No. 24-6891

In the Supreme Court of the United States

DAVONE UNIQUE ANDERSON,

Petitioner,

–v–

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania, Eastern District

BRIEF IN OPPOSITION

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***** CAPITAL CASE *****

COUNTER STATEMENT OF THE QUESTIONS PRESENTED

1. Whether a statement made to a corrections officer, without provocation, is "voluntary" for purposes of the Self-Incrimination Clause of the Fifth Amendment of the United States Constitution.

2. Whether a statement made to the police, without provocation, during the execution of a search warrant, is "voluntary" for purposes of the Self-Incrimination Clause of the Fifth Amendment of the United States Constitution.

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COUNTER STATEMENT OF THE CASE

In July 2020, Davone Anderson was in a romantic relationship with both Sydney Parmelee and Kaylee Lyons. Ms. Parmelee was shot in the head by Anderson at his residence on July 5, 2020; Anderson attempted to portray her death as a suicide. (Notes of Testimony (hereinafter "N.T."), Vol. I at 27, 29 and 35; 48.) In the evening hours of July 30, 2020, at the same residence, Ms. Lyons, pregnant with Anderson's child, confronted him and accused him of murder. (N.T., Vol. I at 59). Anderson then shot Ms. Lyons in the head, causing her and her unborn child to perish. (N.T. Vol. I at 114; N.T., Vol. II at 9-10).

At approximately 3:00 AM on July 31, 2020, Defendant was located at the Caroll Mart in Carlisle, Pennsylvania. (N.T., Vol. II at 81-83). He was found in possession of Ms. Lyons' car, which had been entered as stolen after her death. (N.T., Vol. II at 83-84). Police arrested Anderson for receiving stolen property and he was taken to Cumberland County Prison. (N.T., Vol. II at 85). Anderson invoked his right to counsel and was not interviewed at that time. (Trial Court Finding of Fact 2, IN RE: Suppression Hearing, December 27, 2021, Guido, E., J., at 94 (hereinafter "N.T. Suppression at ___"). On July 31, 2020, Anderson was at the booking center at the Cumberland County Prison. (N.T., Vol. II at 134). Sergeant Jason Sweeney of Cumberland County Prison was present and spoke to Anderson that evening. (N.T. Suppression at 28-29). Sweeney, who was familiar with Anderson from prior periods of incarceration, asked how he was doing because Anderson seemed to be acting out

of character. (N.T. Suppression at 28-29). Anderson explained that he had not been sleeping because he had been using weed and ecstasy for a few days prior to his arrest. (N.T. Suppression at 29). Anderson denied that he would harm himself. (N.T. Suppression at 29). Anderson asked to make a phone call and have a drink, but was advised he could not do that until after he was processed. (N.T. Suppression at 29).

At approximately 3:00 PM, Corrections Officer Matthew Corsiglia observed Anderson in a cell through a monitor and realized Defendant was attempting to tie elastic from a COVID-19 mask around his neck; due to that possible suicide attempt, Anderson was placed in a suicide smock and dry cell. (N.T., Vol. II at 137-38). A corrections officer stayed with him for half an hour to monitor him face to face and there was a CC TV Screen that could be monitored. (N.T. Suppression at 14). At around 6:45-7:00 PM, Anderson knocked on the glass window of the cell and said to Corsiglia that he wanted to confess something, that he "killed them both." (N.T. Suppression at 14-15; N.T., Vol. II at 138). Anderson then muttered names that Corsiglia did not understand. (N.T., Vol. II at 139). Corsiglia called the detectives at Carlisle Borough Police Department and asked them to come speak to Anderson. (N.T. Suppression at 14). Corsiglia called the detectives again and advised them that Anderson had confessed to killing someone. (N.T. Suppression at 15).

Detectives arrived at the prison with signed search warrants to execute a search warrant for DNA collection and met with Anderson. (N.T., Volume III, IN RE: Jury Trial, Guido, E., J. at 17.) Upon arrival, the detectives were advised by prison staff that Anderson had confessed to killing both women. (N.T. Suppression at 46).

Detectives interviewed Anderson[1], but he requested a lawyer and the interview stopped; he had been taken to medical for part of the booking process; detectives then asked that he be returned so they could execute the search warrants for a DNA swab. (N.T. Suppression at 53). While police were executing the search warrant, Anderson, without provocation, said "I killed Sydney." "And I killed Kaylee too." (N.T., Vol. III at 17). The statements were recorded on body-worn cameras worn by the detectives and played at trial. (N.T., Vol. III at 18). Anderson had been in custody for about 15 hours when these events transpired. (N.T. Suppression at 88).

Autopsies conducted on the victims determined that they both died of gunshot wounds to the head, and that the deaths were a homicide. (N.T., Vol. II at 110-11; 120).

