No. 24-_____

IN THE
SUPREME COURT OF THE UNITED STATES

DAVONE UNIQUE ANDERSON,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE.

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CAPITAL CASE
QUESTIONS PRESENTED

Davone Anderson was arrested at 4:04 a.m. on July 31, 2020 on charges of receiving stolen property and unauthorized use of firearms. In actually, police suspected him of murder. He immediately asked for a lawyer.

Eleven hours later, in a booking cell at the county jail, Mr. Anderson had not been provided counsel. Sobbing in his cell and denied an opportunity to call his mother because of the prison's delay in processing his arrest, Mr. Anderson tried to kill himself. He was forcibly stripped, re-dressed in an anti-suicide "turtle suit," and removed to a suicide-proof dry cell with no water and no toilet. He had not slept in days, a period during which he had taken drugs including ecstasy and marijuana. He believed the guards and the police were trying to kill him.

Restrained in the turtle suit and still unrepresented, Mr. Anderson told a corrections officer he had something to confess. Though Mr. Anderson had not asked to speak to police, the officer called the detectives who were investigating two shootings they believed he had committed. With the police on their way, Mr. Anderson told the C.O. that he had "killed them both."

Not only was Mr. Anderson suicidal, detectives observed that he was emotionally unstable and "fuckin' nuts." They interrogated him three times over the course of the next four hours, ultimately extracting a second confession at the start of the physically intrusive execution of a search warrant for his DNA and for possible gunshot residue after having him involuntarily returned from the prison medical unit. Calling the detectives' actions a "blatant violation" of Mr. Anderson's rights, the trial court suppressed all statements made in the first two interviews by detectives, all statements after the execution of the search warrants in the third interview, and all statements made in a fourth attempted interview in a police cruiser the next day when detectives removed Mr. Anderson from the prison in an attempt to persuade him to lead them to the murder weapon. However, it ruled that the initial statement to the C.O. and the confession to detectives as they were preparing to execute the search warrants were "voluntary" and not given in response to police questioning.

The questions presented are:

1. Whether a statement to a corrections officer made by an individual who has just attempted suicide while in custody is "voluntary" when the prison has denied his request for counsel for more than 11 hours and engaged in physically and psychologically coercive conduct that has exacerbated his continuing mental health crisis.

2. Whether statements made at a third police interview of an individual in mental health crisis who has been denied counsel for 16½ hours and has been physically relocated from the prison medical unit to the same interview room in which he has already been subjected to two prior blatantly unconstitutional interrogations by the same detectives are inherently involuntary custodial statements. *See Colorado v. Connelly*, 479 U.S. 157 (1986); *Miranda v. Arizona*, 384 U.S. 436, 460 (1966).

PARTIES TO THE PROCEEDING

The petitioner is Davone Unique Anderson, a death-sentenced Pennsylvania prisoner. He was the appellant in the Supreme Court of Pennsylvania.

The respondent is the Commonwealth of Pennsylvania, which was the appellee in the proceedings below.

STATEMENT OF RELATED PROCEEDINGS

In the trial court:

Court of Common Pleas of Cumberland County, Pennsylvania
Commonwealth v. Davone Anderson, No. CP-21-CR- 1964-2020
Ruling on Motion to Suppress: December 27, 2021
Judgment of sentence entered: May 31, 2022

Direct appeal:

Supreme Court of Pennsylvania (No. 801 Cap. App. Dkt.)
Commonwealth v. Davone Anderson, 323 A.3d 744 (Pa. 2024) (affirming)
Judgment entered: September 26, 2024, reargument denied November 22, 2024

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PETITION FOR WRIT OF CERTIORARI

Petitioner Davone Unique Anderson respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania.

OPINIONS BELOW

The ruling of the Cumberland County Court of Common Pleas on Petitioner's *Motion to Suppress* is not published but is reproduced at App. 136a. The direct appeal opinion of the Supreme Court of Pennsylvania in *Commonwealth v. Anderson*, No. 801 Cap. App. Dkt., is published at 323 A.3d 744 (Pa. 2024) and is reproduced at App. 1a. The Supreme Court of Pennsylvania opinion and order denying reargument is not published but is reproduced at App. 30a.

JURISDICTION

The opinion of the Supreme Court of Pennsylvania was entered on September 26, 2024. The Court denied reargument on November 22, 2024. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment provides in relevant part:

> No person … shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ….

U.S. Const. amend. V.

The Sixth Amendment provides in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right … to have the Assistance of Counsel for his defence.

U.S. Const. amend. VI.

The Fourteenth Amendment provides in relevant part:

> No State shall … deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV.

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

On July 31, 2020, Davone Anderson was arrested, ostensibly on charges of receiving stolen property and unauthorized use of firearms. In reality, he was being held in connection with the murder of Sydney Parmelee and the shooting of Kaylee Lyons. He immediately invoked his right to counsel. App. 209a; App. 250a–51a. Ms. Lyons and her unborn child subsequently died. Mr. Anderson was formally charged with the murders on August 10, 2020. App. 205a; App. 254a.

Eleven hours later, in a booking cell at the county jail, Mr. Anderson had not been provided counsel. Sobbing in his cell and denied an opportunity to call his mother because of the delay in processing him, Mr. Anderson tried to kill himself. He was forcibly stripped, re-dressed in an anti-suicide "turtle suit," and removed to a suicide-proof dry cell with no water and no toilet. He had not slept in days, a period in which he had taken drugs including ecstasy and marijuana. He believed the guards and the police were trying to kill him.

Over the course of the next four hours, during which he spoke to several guards and was interrogated by detectives investigating the shootings, Mr. Anderson made certain statements admitting that he killed Sydney and Kaylee. At the times of those statements, Mr. Anderson had not yet been provided counsel, and no counsel was present to represent him during the interrogations. Once Mr. Anderson was provided counsel, he timely filed a pre-trial motion to suppress the statements. App. 205a.

The trial court conducted a suppression hearing and ruled that statements Mr. Anderson made to the prison booking officer shortly after his suicide attempt and to detectives at the beginning of a third interrogation they initiated to execute an intrusive search warrant to obtain his DNA and swab his hands for gunshot residue had been voluntary within the meaning of *Miranda*, and not offered in response to police questioning. The court held that those statements were admissible. However, the trial court found that statements Mr. Anderson made during two previous interrogations by the detectives, as well as statements he made to the detectives following the execution of the search warrants had been obtained in violation of Mr. Anderson's Fifth and Sixth Amendment rights. The court suppressed those statements, as well as statements made the next day when the detectives removed him from the prison for a ride in their vehicle in an attempt to persuade him to show them the location of the gun used to shoot Kaylee. App. 253a; App. 7a–8a. Prior to trial, Mr. Anderson also moved to bar the death penalty in his case, asserting that Pennsylvania's capital punishment statute was unconstitutional under the Pennsylvania and United States Constitutions, both "inherently and as applied." App. 208a. That motion was denied. App. 134a.

