouble. What you've got to do right now is help yourself"); *id.* (McMullen, P.J., dissenting) (Investigator Williams telling Antonio that he has to be truthful if he wants Williams' help).

Throughout the all-night interrogation, the officers used additional "minimizing" techniques when they suggested repeatedly that perhaps Antonio shot the victims because he was just "scared," "in fear for [his] life." *Id.* at *11 (McMullen, P.J., dissenting); *see also id.* at *13 (McMullen, P.J., dissenting) (suggesting that the district attorney would understand and Antonio would be treated with leniency if he admitted he was "scared."). Significantly, moments before Antonio's ultimate admission, Investigator Williams used a highly coercive minimizing tactic, known as the "alternative question technique."[6] Specifically,

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[6] Such a tactic is taught as a critical aspect of the "Reid Technique" of interrogation. Named after one of its founders, John E. Reid, the Reid Technique has been the "most widely publicized and probably most widely used" interrogation method in the United States since its inception in the 1960's. Miriam S. Gohara, *A Lie for a Lie: False Confessions and the Case for Reconsidering the Legality of Deceptive Interrogation Techniques*, 33 Fordham Urb. L.J. 101, 117 (2006). The Reid Technique instructs officers that they should propose a binary choice to their suspects—either they committed the crime for an inexcusable or repulsive reason, or simply because of a mistake or lapse in judgment that reflects only basic human nature. *See Selecting the Proper Alternative Question*, Reid (Sept. 1, 2004), https://reid.com/resources/investigator-tips/selecting-the-proper-alternative-question (explaining that the "choices presented in an alternative question generally contrast an undesirable characteristic of the crime to one that is desirable" but "accepting either choice results in the first admission of guilt"); Fred E. Inbau et al., *Criminal Interrogation and Confessions* 293-303 (2013) (instructing officers on how to utilize the "alternative question" technique to "weaken the suspect's resistance" to

investigator Williams asserted that he knew undoubtedly that Antonio shot the victims, and that the only question Antonio needed to answer was: "Did you shoot out of fear? Or did you shoot to kill somebody?" *Id.* at *14 (McMullen, P.J., dissenting). Finally, after a sleepless night spent in an interrogation room—where he was subjected to a variety of highly coercive and deceptive tactics, and denied multiple requests to speak with his mother[7]—Antonio confessed to shooting the victim out of fear, ending the interrogation.

Antonio's motion to suppress his confession was denied, the confession was admitted into evidence at trial, and he was subsequently convicted of two counts of second-degree murder. On appeal, the Court of

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confession and to "impl[y] a rather sympathetic attitude on the part of the investigator").

[7] Throughout the interrogation, officers denied at least four requests from Antonio to see his mother. The first time Antonio asked to see his mother, at approximately 2:52a.m., Investigator Williams outright refused and said, "No, I'm not getting your mamma in here. I mean, this is grown up shit, you know what I'm saying?" *Adkisson*, 2024 WL 1252173, at *11. The other three times Antonio asked for his mother, Investigator Williams falsely responded that he would allow Antonio to speak with her but that he just had to wait. *Id.* at *12 (Investigator Williams saying he would let Antonio "talk to [his mother] in just a second"); *id.* at *13 (Investigator Williams saying "Yeah, I think they're talking to her. But we'll get her in a minute"); *id.* (Investigator Williams telling Antonio that he "can talk to [his mother] in a minute").

Criminal Appeals affirmed his conviction, holding, among other things, that he was not in custody for purposes of *Miranda* during his hours' long, middle-of-the-night interrogation; in the alternative, his implicit *Miranda* waiver was valid; and his statements were provided voluntarily. *Id.* at *6-7.

ARGUMENT

I. INNOCENT ADOLESCENTS FALSELY CONFESS TO SERIOUS CRIMES AT A SUBSTANTIALLY HIGHER RATE THAN ADULTS

In the last several decades, false confessions—innocent people "admitting" to having committed a crime—have been "recognized as one of the leading sources of erroneous convictions of innocent individuals." Jessica R. Klaver et al., *Effects of Personality, Interrogation Techniques and Plausibility in an Experimental False Confession Paradigm*, 13 Legal & Criminological Psych. 71, 72 (2008) (citations omitted). False confessions account for nearly one-third of all known DNA exonerations and approximately twelve percent of all known exonerations nationwide. *See* Innocence Project, *DNA Exonerations in the United States (1989–2020)*, (https://www.innocenceproject.org/dna-exonerations-in-the-united-states/) (last accessed November 18, 2024); *Exoneration Detail List*, Nat'l Registry Exonerations,

https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx (last visited Nov. 18, 2024).[8] False confessions are particularly prevalent in cases like this one—homicide offenses involving young suspects. *See Exoneration Detail List*, *supra* (over 30% of the nation's proven false confession cases involved confessions elicited from people aged 18 or younger; nearly 75% of these false confessions elicited from young people resulted in wrongful murder convictions).

The scientific findings discussed below, which explain why young people perceive and respond to police interrogation differently than adults, compel the conclusion that this state's voluntariness, *Miranda* custody, and *Miranda* waiver doctrines should be revisited to assure that each meaningfully accounts for a young suspect's age and corresponding vulnerabilities.