At the conclusion of the guilt-phase proceedings, the jury convicted Mr. Anderson of two counts of first-degree murder for the deaths of Sydney and Kaylee, first-degree murder for the death of Kaylee's unborn child, and two counts of endangering the welfare of children. App. 244a–54a; App. 8a. During the penalty phase, the Commonwealth incorporated the evidence from the guilt-phase proceedings and also presented victim impact testimony from the families of the victims, including Sydney's mother and sister and Kaylee's mother and father. App 8a.

The jury did not reach a unanimous verdict regarding the appropriate sentence for Sydney's death, and as a result, the trial court imposed a sentence of life imprisonment without

the possibility of parole. App. 244a; App. 8a. The court also imposed a sentence of life imprisonment for the homicide of Kaylee's unborn child. With respect to Kaylee's death, the jury found a single aggravating circumstance, that Mr. Anderson had been convicted of another federal or state offense (Sydney's murder) for which a sentence of life imprisonment or death was imposable. Despite significant evidence of Mr. Anderson's mental health issues in and around the time of the offense, counsel did not attempt to present evidence in support of Pennsylvania's enumerated mental health mitigating circumstances. 42 Pa. C.S. § 9711(e)(2) (extreme mental or emotional disturbance); 42 Pa. C.S. § 9711(e)(3) (substantially impaired capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law). Although Pennsylvania permits independent consideration of multiple unenumerated mitigating circumstances,[1] counsel presented Mr. Anderson's mitigating evidence as though it was a single "catch-all" circumstance. Treating that evidence as a single, undifferentiated factor, the jury concluded that the aggravating circumstance outweighed the sole mitigating factor and sentenced Mr. Anderson to death. App. 244a–55a; App. 9a–10a. After the trial court formally imposed the jury's sentence, Mr. Anderson's counsel filed his post-sentence motion, which the trial court denied. App. 244a–55a; App. 9a–10a. He then filed his direct appeal.

On September 26, 2024, the Supreme Court of Pennsylvania affirmed Mr. Anderson's convictions and sentences. App. 25a. Justice McCaffery authored a concurring opinion to "express [his] deep discomfort with affirming a death sentence given the poor quality of Anderson's representation." App. 26a. He noted that Mr. Anderson's direct appeal counsel had

[1] 42 Pa. C.S. § 9711(e)(8) ("Any other evidence of mitigation concerning the character and record of the defendant and the circumstances of his offense.")

failed to "describe the mitigating evidence at trial in any level of detail" and failed to raise even "an as applied or facial challenge to . . . the constitutionality of the death penalty in Pennsylvania" notwithstanding that trial counsel had preserved the issue and that concerns about the statute's constitutionality were well known. App. 27a. Justice McCaffery also sharply criticized appellate counsel's inadequate performance regarding an issue that featured prominently at Mr. Anderson's trial — a confession Mr. Anderson had made "after he was put on suicide watch for attempting to kill himself while in custody." *Id*. Justice McCaffery lamented that "this dismal advocacy illustrates long-standing issues with capital representation in Pennsylvania and the great harm ineffective lawyering poses to capital defendants." App. 28a. He closed by seriously questioning the "constitutionality and efficacy" of Pennsylvania's death penalty, while "saving for another day the many other reasons" he believes the "death penalty has no place in our Commonwealth." App. 28a–29a.

Direct appeal counsel subsequently withdrew from the case and substitute counsel timely filed a motion for reargument. The Court denied reargument on November 22, 2024. *See* App. 30a.

II. FACTS RELATED TO THE QUESTIONS PRESENTED

At 4:04 a.m. on the morning of July 31, 2020, Davone Anderson was arrested after a traffic stop by officers of the Carlisle Borough Police Department.[2] Ostensibly, he was arrested on charges of receiving stolen property and unauthorized use of firearms, but as the trial court

[2] Except where otherwise indicated, the timeline for Mr. Anderson's arrest and interviews are set forth in the *Omnibus Motion*, filed on October 26, 2021 (App. 205a) and admitted by the Commonwealth in its *Brief in Opposition to Defendant's Omnibus Pretrial Motion*, filed on December 27, 2021. The facts relating to Mr. Anderson's arrest and transfer to the custody of the Cumberland County Prison are set forth in paragraphs 15–20 of those pleadings. Where the parties' pleadings disagree on the content of the interview transcripts, Petitioner cites to other portions of the record that clarify what transpired.

found, "the arrest was made with the homicides in mind." App. 137a, *Commonwealth v. Anderson*, No. CP-21-CR-0001964-2020, Order re: Motion to Suppress, Findings of Fact ¶ 1 ("Suppression Order").[3]

Mr. Anderson immediately invoked his right to counsel. *Id*., Findings of Fact ¶ 2. Police body cam tapes show that at 4:06 a.m., Detective Sergeant Daniel Freedman informed Mr. Anderson that he was being taken into custody. By 4:08 a.m., Mr. Anderson had requested a lawyer and by 4:10 a.m. he told Sgt. Freeman he was "not talking." Sgt. Freeman verbally acknowledged Mr. Anderson's request, responding, "I got that."

The officers then took Mr. Anderson to the Cumberland County Prison, arriving at 4:15 a.m. At the county jail, he was placed alone in a holding cell in the booking center for processing. Fifteen hours later, in obvious emotional crisis, he remained unrepresented, "he had still not been processed and no charges had been filed." App. 137a, Findings of Fact ¶ 4.

Mr. Anderson's Interactions with County Prison Personnel at the Time of His Statements

Corporal Jason Sweeney,[4] who handled "all operations pertaining to anything from the records, booking department, security, staffing, those sorts of things," was scheduled to serve as "shift lead" on July 31, beginning at 3:00 p.m. Typically, however, he came in early, around 2:00 p.m. to "get briefed from the previous shift, anything pertaining to previous issues or anything I might need to be made aware of." App. 57a.

Corporal Sweeney was familiar with Mr. Anderson, having seen and interacted with him on prior occasions at the prison. App. 58a. Mr. Anderson was already in custody at the time

[3] The Suppression Order is divided into findings of fact and conclusions of law. For clarity, citations to this order in this petition include the portion of the order and the paragraph number along with the appendix page.