A. Adolescence is a Dispositional Risk Factor for False Confession

Since the first DNA exoneration in 1989, a robust canon of scientific research has developed, providing empirical data on the factors that can

[8] 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.

lead innocent people to inculpate themselves. These risk factors—a myriad of which are present in the instant case—are categorized broadly into the "dispositional" characteristics of the confessor (such as youth or cognitive disability) and the "situational" circumstances of the interrogation itself (such as the police interrogation tactics or the environment in which the interrogation occurred). *See* Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3, 4 (2010). Certainly, adults—including adults without any cognitive, developmental, or mental health issues—can and do falsely confess as a result of coercive police tactics. But, as detailed below, adolescence, independent of any other variable, 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. Pol'y, & 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 Psych. Sci. 55, 56 (2007); Kimberly Thomas, *Reckless Juveniles,* 52 U.C. 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. *Cleary*, *supra*, at 120. *Amici* will focus primarily on adolescents' diminished cognitive control under stress, difficulty with "future orientation," and sensitivity to the power imbalance between themselves and law enforcement officers. The collective impact of these deficits render adolescents underequipped to understand their rights in the inherently stressful context of police interrogation and, thus, at risk of false confession even in circumstances under which an adult would have capacity to withstand

continued interrogative pressure. *Id.* at 120-22; *see also* Laurel LaMontagne, *Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions*, 41 W. St. U. L. 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." Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra*, at 6. 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 et al., *Testimony and Interrogation of Minors: Assumptions About Maturity and Morality*, 61 Am. Psych. 286, 295 (2006). Adolescents under stress are "vulnerable to further distortion[]" of their "already skewed cost-benefit analyses[.]" *Id.* A 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." Cleary, *supra*, at 120-21 (citing Alexandra O. Cohen et al., *When Is an Adolescent an*

Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts, 27 Psych. Sci. 549, 549–562 (2016)). Teenagers therefore have less capacity for cognitive control during the inherently stress-inducing atmosphere of police interrogation.

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 Psych. Pub. Pol'y, & 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." Cleary, *supra*, at 121. Future orientation increases with age. *Id.* Children and teenagers are therefore more likely than adults to falsely confess without adequately considering 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 where, as here, coercive interrogation is accompanied by sleep deprivation[9] or prolonged isolation from the suspect's loved ones. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra*, at 16. However, even a relatively short period of interrogation may be perceived by adolescents as endless, putting additional pressure on young suspects to adopt interrogators' narratives of guilt. Cleary, *supra*, at 121. Accordingly, adolescents 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 adequately considering their future. Evincing this failure of future orientation, 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;

[9] There is "high level of consensus" among leading experts that sleep deprivation impacts decision making and thus renders a suspect of any age more vulnerable in the interrogation room. *See* Kassin et al., *On the General Acceptance of Confessions Research* at 71-72.

see also Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 969 (2004).

iii. *Adolescents' Sensitivity to Power Imbalance with Authority Figures*

Psychological research has consistently demonstrated the "powerful phenomenon" of individuals' obedience to "authority figures because of their authoritative status." Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 L. & Hum. Behav. 141, 152 (2003). Compliance with authority figures, like police officers, is greater 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. Cleary, *supra*, 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, 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* Leo, *supra*, at 336, 338. 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. Owen-Kostelnik et al., *supra*, at 296. Paradoxically, factually innocent individuals and children are believed to be at heightened 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. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra*, at 22-23 (explaining that "innocence itself may put innocents at risk").

B. Adolescents have Diminished Capacity to Comprehend their *Miranda* Rights

In addition to their increased susceptibility to coercion, young people, particularly those under twenty, are less likely than adults to understand and assert their *Miranda* rights in the interrogation room—rights that are meant to protect against the coercion that can occur when

a person is suddenly engulfed in a police-dominated environment. *See, e.g.*, Naomi E.S. Goldstein et al., *Evaluation of Miranda Waiver Capacity*, *in* APA Handbook of Psychology and Juvenile Justice 467, 475 (Kirk Heilbrun, David DeMatteo & Naomi E.S. Goldstein eds., 2016) ("Many juveniles . . . may not be able to apply the *Miranda* rights to their own situations or to recognize the consequences of waiving or asserting their rights[.]"). One study found that a majority of young people who received *Miranda* warnings did not understand them well enough to waive their rights; that only 20.9% of the young people exhibited understanding of all four components of a *Miranda* warning; and that 55.3% manifested no comprehension of at least one of the four warnings. Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 Cal. L. Rev. 1134, 1152-54 (1980).

Social science reveals that even "educated adults in the US . . . struggle to fully comprehend their [*Miranda*] rights." Saul M. Kassin et al., *The Right to Remain Silent: Realities and Illusions*, *in* The Routledge International Handbook of Legal and Investigative Psychology 4 (Ray Bull & Iris Blandón-Gitlin eds., 2019) (citations omitted); *see also State v. Purcell*, 203 A.3d 542, 564 (Conn. 2019) (relying on scientific research

to conclude that "even the [well educated] have difficulty understanding their *Miranda* warnings" (quotation marks and citations omitted; brackets in original)). Compared to the average adult, "established literature demonstrates substantial deficits in youths' understanding of the *Miranda* warnings and the constitutional rights they convey." Cleary, *supra*, at 123.

Further, the stress associated with police interrogation and accusations of wrongdoing further undermines a suspect's *Miranda* comprehension. A recent study found that stress diminished comprehension levels of "highly functioning college students down to those of . . . adults diagnosed as psychotic." *See* Laura Smalarz et al., *Miranda at 50: A Psychological Analysis*, 25 Current Directions Psych. Sci. 455, 456 (2016); *see also* Kyle C. Scherr & Stephanie Madon, *"Go Ahead and Sign": An Experimental Examination of Miranda Waivers and Comprehension*, 37 L. & Hum. Behav. 208, 214 (2013) (finding that "stress can undermine suspects' comprehension of a waiver's content[,]" and thus when accusations are more "serious," then "comprehension of the waiver [i]s lower"). As discussed above, children and adolescents respond to stress in a cognitively distinct way than adults, and thus face

additional barriers to *Miranda* comprehension when under the stress of interrogation.

Even if they comprehend the literal meaning of *Miranda* warnings, children and adolescents—because of their still-developing brains—may not comprehend the warnings' "relevan[ce] to the situation they are in," nor appreciate that they could actually exercise their rights in the face of a police officer's demand for compliance. Kassin et al, *Police-Induced Confessions: Risk Factors and Recommendations*, *supra*, at 8. Indeed, juveniles "have greater difficulty than adults conceiving of a right as an absolute entitlement that they can exercise without adverse consequences." Barry C. Feld, *Police Interrogation of Juveniles: An Empirical Study of Policy and Practice*, 97 J. Crim. L. & Criminology 219, 229-30 (2006). Concluding, as the Court of Appeals did here, that a *Miranda* waiver is voluntary, knowing, and intelligent, when a child simply begins to speak after police quickly read the child their *Miranda* rights—without ever explicitly waiving those rights—ignores this scientifically-established reality and leaves children without meaningful safeguards in the interrogation room.

II. POLICE DECEPTION—INCLUDING LIES ABOUT EVIDENCE AND FALSE THREATS OF THE DEATH PENALTY—PLACE INNOCENT PEOPLE, AND ESPECIALLY INNOCENT YOUTH, AT RISK OF FALSE CONFESSION

In an effort to elicit a confession from a teenaged suspect, officers here falsely convinced 17-year-old Antonio that he could be facing the death penalty, and lied to him about video surveillance evidence that did not exist. Both lies about evidence against the accused, known as the "false-evidence ploy," and deceptive threats of the death penalty have the power to manipulate the innocent into falsely confessing. Scientific study has conclusively determined that such police deception during interrogation significantly increases the risk that a suspect, and especially a young suspect like Antonio, will falsely confess. *See, e.g.*, Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra*, at 12; Joshua M. Stewart et al., *The Prevalence of False Confessions in Experimental Laboratory Simulations: A Meta-Analysis,* 36 Behav. Sci. & L. 12, 26 (2018) (finding, as a result of a "meta-analytic" study, that "deception during police interrogation. . . increase[s] [the] likelihood of false confessions").

A. Hundreds of Wrongful Convictions and Decades of Scientific Research Demonstrate that Police Lies About Evidence,

Known as the "False Evidence Ploy," Can Lead to False Confessions

The "false evidence ploy"—a tactic that involves presenting the suspect with non-existent evidence of guilt, such as fictional eyewitness identification, fabricated incriminating forensic evidence or, as in this case, video footage that does not exist—has been implicated in the vast majority of proven false confessions. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, *supra*, at 12, 28; *see also, e.g.*, Gohara, *supra*, at 102 (describing the use of false evidence ploys to extract confessions in the Central Park Five[10] case); Brandon L. Garrett, *The Substance of False Confessions*, 62 Stan. L. Rev. 1051, 1097-1099 (2010) (describing various additional cases of innocent people falsely confessing in response to the false evidence ploy); Richard A. Leo,

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[10] The Central Park Five, also known as the Exonerated Five, are five men who falsely confessed to the attack and rape of a woman in Central Park when they were young adolescents, the youngest being 14. The detectives who interviewed them repeatedly lied about the existence of evidence against them, as well as falsely told the young suspects that they had implicated each other. They spent 13 years in prison before the actual perpetrator confessed to the crime and they were exonerated. Salaam, Richardson & Santana, *We Are the 'Exonerated 5.' What Happened to Us Isn't Past, It's Present*, <https://www.nytimes.com/2021/01/04/opinion/exonerated-five-false-confessions. html/> (accessed November 18, 2022).

Structural Police Deception in American Police Interrogation: A Closer Look at Minimization and Maximization, *in* Interrogation, Confession, and Truth: Comparative Studies in Criminal Procedure 183-84 (Lutz Eidam, Michael Lindemann & Andreas Ransiek eds., 2020) (detailing the case of Martin Tankleff, an innocent teenager who was lied to by interrogating officers and, as a result, confessed to killing his parents, was wrongfully convicted, and spent nearly two decades in prison before he was ultimately exonerated and released).

The false evidence ploy engenders feelings of helplessness, as the suspect, regardless of guilt or innocence, feels "trapped" based on the perceived "inevitability" of evidence against them and, consequently, views acceding to officers' suggestions of guilt as the only option. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, at 16-17; *see also* Kassin, *The Social Psychology of False Confessions*, 9 Soc. Issues Pol'y Rev. 25, 34 (2015) (concluding, based on scientific studies, that the false evidence ploy has a grave psychological impact and leads to false confessions). Laboratory experiments have demonstrated that this tactic can and does induce innocent people to falsely confess to crimes or other misconduct, including, for example, "cheating, in

violation of a university honour code[,] . . . stealing money from the 'bank' in a computerized gambling experiment . . . and recalling past transgressions, including acts of violence." Snook et al., *Urgent Issues and Prospects in Reforming Interrogation Practices in the United States and Canada*, 26 Legal & Criminological Psychol 1, 10 (2021) (citations omitted). 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.