[4] Corporal Sweeney had been promoted to Sergeant by the time of his testimony in the suppression hearing. App. 56a–57a.

Corporal Sweeney's shift began, and Sweeney was under the impression that Mr. Anderson was in custody "[i]n connection with a possible homicide." App. 71a, 75a. The corporal saw Mr. Anderson in the holding cell "[s]lightly before [he] actually punched in" for his shift, and this time Mr. Anderson looked different. App. 59a.

Previously, Corporal Sweeney had found Mr. Anderson to be "a very reserved individual . . ., fairly pleasant, . . . [b]ut very quiet." This time, however, "I noticed that he seemed out of sorts," Sweeney testified. He seemed to be "very off," "worked up," "kind of emotional," "up, down." Mr. Anderson "was crying a little bit" and he appeared to be "a little disheveled." App. 59a–60a.

Sweeney was told that Mr. Anderson wanted to speak with him. When they spoke, Sweeney knew that something was wrong, telling Mr. Anderson, "I don't know … what's going on with you because you seem to be like — you're not you." Mr. Anderson explained that "he had not slept for a few days," had taken "a lot of ecstasy," and had "smoked some weed." App. 61a. Mr. Anderson wanted to make a phone call, but Corporal Sweeney said that would not be possible until after he was processed — which already had not occurred for nearly 15 hours. *See id.*

Cumberland County booking officer Matthew Corsiglia punched in at 2:53 p.m. on July 31, 2020 for his 3:00 p.m. shift, App. 49a, and when he first saw Mr. Anderson was immediately aware of his emotional fragility. C.O. Corsiglia testified at the suppression hearing that

> [Mr. Anderson] was just sitting on the floor avoiding the cell door and trying to avoid the window and trying to cover himself [with a blanket], and he was just sitting on the floor just hunched over. If you were standing in the booking center and looked over towards the cell, you could not see him sitting there.

Id.

Although Officer Corsiglia could not see Mr. Anderson directly, he was able to observe him on the video feed from a closed circuit camera in the back of the holding cell. Shortly after coming on shift, the C.O. "saw Mr. Anderson trying to tie something around his neck in the cell," App. 44a, "and then also try pulling the blanket over his head at the same time," App. 50a. Mr. Anderson had tied together two straps of a COVID-19 facemask that the prison had given him and was trying to strangle himself with it.

Officer Corsiglia "called a code" and, in a scene of chaos and trauma, responding officers — including "the white shirts"[5] (Lieutenants) and the warden — descended on Mr. Anderson's cell. Mr. Anderson was then "changed out" and forcibly removed from a booking cell to a "dry cell," which C.O. Corsiglia described as a "suicide proof cell" with "no sink or toilet, just a cement pad." App. 45a.

Mr. Anderson was stripped and "[h]is clothing was all removed due to the possible suicide threat." *Id*. C.O. Corsiglia testified that when Mr. Anderson refused to get out of his clothes, "Lieutenant Palmer . . . took him into the back of the booking [area] into a shower, and . . . remove[d] his clothes from him." App. 51a. Mr. Anderson was then put into a suicide smock, commonly referred to as "a turtle suit," used "to prevent [prisoners] from committing suicide from hanging themselves." *Id*. Once in the "suicide proof cell," he also was provided a "suicide proof blanket." App. 45a.

Mr. Anderson's Uncounseled Statement Following His Suicide Attempt

Distraught and isolated, Mr. Anderson "was put on a half hour face-to-face with another officer," App. 46a, and remained under closed circuit visual surveillance. Fifteen hours after his

[5] "White shirts" is a term referring to corrections lieutenants, whose uniform shirts — unlike those of other correctional officers — are white.

arrest and several hours after his suicide attempt, Mr. Anderson was still unrepresented and had not been seen by the prison medical department, as he would have been had he been timely processed. Then, at about 6:45 p.m., Mr. Anderson tapped on the cell door to get Officer Corsiglia's attention and said he wanted to confess something. App. 46a; App. 138a, Findings of Fact ¶ 9. Although Mr. Anderson did not request to talk to the police, C.O. Corsiglia "took it upon himself to call the police to come talk to the Defendant." App. 52a; App. 138a, Findings of Fact ¶¶ 9–10. He called "County 911" "to try to contact Detectives [Christopher] Miller or [Thomas] Dolan," who were investigating the murder of Sydney Parmalee and Kaylee Lyons' shooting. App. 52a.

When C.O. Corsiglia hung up the phone, Mr. Anderson again tapped on the cell door to get his attention, called the C.O. over, and reportedly told Officer Corsiglia "I killed them both." App. 46a–47a, 54a; App. 138a, Findings of Fact ¶ 11. Asked to repeat what he had said, Mr. Anderson said he had "killed them both," mentioning two names that Officer Corsiglia could not clearly make out. App. 47a, 54a. The trial court ruled that the statement to C.O Corsiglia was voluntary and not made in response to any questioning." App. 140a, Conclusions of Law ¶ 1.

Detectives Dolan and Miller rushed to the county prison in response to Officer Corsiglia's call armed with search warrants related to the shootings, arriving shortly after 7:00 p.m.. When they reached the prison, C.O. Corsiglia told them what Mr. Anderson had said. The detectives did not execute the warrants, but instead took Mr. Anderson, still confined in the "turtle suit" and unrepresented, to an interview room where at 7:19 p.m., they began questioning him. App. 95a, 120a.

The First Uncounseled Police Interrogation

Attempting to persuade Mr. Anderson to sign a *Miranda* waiver, Detectives Dolan and Miller never once informed him that they wanted to talk to him about the shootings or that they had warrants to obtain DNA to potentially link him to those crimes. App. 155a–74a.[6] Instead, they repeatedly told him that they were not trying to trick him into anything.[7]

At 7:20 p.m., Detective Miller read Mr. Anderson the Miranda warning. App. 155a–56a. Less than three minutes later, at approximately 7:22:56 on the video of the interview (but not appearing on the transcript submitted by prosecutors to the trial court), Mr. Anderson again requested a lawyer. App. 98a (Judge Guido: "as I heard it, he says 'I want a lawyer'"). However, the detectives ignored his request and continued to the interview for another forty minutes. App. 210a; App. 6a; App. 138a, Findings of Fact ¶ 13. During that time, Mr. Anderson confided that he was "paranoid," App. 157a, and was afraid that police were trying to kill him, App. 283a. Detective Dolan confirmed during the suppression hearing that Mr. Anderson was afraid that "the

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[6] The timeline for the first custodial interview is set forth in the *Omnibus Motion* (App. 210a–11a) and the Commonwealth's *Brief in Opposition.* Where the parties' pleadings disagree on the content of the interview transcripts, Petitioner cites to other portions of the record that clarify what transpired. The Commonwealth's transcripts of the four interrogations of Mr. Anderson by detectives on July 31 and August 1, 2020, which were introduced as Commonwealth exhibits at the suppression hearing, misspell his first name as "Devon." For the sake of clarity, Mr. Anderson has used the correct spelling in this petition.