Experts in psychology have long understood that the "presentations of false information" are so powerful that they can "substantially alter subjects' visual judgments, beliefs, perceptions of other people, behaviors toward other people, emotional states, . . . self-assessments, memories for observed and experienced events, and even certain medical outcomes, as seen in studies of the placebo effect." Kassin, *Police-Induced Confessions*, *supra*, at 17 (citing eleven "highly recognized [classic studies] in the field" that "revealed that misinformation renders people vulnerable to manipulation" and omitting internal citations); Saul M. Kassin et al., *On the General Acceptance of Confessions Research: Opinions of the Scientific Community*, 73 Am. Psychologist 63, 70 (2018) (noting that

misinformation "can alter a person's memory for that event."). Consequently, a false evidence ploy during an inherently stressful interrogation can not only function to compel a confession from an innocent person as an act of compliance, but can even produce a "coerced-internalized" false confession. A "coerced-internalized" false confession is an incriminating admission by an innocent suspect who, persuaded by the interrogators' misrepresentation of the evidence, begins to doubt their memory of the event and wrongfully believe in their own guilt. Kassin, *Police-Induced Confessions*, *supra*. at 15; *see also* Perillo & Kassin, *Inside Interrogation*, 35 L. & Hum. Behav. at 328 (describing the results of a laboratory study in which misinformation "increased the number [of participants] who internalized guilt, from 12[%] to 55%").

In light of the robust literature in the field, there is overwhelming consensus among experts that false evidence ploys are dangerously manipulative. *See e.g.,* Snook et al., *Urgent Issues and Prospects in Reforming Interrogation Practices*, 26 Legal & Criminological Psychol. at 10 (noting that "the scientific community is in agreement regarding the risk of false evidence" in interrogation because it is "clear that misinformation renders people vulnerable to manipulation" and

"[n]umerous laboratory experiments specifically demonstrate the false evidence effect"). Indeed, in a 2018 survey of leading experts on false confession and interrogation coercion, nearly all agreed that "presentations of false incriminating evidence during interrogation increase the risk that an innocent suspect would confess to a crime he or she did not commit." Kassin et al, *On the General Acceptance of Confessions Research*, 73 Am Psychologist at 70-72 (finding that 94% of experts surveyed agreed there is reliable scientific evidence to support this proposition). These experts overwhelmingly agreed that the false evidence ploy, even when used against adult suspects, increases the risk of false confession in a manner "*equally perilous*" to the use of "explicit promises of leniency, threats of harm or punishment," and *even torture*. *Id.* at 70, 72, 75 (emphases added).

B. Threats of the Death Penalty Place the Innocent at Risk of Falsely Confessing; False Threats of Capital Punishment against Children—Especially when Combined with Other Psychologically Coercive Tactics—Further Increase the Risk

An examination of our nation's wrongful conviction cases reveal that "[i]n a significant number of proven police-induced false confession cases, interrogators' threats or promises relating to whether the death penalty will be imposed or whether the defendant will be executed appear

to have played a significant part in inducing the defendant's false confession." Welsh S. White, *Confessions in Capital Cases*, 2003 U. Ill. L. Rev. 979, 1008 (2003); *see also* Brandon L. Garrett, *The Substance of False Confessions*, 62 Stan. L. Rev. 1051, 1065 (2010) (noting that many innocent people who falsely confessed "later explained that they confessed in order to avoid threats of the death penalty"). A journalist researching this issue in 2017 found that there are at least two dozen cases of proven false confessions in which the confession was elicited from an innocent person threatened with the death penalty.[11] In at least five of those cases, the innocent false confessor was a child. More recently, in 2019 alone, six more people were exonerated who provided false confessions in response to a threat of the death penalty. *DPIC Analysis: Use or Threat of Death Penalty Implicated in 19 Exoneration Cases in 2019*, available at https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-special-reports/dpic-analysis-2019-exoneration-report-implicates-use-or-threat-of-death-penalty-in-19-wrongful-

[11] Andrew Cohen, *Confess, or "They'll F***ing Give you the Needle,"* The Marshall Project (Nov. 13, 2017), *available at* https://www.themarshallproject.org/2017/11/13/confess-or-they-ll-fucking-give-you-the-needle (last visited Nov. 18, 2024).

convictions#_ftn3 (last viewed Nov. 17, 2024). Further evincing the coercion involved in an interrogation in which a person is threatened, however implicitly, with capital punishment, *over twenty percent* of all innocent people who have ever been exonerated from death row had falsely confessed to the capital crime. *National Registry of Exonerations*, *supra* (last viewed Nov. 18, 2024).

Experts overwhelming agree that "[t]hreats of . . . punishment during interrogation can lead an innocent person to confess to a crime he or she did not commit." Kassin, *On the General Acceptance*, *supra*, at 71-72 (regarding "Explicit Threats"). When that threat involves the *ultimate* punishment—death—the coercive impact is undoubtedly exacerbated. And, when such a threat is made *deceptively*, against a child who, as a function of their age is especially vulnerable to police coercion but will never in fact face that punishment, the threat poses a particularly grave risk to the innocent child.