[7] App. 156a (Det. Dolan: "No tests, no tricks."); App. 158a (Det. Miller: "We're not playin' games."); id. (Det. Miller: "Like I said man, we're – we're straight shooters man. We're not playin' any games."); App. 158a ("like I said I'm not playin' any games."); App. 160a (Det. Dolan: "We're not tryin' to play games with ya."); App. 161a (Det. Miller: "You know us. We're not – we're not playin' games with ya."); App. 161a (Det. Dolan: "I'm not tryin' to trick you or anything."); App. 162a (Det. Dolan: "we both wanna talk to you and like I said we're not tryin' to trick you"); App. 162a (Det. Miller: "[L]isten man, we play by the rules here."); App. 168a (Det. Miller: "[L]et me ask you a question. Do you – has Detective Dolan and I have we always been straight with you? Do you – I mean always been honest with you, right? So listen I mean I know you haven't known us that long. Have we ever told you anything wrong? Have we ever given you any reason to doubt us?").

guards in the prison were trying to kill him" and that "they were going to take him to his cell and set him on fire." App. 99a.

Finally, at 7:42:52, the detective secured Mr. Anderson's signature on a *Miranda* waiver form. However, less than eight minutes later, he again invoked his right to counsel, saying "I don't need to be talking to you. I need an attorney," and "I ain't got nothing else to talk about." App. 100a.[8]

Judge Guido held that this interview was conducted "in violation of the Defendant's right to remain silent under the 5th amendment, and right to counsel under the 6th amendment" and suppressed all statements made during the interview. Conclusions of Law ¶ 3, App. 140a.

A Second Uncounseled Conversation with Corporal Sweeney

After the first interrogation was halted, Mr. Anderson told one of the booking officers he wanted to speak with Corporal Sweeney. The detectives were still in the booking center and Sweeney was aware that Mr. Anderson had ended their interview, so he asked them, "Is it okay that I go in and speak with him?" App. 73a–74a.[9] The detectives gave him the go-ahead.[10]

At that time, as the trial court found, Mr. Anderson "was obviously distraught." App. 139a, Findings of Fact ¶ 18. "So I go in. I speak with him," Corporal Sweeney testified:

> He said, man, look, Sweeney, this is my life, man. Like I need to call my mom. And I said listen, I said, I can't put you on the phone, but, you know, we kind of already talked about that. I can only do that after, you know, we go ahead and we get you processed in. And he's like, man, I just don't know what I'm supposed to do.

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[8] The transcript of the interrogation provided to the trial court omits Mr. Anderson's statement to detectives that "I don't need to be talking to you." App. 283a.

[9] Video of Corporal Sweeney's conversation with Mr. Anderson was recorded from the prison's closed circuit cameras. Audio was not recorded.

[10] Detective Dolan did not "recall Corporal Sweeney specifically asking me if can go talk to Mr. Anderson," but when questioned by Judge Guido said he had no reason to dispute Mr. Sweeney's testimony. App. 103a–04a.

App. 64a.

Playing on Mr. Anderson's emotional distress, Sweeney did the detectives' bidding. He told Mr. Anderson,

> [Y]ou know, you're all over the place still. I mean you're very worked up. You're very agitated. And I understand the gravity of the situation.
>
> I said, you know, listen, if you know anything, if you understand what's going on and why you're here, you need to say something because if you keep anything inside of you, that weight will crush you. . . . You speak the truth and it will get a lot of that weight off your chest.

App. 64a. Mr. Anderson "put his head down and . . . nodded," and he asked Corporal Sweeney, "would you be able to ask the detectives to come back in?" *Id.*

Sweeney passed on the message to the detectives, who returned to the interrogation room for a second interview with Mr. Anderson at 8:19 p.m. Barely 18 minutes had passed since the termination of the first interrogation. App. 75a.

The Second Uncounseled Police Interrogation

As the second interview started, Mr. Anderson remained uncounseled, now sixteen hours after he first requested representation. The detectives' body camera showed that he was still confined in the anti-suicide "turtle suit."[11] After Detective Dolan told Mr. Anderson that the detectives had been advised that he wants to "get something off his chest," Mr. Anderson was offered and signed a *Miranda* waiver form.

At 8:32 p.m., Mr. Anderson again expressed fear that his life was in danger in the county prison, telling the detectives "I'm not gonna lie, I'm scared that they about to kill me, the CO's

[11] The timeline for the second custodial interview is set forth in the Omnibus Motion (App. 211a–13a) and the Commonwealth's Brief in Opposition. Where the parties' pleadings disagree on the content of the interview transcripts, Petitioner cites to other portions of the record that clarify what transpired.

are trying to kill me." App. 212a, admitted by the Commonwealth in its Brief in Opposition ¶ 43.[12] During the suppression hearing, Detective Dolan confirmed that Mr. Anderson was still worried that the C.O.s in whom he had been confiding in earlier in the day were "going to put him in a cell and burn him up." App. 105a. During the course of the subsequent half-hour, Mr. Anderson was largely unresponsive, mostly muttering and making comments about another detainee who had been brought in for booking. App. 212a. At 9:04 p.m., he yet again told the detectives he was afraid the county correctional officers were going to hurt him. App. 212a, admitted by the Commonwealth in its Brief in Opposition ¶ 47.[13] Both detectives attempted to assuage his fear, with Detective Dolan offering a guarantee that "They won't do anything to ya and I'll make sure of it." App. 153a. Finally, nearly fifty minutes into the interview, Mr. Anderson refused to answer any more questions, once again requesting a lawyer. App. 106a–07a, 108a ("Next time we speak, I'm going to need an attorney.").

Judge Guido held that this second interview was conducted "in violation of the Defendant's right to remain silent under the 5th amendment, and right to counsel under the 6th amendment" and suppressed all statements made during the interview. App. 140a, Conclusions of Law ¶ 4.

The Uncounseled Warrant Searches

After Mr. Anderson ended the failed interrogations, Corporal Sweeney moved him to the medical unit to finish his processing. Detective Dolan, trying to avoid having to obtain a nighttime search warrant, for the first time told Sweeney that the detectives had search warrants

[12] The transcript of this interview provided to the court by the prosecution again fails to record this statement, instead reporting a series of entries of "(unintelligible)." App. 146a.
[13] This statement does not appear in the transcript of the second interview either. Instead, the transcript again contains several entries of "(unintelligible)." App. 153a.

to obtain DNA samples and check for gunshot residue. Dolan asked Sweeney to bring Mr. Anderson back so the detectives could execute the warrants. Mr. Anderson was returned to custody in the interview room, still dressed in his anti-suicide turtle suit, where the detectives executed the warrants in a custodial setting outside the presence of any counsel. App. 84a–85a.[14]

The detectives had obtained the search warrants in connection with their investigation of Kaylee Lyons' shooting before they received the call from the booking center to come to the prison. They had intended to serve the warrants that day, but hadn't been planning to go to the prison so soon. The detectives took the warrants with them to the prison. App. 102a.

Knowing Mr. Anderson was certain to invoke his right to counsel, the detectives never told him at any point in the four hours in which they had been trying to obtain his cooperation that were actually investigating him as a suspect in the shootings or that they had warrants to take his clothes, his DNA, and search for gunshot residue. Detective Dolan admitted in the suppression hearing that that the detectives had the warrants with them throughout the interviews, but had not served them. App. 108a.

16½ hours after first requesting but never receiving counsel, having attempted suicide and been forcibly placed in a suicide suit, exhausted and in fear of his life from the guards and detectives, and now being told that the detectives had custody of his clothes, would be taking his DNA, and would be swabbing his hands for gunshot residue, Mr. Anderson's defenses had been

[14] The warrant search and interrogation was recorded on police body cam and a transcription was introduced in the suppression hearing as the prosecution's Exhibit 3b, Interview with Davone Anderson, Part 3 – Third Recording. The timeline for the warrant search is set forth in the *Omnibus Motion* (App. 213a) and the Commonwealth's *Brief in Opposition.* Where the parties' pleadings disagree on the content of the interview transcripts, Petitioner cites to other portions of the record that clarify what transpired.

worn down. He thought "if I refused to cooperate with y'all, y'all were gonna take me somewhere and kill me." App. 182a.

Detectives Miller and Dolan initiated what would be a physically intrusive custodial search warrant process, explaining what they intended to do. App. 175a–76a. At 9:43 p.m., after the detectives have swabbed his hands for gunshot residue, Mr. Anderson confessed to the shootings. App. 176a ("I killed Sydney. . . . I killed Kaylee too.").

At 9:49 p.m., after praise from the officers for his honesty, Mr. Anderson signed his third pre-printed *Miranda* waiver form and provided additional incriminating information. He then turned the subject to his obvious and profound mental health issues:

> Everybody been tellin' me I need to get help – that I'm always thinkin' everybody's out to get me or I'm gonna get killed – that shit's goin' on behind my back. Because of that they think I'm a paranoid schizophrenic or something like that. I don't know. . . .
>
> Tryin' to set me up – get me killed.

App. 179a. As the detectives continued to ask him about Kaylee's shooting, Mr. Anderson obsessed on being set up to be killed. He told them, "even now, like, when I'm walkin' the hallway with them boys [the corrections officers] thinkin' they probably takin' me to my – my cell to set my cell on fire with me in it." App. 180a. "I need help," he said. App. 181a.

At 10:09 p.m., after Mr. Anderson again invoked his right to counsel, the interview ended and he was taken to the medical unit for processing. Following processing, Mr. Anderson was placed into the hospital unit at the Cumberland County Prison under suicide watch. App. 209a; Brief in Opposition ¶ 21.

The trial court found that "The statements made in response to questioning after the execution of the search warrant were made in violation of the Defendant's right against self incrimination [sic] under the 5th amendment, and right to counsel under the 6th amendment."

App. 140a, Conclusions of Law ¶ 5. It deemed Mr. Anderson's statements prior to being advised of his rights "unsolicited" and "voluntary," and permitted their admission in his trial. App. 139a, Findings of Fact ¶ 26.

The Uncounseled Interview in the Car

Detectives Dolan and Miller returned the next day to interrogate Mr. Anderson a fourth time,[15] this time under the pretext of taking him for a ride in their police cruiser to "get him some fresh air." App. 112a. They had taken extraordinary steps to ensure that anything inculpatory he might say would be recorded, "equip[ing] the vehicle with recording devices so that they could secretly record any statements he might make." App. 253a.

The detectives' police cruiser came equipped with one camera in the console area in the front of the car. They had a second specially installed camera mounted to the back of the passenger seat. App. 110a–11a (Dolan testimony). They also arranged to be followed by a second police cruiser and placed a cell phone call to that vehicle so the officers could eavesdrop on the interrogation, send a text message to Detective Dolan if there were any issues, and react if something went wrong. The officers in the second car put their phone on mute so Mr. Anderson would not know they were listening in. App. 195a, 124a–125a (testimony of Detective Sgt. Daniel Freeman).

Mr. Anderson had not asked to speak with the detectives again. They wanted to get him in the car in the hope that he would show them where they could find the gun used to kill Kaylee Lyons. App. 110a (Dolan testimony). Mr. Anderson remained uncounseled as, at 4:53 p.m.,

[15] The timeline for the attempted interrogation in the car is set forth in the *Omnibus Motion* (App. 214a) and the Commonwealth's *Brief in Opposition.* Where the parties' pleadings disagree on the content of the interview transcripts, Petitioner cites to other portions of the record that clarify what transpired.

Detectives Miller and Dolan escorted him from the prison to their vehicle. When the detectives took Mr. Anderson from the prison, both his legs and his arms were shackled. Detective Miller told Mr. Anderson "We're gonna go for a ride, maybe get you something to eat, drive around." Detective Dolan added, "just to be straight up with you here, so you don't think we're doing anything shady or anything, we have the – we have the cameras going." App. 196a. At 4:56, when Detective Miller suggested that the detectives wanted Mr. Anderson's help to find the gun, he responded, "If that's what we came out for, y'all gotta take me back or kill me. Whichever y'all want to do." App. 196a–97a.

Even then, the detectives pressed on. Miller read Mr. Anderson the *Miranda* warning, App. 197a, in a *sixth* attempt to get him to waive his rights, Brief in Opposition ¶ 62. However, Mr. Anderson immediately asked for a lawyer. App. 197a. Claiming not be asking any questions and saying "I'm not trying to put any pressure on you," Detective Miller suggested that Mr. Anderson "could shake [his] head" to indicate if he would be "willing to indicate to us where the gun might be." *Id*. Mr. Anderson then asked for an attorney again, and when Detective Miller responded "I can't get you an attorney right now," Mr. Anderson said, "If y'all gonna kill me, just do it." App. 198a.