Further exacerbating the power of the false threat of the death penalty here, officers also used "minimization" tactics, suggesting throughout the six-hour-long interrogation that Antonio was just a "kid," who was in "fear" for his life. "Minimization" refers to a category of

techniques "designed to provide the suspect with moral justification and face-saving excuses for having committed the crime in question." *See* Kassin, *Police-Induced Confessions*, *supra*, at 12. Scientific research has revealed that officers who engage in minimization tactics that downplay the seriousness of the offense or, as here, provide "a choice of alternative explanations—for example, suggesting to the suspect that [a] murder was spontaneous, provoked, peer-pressured, or accidental rather than the work of a cold-blooded premeditated killer" communicate "by implication that leniency in punishment is forthcoming upon confession." *Id.* Consistent with real-world examples from proven false confession cases, laboratory studies reveal that such minimization tactics "have the pernicious effect of making people expect leniency even in the face of warnings that police cannot influence sentencing." *See* Luke & Alceste, *The Mechanisms of Minimization: ow Interrogation Tactics Suggest Lenient Sentencing Through Pragmatic Implication*, 44 L. & Hum. Behav. 266, 282 (2020).

Moreover, interrogators routinely use minimization in conjunction with the tactic of "maximization," which "convey[s] the interrogator's rock-solid belief that the suspect is guilty and that all denials will fail."

Kassin, *Police-Induced Confessions*, *supra*, at 12; *see also, e.g.*, *Criminal Interrogation and Confessions*, at 192 (instructing interrogating officers to express "absolute certainty in the suspect's guilt"). Maximization involves implicitly or explicitly threatening harsher consequences if the suspect persists in a claim of innocence, as well as "making an accusation, overriding [the suspect's] objections, and citing evidence, real or manufactured, to shift the suspect's mental state from confident to hopeless." Kassin, *Police-Induced Confessions*, *supra*, at 12.

Here, the interrogating officers used precisely such a coercive combination of tactics—they insisted in Antonio's guilt, by exaggerating (and lying) about evidence against him, and deceptively maximized the possible penalty against him, while offering him a face-saving, minimizing explanation. Scientists have found that, as here, when minimization (you're just a "scared kid") is used in conjunction with maximization (you're facing the death penalty) in this manner, the rate of false confession is significantly increased. Specifically, empirical research has revealed that "the combined use of minimization and maximization techniques increased the false confession rate from *3% to 43%*." *Interrogation, Confession, and Truth*, at 199 (citations omitted)

(emphasis added). And, analyses of the known false confession cases "have shown that minimization and maximization interrogation techniques—communicating implicit promises and threats (if not explicit promises and threats) are almost always present in police interrogations leading to proven false confessions." *Id.* (emphasis omitted).

III. TO HELP SAFEGUARD AGAINST THE WRONGFUL CONVICTION OF INNOCENT CHILDREN, THIS COURT SHOULD HOLD THAT CHILDREN'S CONFESSIONS ELICITED FOLLOWING POLICE DECEPTION ARE *PER SE* INVOLUNTARY AND INADMISSIBLE.

Because the use of deceptive interrogation tactics against children present a grave risk that the child will provide a false confession and, consequently, be wrongfully convicted, *amici* urge this Court to hold that the use of the deceptive interrogation tactics at issue here—namely, the false evidence ploy and lies about exposure to the death penalty—will render a child's resulting confession *per se* involuntary and inadmissible under Art. 1, § 9 of the Tennessee Constitution. This Court has consistently held that the Tennessee Constitution is "broader and more protective of individual rights than the test of voluntariness under the Fifth Amendment." *State v. Smith*, 933 S.W.2d 450, 455 (Tenn. 1996). To adequately protect this state's children's individual rights in the

interrogation room, and align Tennessee's Constitution with the scientific consensus discussed above, this Court should adopt the proposed *per se* rule.

Adopting a rule that confessions elicited from children after the use of deceptive interrogation tactics are categorically involuntary will effectively "'deter[] police from using a tactic that might induce the innocent to confess falsely.'" *State v. Hillery*, 956 N.W.2d 492, 499 (Iowa 2021) (citation omitted). Several courts, including the U.S. Supreme Court, have announced or acknowledged *per se* rules to deter the use of particularly coercive police interrogation tactics. The Supreme Court of Hawaii, for example, has created a *per se* rule barring a specific form of police deception—namely, lying to a suspect about the results of their polygraph test because such lies "'are of a type reasonably likely to procure an untrue statement or to influence an accused to make a confession regardless of guilt.'" *State v. Matsumoto*, 145 Hawaii 313, 324 (2019) (quoting *State v. Kelekolio*, 74 Hawaii 479, 511 (1993));*see also Wilson v. State*, 311 S.W.3d 452, 465 (Tex. Crim. App. 2010) (holding that it is unlawful for Texas officers to fabricate physical evidence and use it during interrogation). In *Ashcraft v. Tennessee*, the U.S. Supreme Court

held that continuous custodial interrogation for 36 hours is "so inherently coercive that" a resulting confession cannot be deemed constitutionally admissible, and thus effectively created a rule that such a lengthy, continuous interrogation will render a resulting confession *per se* involuntary. 322 U.S. 143, 154 (1944).[12]

Several state and federal courts have also expressly acknowledged the proven risk of false confession when officers lie about evidence. Recently, in *State v Gonzalez*, one of the justices of the New Jersey Supreme Court called on that court to recognize both the "ethical concern[s]" with sanctioning police deception, and the reality that the "use of lies may overbear the will of a suspect, overcome the suspect's ability to resist the psychologically coercive pressures inherent in the