At approximately 5:00 p.m., Detectives Miller and Dolan returned Mr. Anderson to the prison.

The Detectives Brag About Their 'Amazing' Efforts to Extract a Confession from a 'Fuckin' Nuts' 'Psycho'

Miller and Dolan had been keenly aware of Mr. Anderson's mental and emotional instability throughout the two days in which they attempted to manipulate him into incriminating himself. Forgetting that their in-car camera was still turned on when they returned to their

vehicle, App. 113a, the officers gave their candid assessment of Mr. Anderson's mental condition and bragged about extracting a confession from him.[16] Here is what they said:

> DETECTIVE MILLER [on the phone with Detective Sergeant Freedman]: Can you hear me? Hello. Yeah, I can hear you now. I guess, um, did you hear that conversation?
>
> Yeah. Okay, well the second we took him from [the booking unit for a ride in the police car], he said, "Are you guys gonna kill me?"
>
> He – he's a fuckin' psycho . . . And then I entered the car and he says – . . . and he's like, "Are you guys gonna take me to Jasmine's house and kill me?" Like, and then he started saying his attorney twice, and it just – he – he's – he's fuckin' nuts.
>
> Yeah. Was there anything else you guys thought that we could have done? Because at that point I was like, man, if we keep doing this, we're – we're just gonna look real, real bad. Yeah. And I even – without coer – I was just trying to be like, "Hey, listen, man, you don't even have to talk. I'm just trying to see can you maybe take us to where the gun would be?" And – and he didn't respond. He said, "I want an attorney." So then it was just done.
>
> Okay. All right, I'll – I'll see you back at the station. Bye. [Hangs up the phone.]
>
> Fuck, damn it, Tom. That just makes last night, how the hell we – we fuckin' did that just amazing.

App. 198a–99a (at 5:06 p.m.).

After a comment from Detective Dolan that reads as unintelligible in the transcript, Detective Miller continued (at 5:07 p.m.):

> [H]e was kind of back and forth last night too, you know, about, "I want an attorney." And then stop talking to us, and just he's fuckin' nuts. And – and how you and I got that confession from him last night is just – I'll tell you what, man, that's – that's amazing.

App. 199a.

[16] Detective Dolan agreed with the characterization by Mr. Anderson's counsel at the suppression hearing that the officers "were very proud of [them]selves." App. 113a.

In a telling observation about how bad Mr. Anderson's mental state was during the repeated interactions with guards and detectives on July 31, Detective Dolan responded that Mr. Anderson was "a little more stable right now," though "[h]e's still fuckin' nuts." *Id*.

At 5:14 p.m., in comments that do not appear in the transcription of the conversation in the car, Detective Miller again praised the detectives' efforts saying, "I did good, you did good. His state of mind . . . ." Detective Dolan responded: "I think we got lucky because of his mental state. Other people would have left after he went squirrely."[17] Detective Miller replied, "Yeah, . . . they would not have kept doing it." App. 214a; App. 114a.

As Detective Miller began to comment on what other officers would have done, he suddenly remembered that the camera in the car might still be on. He asked Detective Dolan, "Did I turn that fuckin' thing off?," and Dolan responds "I don't know." At that point the recording ends. App. 203a, 115a.

In the court's Post-Trial Opinion on April 12, 2023, Judge Guido described the detectives' conduct on July 31 and August 1 as a "blatant violation" of Mr. Anderson's rights under the Fifth and Sixth Amendments. App. 253a.

The State Courts' Treatment of the Suppression Issue

After the suppression hearing, the court held that the entirety of the first and second interviews conducted by Detectives Dolan and Miller at the prison were "in violation of the Defendant's right to remain silent under the 5th amendment, and right to counsel under the 6th

[17] Detective Dolan questioned whether he used the word squirrely and, rather than parse words and have the court listen to that portion of the audio, the defense represented, without objection from the Commonwealth, that "[T]his is the gist of what happened here." App. 114a. At paragraph 62, the Omnibus Motion alleges that Detective Dolan said "Other people would have left after he went squirrely the first time," (App. 214a) and paragraph 62 of the Commonwealth's Brief in Opposition admits that averment.

amendment." App. 140a, Conclusions of Law ¶¶ 3–4. It further held that "[t]he statements made in response to questioning after the execution of the search warrant" and were made in violation of the Defendant's right against self incrimination [sic] under the 5th amendment, and right to counsel under the 6th amendment," and that "any statements made in the police car … were obtained in violation of the Defendant's right to remain silent under the 5th amendment, and right to counsel under the 6th amendment," *Id.*, Conclusions of Law ¶¶ 5–6.

However, the court ruled that the statements made to C.O. Corsiglio in the suicide-proof cell and to Detectives Dolan and Miller in the interview room at the beginning of their execution of the search warrants were "voluntary statements and not made in response to any questioning." App. 139a, Conclusions of Law ¶¶ 1–2.

The trial court again addressed the suppression issue in its Post-Trial Opinion in response to Mr. Anderson's continuing challenge to the admission of those statements. The trial court noted that it had suppressed "[a]ll of Defendant's statements from the interrogations by the detectives," characterizing the detectives' conduct as a "blatant violation of his rights under the 5th and 6th Amendments." App. 253a. It further explained its prior ruling that Mr. Anderson had "made voluntary, unsolicited statements to Corrections Officer Corsiglia, and to Detectives Dolan and Miller" in connection with the execution of the search warrants, writing that "[n]one of the admitted statements . . . were the result of a custodial interrogation" and had been "volunteered . . . of his own free will." App. 258a–59a.

The Pennsylvania Supreme Court affirmed. *Commonwealth v. Anderson*, 323 A.2d 744, 755–56 (Pa. 2024). The Court criticized appeal counsel's presentation of suppression claim before addressing its merits:

> In his *Miranda*-based argument, Appellant does not reference or cite to the transcript of the suppression hearing, nor does he address the trial court's

> findings of fact or legal conclusions regarding its decision to admit Appellant's "excited utterance,"[18] while, at the same time, suppressing numerous other statements it found to have been obtained in violation of Appellant's Fifth and Sixth Amendment rights. Regardless, our independent review of the record supports the trial court's finding that Appellant's statement was made voluntarily, and not in response to any prompting by law enforcement.

App. 17a. Accordingly, it held that admission of the statements did not violate *Miranda v. Arizona*, 384 U.S. 436 (1966). *Id.*

Justice McCaffery concurred, but expressed strong reservations, which he laid at the feet of appellate counsel's "dismal advocacy." He wrote:

> I am disturbed by counsel's failure to challenge what appears to be a quite glaring matter: Anderson's "voluntary" excited utterance confession to the corrections officer **after he was put on suicide watch for attempting to kill himself while in custody**. In my mind, there is certainly a question as to whether such a statement, given by a person experiencing a mental health crisis, can be voluntary, especially where, as here, Anderson gave this statement after being in custody for nearly 12 hours without access to the counsel he requested upon his arrest.

App. 27a (emphasis in original).

REASONS FOR GRANTING THE WRIT

I. The Use of The Statements Presents Important Constitutional Questions

The Due Process Clause of the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." The Fifth Amendment prohibits compelling any person in any criminal case to be a witness against himself. As a result, once a defendant has invoked the right to counsel, the prosecution may not

[18] The Court noted that appellate counsel's challenge to the admitted statements as "excited utterances" was "somewhat inaccurate." The statements, it wrote, are "more properly characterized as a 'spontaneous utterance,' but, as we explained in [*Commonwealth v. Johnson*, 42 A.3d 1017, 1029 (Pa. 2012)], '*Miranda* does not preclude the admission of spontaneous utterances.'" *Anderson*, 323 A.2d at 756.

use uncounseled statements stemming from custodial interrogation against a defendant. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

Whether a confession is involuntary for suppression purposes must be evaluated based upon "the unique characteristics of a particular suspect." *Miller v. Fenton*, 474 U.S. 104, 109 (1985). In making that assessment, a court must conduct "an independent study of the entire record," *Boulden v. Holman*, 394 U.S. 478, 480 (1969), that examines the "totality of the circumstances," *Frazier v. Cupp*, 394 U.S. 731, 739 (1969).

"[C]oercive police activity is a necessary predicate to [a] finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). Though not independently dispositive of the voluntariness inquiry "by itself and apart from its relation to official coercion," a defendant's mental condition is a "significant factor in the 'voluntariness' calculus." *Id.* at 164.

The same analysis applies in the Fifth Amendment context of a *Miranda* violation. *Id.* at 169–70. "[T]he relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). *Miranda* itself recognized that "coercion can be mental as well as physical." 384 U.S. at 448.

Davone Anderson's case raises important constitutional questions concerning both when a statement is "voluntary" and when it is the product of a "custodial interrogation." Here, police and county jailers unreasonably failed to provide a suspect who was in obvious emotional crisis with access to a lawyer, forcibly stripped him of his clothing and placed him in a "turtle suit" suicide smock after he attempted to kill himself, created an atmosphere in which he believed he would be killed if he did not cooperate with corrections personnel and police, deliberately

deceived him about the reason police wanted to questioning him, and blatantly disregarded his rights by continuing to question him in repeated interrogations after he had again requested counsel. Mr. Anderson argues that given his mental condition, which was known to police and corrections officials, these practices constituted "state action" amounting to coercive "police conduct causally related to the confession." *Connelly*, 479 U.S. at 164–65. He further argues that they created an atmosphere in which even a statement prior to questioning by detectives constituted a "custodial interrogation" in violation of *Miranda*.

From the time this Court decided *Colorado v. Connelly*, 479 U.S. 157 (1986), it has been widely criticized. The decision has been widely interpreted to allow the use of statements of mentally ill persons in police custody, including in situations where the police knew or had reason to know the statements were the product of a mental illness being exploited in a coercive environment.

This Court's precedents subsequent to *Connelly* undermine that use of it. In *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), the Court held that a declarant's age is relevant to whether they are in custody. No where in that case did the Court explicitly address whether mental health, too, should weigh on the questions of whether a declaration is custodial or the product of coercion. Nonetheless, the logic of that decision—and the Court's existing precedents—make it clear that it should be an important consideration. That is, in *J.D.B.*, the Court held that the age of the declarant, if known to the police, was relevant to determine whether the declarant was in custody for purposes of *Miranda*. The Court reasoned that child declarants are "susceptible to influence" as a category, placing them at particular risk from "outside pressures." *Id.* at 275 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982) and *Roper v. Simmons*, 543 U.S. 551, 569 (2005)).

Since deciding *Connelly*, the Court has deepened its understanding of how a declarant's mental health, like youth, can make them susceptible to and at risk of influence from outside pressures. The Court has repeatedly done so in the context of intellectual disability. *See Atkins v. Virginia*, 536 U.S. 304 (2002); *Hall v. Florida*, 572 U.S. 701 (2014). And there is no reason it should not apply the same logic here to hold state actors to a higher standard than required under *Connelly*.

Moreover, the animating principles at issue are dignity and reliability. And allowing for the police to exploit a person's mental health crisis serves neither purpose. Using statements made in a moment of crisis is humiliating to the declarant and should be beneath the station of those seeking to enforce our nation's laws. And there is no guarantee that such statements would even serve their intended purpose. A person in extremis is unlikely to offer trustworthy statements, and the due process protections against use of coerced and custodial statements ought to account for as much.

The Pennsylvania courts did not consider the coercive impact of the state's treatment of Anderson or the severity of his emotional crisis in assessing the admissibility of his confession, in violation of his Fifth, Sixth, and Fourteenth Amendment rights. And while saying that a defendant's mental condition must be a "significant factor" in that analysis, this Court has not addressed the point at which mental illness or emotional distress becomes determinative of the voluntariness inquiry. This Court should grant review to clarify that the psychologically coercive conditions—known to and created by the police—are relevant in assessing whether a statement by an uncounseled prisoner who had requested but not received counsel constituted "custodial interrogation," as well as whether it rendered the resulting statement involuntary, and to address

the question left unanswered in *Connelly* of when state action with a mentally ill prisoner that results in an inculpatory statement requires suppression.

II. This Case Squarely Presents the Questions Presented

The Pennsylvania Supreme Court addressed the admissibility of Mr. Anderson's statements on the merits, and the resolution of the questions presented were important to the resolution of the case below. That is, the majority concluded that the statements at issue were voluntary and did not violate *Miranda* because the statement was voluntary. App. 17a.

The concurrence, however, noted that the statement was made during a "mental health crisis," and was offered by a person who "was put on suicide watch for attempting to kill himself while in custody." App. 27a. The majority, however, did not address this critical aspect of the context in which Anderson's statements were made. Thus, the related questions presented are squarely before the Court.

III. This Case Presents a Good Vehicle to Clarify the Role of Mental Illness in Assessing Coercive and Custodial Interrogations.

There is no question that the court below addressed the issue on the merits, and there is no procedural bar preventing this Court's review.