[12] *Amici* acknowledge this Court's previous rejection of a *per se* rule regarding an officer's promise of leniency in interrogation. *State v. Downey*, 259 S.W.3d 723, 736 (Tenn. 2008) ("In Tennessee, '[p]romises of leniency by state officers do not render subsequent confessions involuntary *per se*[.]'") (internal citation and quotation marks omitted). *Downey,* however, is distinct from the instant case in that it did not involve the interrogation of a child, nor did it involve the highly coercive tactics of lying about evidence and false threats of capital punishment. Moreover, *Downey* was decided over fifteen years ago, before much of the scientific consensus discussed in this brief was established. Accordingly, guided by the science presented here, this Court should adopt a *per se* rule as applied to the use of certain deceptive tactics against children.

interrogation process, and, in some instances, elicit a false confession." 249 N.J. 612, 640 (N.J. 2022) (Albin, J, concurring). Describing the issue of police deception in interrogation as one of "supreme importance," New Jersey Supreme Court Justice Albin urged the court to decide in the next appropriate case, "whether sanctioning deception and trickery in the interrogation process offends judicial integrity and whether the cost of potentially eliciting false confessions outweighs the benefits of eliciting a number of true confessions." *Id.* at 639, 642. Justice Albin queried:

> When deceptive interrogation tactics are sanctioned by our courts, what is the lesson conveyed to the public—that law enforcement officers can lie to a suspect, but when a suspect lies to the police, it is a crime? One day, this Court will have to decide whether the continued use of lies and trickery is a constitutionally permissible practice—whether it is a principled and sufficiently reliable means of inducing a truthful confession from a suspect.

Id. at 639-640 (citation omitted). Other courts have expressed similar disdain for the sanctioning of police deception. *See, e.g., State v. Phelps*, 215 Mont. 217, 225 (1985) ("[W]e cannot condone the tactics of this officer who informed Phelps as to the existence of incriminating evidence when the evidence was inconclusive."); *State v. Register*, 323 S.C. 471, 480 (1996) (stating that "the misrepresentation of evidence by police is a

deplorable practice"); *Aleman v. Hanover Park*, 662 F.3d 897, 906-07 (7th Cir. 2011) (reasoning that the false presentation of evidence by an interrogator may "destroy the information required for a rational choice" and "'seriously distort'" the suspect's perception of reality, resulting in a confession that is "worthless as evidence") (quoting *United States v. Rutledge*, 900 F.2d 1127, 1129-30 (7th Cir. 1990)).

Other state high courts have similarly recognized the coercive power of the tactic and the likelihood that it may elicit false or involuntary confessions. *See e.g.*, *People v. Stewart*, 512 Mich. 472, 496, n.9 (2023) ("Research illustrating a strong correlation between the use of false evidence and an interrogee providing a false confession is particularly concerning"); *State v. Baker*, 465 P.3d 860, 878-879 (2020) (recognizing that "false claims of physical evidence result in an unsettling number of false or involuntary confessions," and holding "that misrepresentations about the existence of incontrovertible physical evidence that directly implicates the accused is an exceptionally coercive interrogation tactic and its use is a strong indicator that the suspect's statement was involuntary."); *Gray v. Commonwealth*, 480 S.W.3d 253, 259-60 (Ky. 2016) (recognizing that police "trickery" is likely to produce

a coerced confession); *People v. Thomas*, 22 N.Y.3d 629, 642 (2014) (holding that the interrogating officers' use of deception during the interrogation at issue functioned to "nullify individual judgment in any ordinarily resolute person and [was] manifestly lethal to self-determination when deployed" against a vulnerable suspect); *State v. Swanigan*, 279 Kan. 18, 25, 39 (2005) (holding that a confession was elicited involuntarily after, among other coercive tactics, the interrogating officer lied to the accused about his fingerprints being found at the crime scene). Additionally, in the last four years, in consideration of young people's heightened vulnerability to deceptive interrogation tactics, ten states across the country have adopted laws that prohibit or deter the use of the false evidence ploy in interrogations of minors.[13] Further, in consideration of the risk that police deception will

[13] Those states are: California, Connecticut, Colorado, Delaware, Illinois, Indiana, Minnesota, Nevada, Oregon, and Utah. *See* CAL.WELF. & INST. CODE § 625.7 (West 2023); COLO. REV. STAT. ANN. § 19-2.5-203(8)(a) (West 2023); CONN. GEN. STAT. ANN. § 54-86Q(b)(2) (West 2023); DEL. CODE ANN. tit. 11 Del. C. Pt. II, Ch. 20, Subch. II, § 2022 (West 2023); 705 ILL. COMP. STAT. ANN. 405/5-401.6 (West 2023); IND. CODE § 31-30.5-1-6 (West 2023); MINN. STAT. § 634.025 (West 2025); NEV. REV. STAT. ANN. § 62C.014 (West 2024); OR. REV. STAT. ANN. § 133.403 (West 2022); UTAH CODE ANN. § 80-6-206(8)(a) (West 2024).

produce false confessions, "a consulting group that . . . has worked with a majority of U.S. police departments," Wicklander-Zulawski, announced in 2017 that it will stop using interrogation techniques that involve deceit. They reasoned that "once you start down the road of using trickery and deception, the misuses are inherent in that. There are no clear lines of, 'This is a good amount of trickery, and this isn't.'" Eli Hager, *The Seismic Change in Police Interrogations,* THE MARSHALL PROJECT (Mar. 7, 2017), https://www.themarshallproject.org/2017/03/07/the-seismic-change-in-police-interrogations (last viewed Nov. 18 2024) (emphasis omitted).

In addition to the ever-increasing concern regarding the false evidence ploy, several courts have recognized the coercion involved when officers, as here, deceptively threaten a child with the death penalty. The Supreme Court of Kentucky has found that "threatening a seventeen-year-old with the death penalty is 'objectively coercive.'" *Dye v. Com.*, 411 S.W.3d 227, 233 (Ky. 2013) (holding that the "interrogating officers' untruthful threats were improperly employed to overbear Appellant's will and critically impair his capacity for self-determination."). Similarly, the Supreme Court of California has found that a sixteen-year-old's

confession was involuntarily provided where officers made references to the death penalty during the interrogation. *People v. McClary*, 20 Cal. 3d 218, 229 (1977), *overruled on other grounds by People v. Cahill*, 5 Cal. 4th 478 (1993). An appellate court in Ohio has likewise found that a seventeen-year-old's confession was inadmissible where "officers attempted to create the impression that Appellant could be facing a death sentence unless he cooperated with them and confessed." *State v. Kerby*, 2007-Ohio-187, ¶ 87.

Other courts have found that threats of the death penalty, including during the interrogation of an *adult* suspect, may render a confession involuntary and inadmissible. For example, the Louisiana Supreme Court has held that a confession is involuntary when the "threat of the death penalty and offer of a 'deal' to avoid it later became the dominant theme of the interview." *State v. Bartie*, 340 So.3d 810, 810 (La. 2020); *see also Bussey v. State*, 184 So. 3d 1138, 1146 (Fla. Dist. Ct. App. 2015) (reversing conviction and finding confession involuntary where, *inter alia*, officers "instill[ed] fear in [the accused] that he would face the death penalty with the hope that his fear would cause him to confess"); *People v. Flores*, 144 Cal. App. 3d 459, 471 (Ct. App. 1983) (suppressing

confession where officers implicitly communicated that "[o]nly by confessing his involvement in the decedent's death could the appellant avoid the possible death penalty"); *Sherman v. State*, 532 S.W.2d 634, 636 (Tex. Crim. App. 1976) (reversing conviction and finding confession involuntary where there was uncontested testimony that the accused "signed the confession because [the officer] had convinced him he would receive the death penalty if he refused.").

Consistent with the growing number of courts that recognize the dangers of such deceptive and coercive tactics, *amici* urge this Court to adopt a rule that a child's confession elicited after the use of lies about evidence or lies about the child's exposure to the death penalty is *per se* involuntary and inadmissible. This Court has recently recognized that this state's law should account for the reality that a "juvenile's brain and character traits are not fully developed, and a juvenile is particularly 'susceptible to negative influences and outside pressures.'" *State v. Booker*, 656 S.W.3d 49, 64 (Tenn. 2022) (quoting *Roper*, 543 U.S. at 569) (holding that "Tennessee's mandatory sentence of life in prison when imposed on a juvenile homicide offender with no consideration of the juvenile's age and attendant circumstances violates the Eighth

Amendment's prohibition against cruel and unusual punishment."). Furthermore, this Court has historically been guided by evolving, reliable science, to help protect against wrongful conviction in this state. *See State v. Copeland*, 226 S.W.3d 287, 299 (Tenn. 2007) (relying on the "advances in the field of eyewitness identification" and the fact that "erroneous identification accounted for as much as eighty-five percent of the convictions of those individuals later exonerated by DNA testing" to overrule prior precedent that had categorically precluded expert testimony regarding the factors that implicate the reliability of eyewitness identifications). Accordingly, to protect innocent children in this state and to align Tennessee law with decades of relevant science, *amici* urges adoption of the proposed *per se* rule. Without such a rule, courts are likely, as the Court of Appeals did here, to continue to give short shrift to the coercive power of such tactics, and the magnified impact they have upon children.

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For all of these reasons, this Court should hold that a child's confession is *per se* involuntary and inadmissible under the Tennessee

Constitution when it is elicited following police lies about evidence or lies about exposure to capital punishment.

IV. THIS COURT SHOULD ANNOUNCE A *MIRANDA* CUSTODY TEST THAT MEANINGFULLY ACCOUNTS FOR A SUSPECT'S YOUNG AGE

Both this Court and the United States Supreme Court have repeatedly recognized that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Booker*, 656 S.W.3d at 58, 68. In consideration of such science, and consistent with decades of jurisprudence regarding the "common sense" notion that children perceive police interrogation differently than adults, the United States Supreme Court held in *J.D.B. v. North Carolina* that a child's age is an objective factor that must be considered in the *Miranda* custody analysis. 564 U.S. 261, 277 (2011). In *J.D.B.*, the Court 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). The Court explained that, 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.

Here, in reaching its conclusion that Antonio "was not under arrest or in custody at the time he spoke with officers and ultimately confessed," the Court of Appeals' majority opinion failed to follow, let alone cite, the Supreme Court's *J.D.B.* mandate, nor consider Antonio's young age whatsoever. *Adkisson*, 2024 WL 1252173, at *6-7. Without additional guidance from this Court, *amici* have grave concern that courts in Tennessee will continue, as here, to ignore the dictates of *J.D.B*[14] and the "reality" that adolescents have an increased susceptibility to police coercion—"a reality that courts cannot simply ignore." *J.D.B.*, 564 U.S. at 277.

The *Miranda* warnings—which the Court of Appeals found were not "necessitated" here (*id.*)—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 U.S. at 455,

[14] Indeed, although *J.D.B.* has been binding precedent since 2011, *amici* were only able to find on Westlaw *one decision* in all of Tennessee that cites *J.D.B. See State v. Thomas*, No. E201800353CCAR3CD, 2019 WL 3822178, at *12 (Tenn. Crim. App. Aug. 15, 2019).