Moreover, the facts underlying this case provide an excellent opportunity for the Court to clarify the role of mental illness in assessing whether a statement is voluntary. Detectives Thomas Dolan and Christopher Miller were investigating the murder of Sydney Parmelee and the shooting of Kaylee Lyons. They believed Davone Anderson was responsible for the shootings and were planning on coming to the Cumberland County Prison on July 31, 2020 to execute search warrants for Mr. Anderson's clothes, his DNA, and possible gunshot residue. When they

heard from C.O. Corsiglia that Mr. Anderson wanted to confess to something, they set out, warrants in hand, to obtain that confession.

Over the course of four custodial interviews in which they committed what the trial court described as "blatant violation[s] of [Mr. Anderson's] rights under the 5th and 6th Amendments," App. 253a, the detectives persistently attempted to get Mr. Anderson to waive his right to counsel and elicit incriminating information. Minutes into the third interview, after the detectives explain the scope of the search warrants and begin swabbing Mr. Anderson's hands for gunshot residue, they succeeded. Mr. Anderson told the detectives, "I killed Sydney. . . . I killed Kaylee too." App. 176a.

The trial court initially summarily ruled that the confessions "were voluntary statements and not made in response to any questioning." App. 138a, Conclusions of Law ¶ 2. The court provided more context for this ruling in its Post-trial Opinion, but failed to consider the impact of the entirety of the police conduct and the seriousness of Mr. Anderson's emotional disturbance in making its determination.

The Court wrote:

> Around 8:20PM, Detectives Dolan and Miller began their second interrogation of Defendant. That interrogation ended when Defendant refused to answer anymore [sic] questions and asked for an attorney. Again, the detectives ended the interrogation but did not leave the prison. Instead, they decided to execute search warrants for Defendant's DNA. He was still in that same interrogation room and still uncharged. They had had the search warrants in their possession from the moment they arrived at the prison but chose not to execute them earlier. During their execution of the warrants, Defendant made unsolicited, voluntary statements to the detectives, in which he admitted to killing Sydney and Kaylee. When asked by the detectives to formalize the statements, Defendant again ended the detectives' questioning by invoking his *Miranda* rights.

App. 252a.

On appeal, the Pennsylvania Supreme Court affirmed, simply stating that its review of the record "supports the trial court's finding that Appellant's statement was made voluntarily, and not in response to any prompting by law enforcement." App. 17a. But that is not this Court's test of voluntariness or custodial interrogation. Voluntariness is not determined one statement at a time in isolation from the entirety of law enforcement conduct and the defendant's subjective understanding of his situation. The analysis actually required by this Court's precedents establishes that the warrant procedure in this case was inherently coercive, Mr. Anderson's confessions were not voluntary, and his statements were obtained in violation of *Miranda*, due process, and his right to counsel.

Mr. Anderson has set forth above the law applicable to this claim. Here, the statements he made in his third custodial interview by Detectives Dolan and Miller have to be understood in the context of the coercive custodial environment in which they took place. He made those statements 16½ hours after he had first asked for a lawyer but never been given one; after he had attempted suicide; after he had been forcibly stripped and moved to the bare concrete slab of a suicide-prevention cell; after he twice had been denied the opportunity to call his mother because the prison inexplicably had still failed to process him; after two prior interviews by the same detectives, one 43 minutes long, the other taking 52 minutes; after his repeated requests for counsel in those interrogations had been disregarded; after he had finally been taken to the medical unit for processing that would allowed him the phone call to his mother that he had twice requested, but then was involuntarily called back to the same interrogation room to be questioned by the same detectives. Mr. Anderson did not need for the detectives to invoke any magic words or formally ask a question to know he was being interrogated — and suppression

law does not elevate that type of form over the substance of such a coercive interrogation environment.

All of that also had to be understood from the unique perspective of Mr. Anderson's mental state. He started out in emotional crisis, sobbing and cowering in the booking cell. He was made more vulnerable and pliant as a result of the suicide prevention steps undertaken by the guards. He was embarrassingly constrained in a turtle suit every time the detectives came to speak with him. He had not slept in days. He still did not have a lawyer and certainly was not going to get one before the detectives were finished with him.

He was exhausted and fearful. In his first interview with Detectives Dolan and Miller, he told them that the police were trying to kill him, and the guards at the prison "were going to take him to his cell and set him on fire." App. 99a. He remained fixated on these fears in the second interview with the detectives, saying "I'm not gonna lie, I'm scared that they about to kill me, the CO's are trying to kill me." App. 212a. He was still worried that the guards were "going to put him in a cell and burn him up." App. 105a. In the third interview, he confessed he believed that, "if I refused to cooperate with y'all, y'all were gonna take me somewhere and kill me." App. 181a. When the detectives began executing the search warrants, it is no wonder he did not wait for the formality of a question before he confessed.

To constitute an "interrogation," the circumstances of a suspect's interaction with law enforcement "must reflect a measure of compulsion above and beyond that inherent in custody itself." *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980). There can be little question such compulsion was present when Mr. Anderson was returned to the interview room for yet a third interview session with the detectives. And in that room, the detectives already had systematically violated Mr. Anderson's rights, deliberately deceiving and manipulating him along the way. Their

course of conduct involved not only "practice[s] that the police should know [are] reasonably likely to evoke an incriminating response from a suspect," *id. at* 301, but practices that were chosen specifically for that purpose.

The detectives' conduct in this case was "oppressive" and "overreaching" and had a direct causal relationship to Mr. Anderson's confession. *Connelly*, 479 U.S. at 163–64. As a result, it violated *Miranda*, due process, and the Fifth, Sixth, and Fourteenth Amendments. Far from being voluntary, Mr. Anderson's inculpatory statement was the culmination of a chain of coercive state action denying him counsel for 11 hours and then traumatizing him even further after he attempted to kill himself. This state action created a coercive custodial environment that overbore his will and had a direct causal relationship to his confession. The state court's admission of the statement at trial failed to consider the totality of the coercive circumstances of Mr. Anderson's confinement, its escalating impact on his emotional disturbance, and the depth of Mr. Anderson's emotional crisis. The statements should have ben suppressed as a violation of the Fifth, Sixth, and Fourteenth Amendments. This case provides an opportunity for this Court to address the question left open in *Connelly* as to when state action with a mentally ill or emotionally disturbed defendant that results in an inculpatory statement requires suppression. This Court should clarify for the lower courts that, in a sufficiently oppressive custodial environment, an interaction with a suspect can constitute an interrogation even in the absence of formal questioning.

CONCLUSION

For the foregoing reasons, Petitioner Davone Anderson respectfully requests that this Court grant certiorari to review the serious issues presented in this petition.

Respectfully submitted,

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