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, because, as discussed *supra*, children have limited comprehension of those rights. However, for all the reasons 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.

Accordingly, a child'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 ignored. Nor should a child's age be considered in a vacuum, as merely one of several factors in the *Miranda* custody test. As the Supreme Court instructed in *J.D.B.*, 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 Court of Appeals' decision and hold that the custody analysis requires an objective inquiry into all relevant 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 children would require courts to determine: "whether, under the totality of the circumstances, a reasonable [child of the suspect's age and] in the suspect's position would consider himself or herself deprived of freedom of movement to a degree associated with a formal arrest." *State v. Anderson*, 937 S.W.2d 851, 852 (1996). While age will not be dispositive in every case (*J.D.B.*, 564 U.S. 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 *J.D.B.* 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 E.W.*, 114 A.3d 112, 118 (Vt. 2015); *United States v. I.M.M.*, 747 F.3d 754, 766 (9th Cir. 2014); *N.C. v Com*, 396 S.W.3d 852, 862 (Ky. 2013); *State v. Cooks*, 284 So.3d 632, 632 (La. 2019); *see also 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). Without such a test, young people will continue to be subjected 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," *J.D.B.*, 564 U.S. at 275-76, but would also 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 Tennessee.

V. DUE TO YOUNG PEOPLE'S DIMINISHED CAPACITY TO UNDERSTAND *MIRANDA* AND HEIGHTENED VULNERABILITY TO INTERROGATION COERCION, IMPLICIT *MIRANDA* WAIVERS FROM CHILDREN SHOULD BE DEEMED INVALID

Here, interrogating officers read Antonio, a 17-year-old teenager, his *Miranda* rights, but never presented him with a *Miranda* form nor clarified whether he understood those rights, or wished to waive them. Rather, after a quick recitation of his rights, Investigator Williams immediately began the interrogation. At the outset, and without Antonio indicating he even understood his rights, Investigator Williams lied to him about the potential of facing the death penalty, while suggesting that he would receive lenient treatment from the prosecutor, because he was just a "kid," if he spoke with the officers. The Court of Appeals, while acknowledging this Court's requirement that it must "'exercise special care' in analyzing a juvenile's waiver," *Adkisson*, 2024 WL 1252173, at *7 (quoting *State v. Callahan*, 979 S.W.2d 577, 583 (Tenn. 1998)), nonetheless found that Antonio implicitly waived his *Miranda* rights voluntarily, knowingly, and intelligently.

Adolescents' vulnerabilities in the interrogation room and their diminished capacities to comprehend *Miranda* warnings underscore the

need to vigorously safeguard their rights during custodial interrogations. Accordingly, many experts recommend that young people be provided 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). At least four states have heeded this advice in the last three years by passing laws that ban law enforcement from interrogating young people under age 18 until the child has been able to consult with a

lawyer.[15] And, in Massachusetts, a judicially crafted rule requires that no *Miranda* waiver of a defendant under 18 "can be effective unless a parent or interested adult was present, understood the warnings, and had the opportunity to explain the rights to the juvenile." *See Com. v. Smith*, 471 Mass. 161, 166 (2015) (internal citations and quotation marks omitted).

The science explored above supports such robust protections for children before they waive *Miranda*. Indeed, *amicus* the Innocence Project has advocated for policy initiatives that require children to consult with an attorney before waiving *Miranda*. Although *amici* support such broad protections for children in the interrogation room,

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[15] *See* Cal. Welf. & Inst. Code § 625.6 (West) (providing that "prior to a custodial interrogation, and before the waiver of any *Miranda* rights, a youth 17 years of age or younger shall consult with legal counsel" and such "consultation may not be waived"); Md. Code Ann., Cts. & Jud. Proc. § 3-8A-14.2 (West) (prohibiting the interrogation of a child by a law enforcement officer until the child has consulted with a certain attorney and a notice has been provided to the child's parents, guardian, or custodian"); N.J. Stat. Ann. § 2A:4A-39 (West) (providing that a "juvenile shall have the right … to be represented by counsel at every critical stage of a court proceeding … including … any interrogation, identification procedure, or other investigative activity involving the juvenile"); Wash. Rev. Code Ann. § 13.40.740 (West) (requiring law enforcement to "provide a juvenile with access to an attorney for consultation, … before the juvenile waives any constitutional rights if a law enforcement officer … [q]uestions a juvenile during a custodial interrogation").

here, given the facts of this case, *amici* simply ask the Court to hold that a child cannot implicitly waive *Miranda*. Rather, in light of a child's categorical vulnerabilities to police coercion and their diminished ability to comprehend their *Miranda* rights, a child must be provided with a *Miranda* waiver form and expressly asked if they understand each right and wish to waive them. For courts to hold that, without such minimal procedural protections, a child's *Miranda* waiver is nonetheless voluntary, knowing, and intelligent, ignores the reality about children's developing brains that the United States Supreme Court has warned would be "nonsensical" to ignore. *J.D.B.* 564 U.S. at 275-76.

CONCLUSION

To protect innocent children in Tennessee from coercive interrogations that place them at risk of false confession and wrongful conviction, *amici* urge the Court to hold that (1) a child's confession elicited in response to police lies about evidence or lies about the death penalty, are *per se* involuntary and admissible; (2) the *Miranda* custody inquiry must be assessed through the perspective of a reasonable child of the suspect's age, and (3) children cannot implicitly waive their *Miranda* rights.

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Respectfully submitted,

By: /s/

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