On August 10, 2020, Davone Anderson was charged with First Degree Murder (2 counts) for the deaths of Sydney Parmelee and Kaylee Lyons; Murder of an Unborn Child; Person not to Possess a Firearm (2 counts); Receiving Stolen Property; and Endangering the Welfare of Children (2 counts). (Criminal Complaint and Affidavit). On October 14, 2020, the Commonwealth filed a Notice of Aggravating Circumstances and declared its intention to seek the Death Penalty.

On October 26, 2021, Anderson, through Counsel, filed an Omnibus Pretrial Motion seeking to Suppress Evidence. (Defendant's Omnibus Pretrial Motion). The

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[1] Defendant was interviewed by detectives twice; after the first interview he spoke to Sergeant Sweeney then asked to speak to the detectives again. Both of those interviews were suppressed by the trial court.

Commonwealth filed a Brief in Opposition. (Commonwealth's Brief in Opposition to Defendant's Omnibus Pretrial Motion). The trial court held a motion on the hearing on December 27, 2021.[2] Defense Counsel sought to exclude the contents of the three interviews of Anderson by two detectives at the Cumberland County Prison, taken shortly after his arrest. (Defendant's Omnibus Pretrial Motion, 7-20). The Commonwealth presented testimony from the two corrections officers and the detectives who spoke to Anderson.

Matthew Corsiglia testified that Defendant told him he wanted to "confess" and he had "killed them both" and mumbled two names. (N.T. Suppression at 14-15). Corsiglia then called Detectives to come speak to Defendant. (N.T. Suppression at 15). Sergeant Jason Sweeney from Cumberland County Prison testified he was familiar with Defendant from prior periods of incarceration and spoke to him after the police had interviewed him. (N.T. Suppression at 26-28, 29). Sweeney explained that Defendant was not acting like his normal self and said he was not sure what he was supposed to do. (N.T. Suppression at 27-28). Sweeney told Defendant to tell the truth because the weight of keeping it inside would "crush" him. (N.T. Suppression at 32). After their conversation, Defendant then spoke to detectives again and confessed to the murders. (N.T. Suppression at 58). Finally, Detectives interacted with Defendant a third time when they served search warrants for DNA and gunshot

[2] At the suppression hearing the Commonwealth agreed that the theft charges filed against Defendant for taking the victim's car would be severed from the homicide charges.

residue on his person. (N.T. Suppression at 54). While police were executing the search warrant, Defendant, without provocation, said "I killed Sydney." "And I killed Kaylee too." (N.T., Vol. III at 17).

At the end of the hearing, the trial court issued an Order allowing Anderson's unsolicited statement to Corsiglia into evidence; statements made at the beginning of the search warrants were deemed admissible as unsolicited, voluntary statements; the trial court suppressed all other statements because they violated the defendant's rights under the 5th and 6th Amendment; a statement made the following day in a police car was also suppressed. (N.T. Suppression at 98-99).

Defendant was convicted by a jury of his peers of one count of Murder of the First Degree in the death of Sydney Parmelee; one count of Murder of the First Degree in the death of Kaylee Lyons; one count of First-Degree Murder of an Unborn Child; and two counts of Endangering the Welfare of a Child. (N.T., IN RE: Jury Trial, Volume IV, Guido, E., J. at 60-62).

A sentencing hearing took place, where the Commonwealth sought the death penalty for Defendant's killing of Sydney and Kaylee. The parties stipulated Defendant had a prior criminal history that included a conviction for Robbery and a conviction for Burglary. (N.T., IN RE: Sentencing Phase, Volume I, Guido, E. J, at 6-7 (hereinafter "N.T. Sentencing Phase, Vol. I at ____.")) The Commonwealth presented victim impact testimony and the defense presented mitigation through lay witnesses and two expert witnesses, including a professor of psychology. (N.T. Sentencing Phase, Vol. II at 31-33, 35).

After deliberating, the jury determined it was deadlocked regarding the appropriate punishment for the death of Sydney Parmelee. (N.T. Sentencing Phase, Vol. II at 80). For the death of Kaylee Lyons, the jury unanimously returned a verdict of death, finding one aggravating circumstance and the catch all mitigating circumstance, but determining the aggravating circumstance outweighed the mitigation. (N.T. Sentencing Phase, Vol. II at 84). Defendant was sentenced to life in prison without parole for the murder of Sydney Parmelee and death for the murder of Kaylee Lyons. (N.T. Sentencing Phase, Vol. II at 80, 84).

REASONS FOR DENYING THE PETITION

I. SUMMARY OF ARGUMENT

The statements of Davone Anderson were properly admitted by the trial court. Anderson made voluntary, spontaneous statements to a corrections officer and the police during the execution of a search warrant. The statements were not in response to any question or coercion. The defendant's right against Self-Incrimination was not violated because the police did not coerce or encourage the defendant to make these statements. Under the circumstances of this case, the statements were properly classified as a spontaneous utterance and were admissible regardless of *Miranda*. There are insufficient facts on the record to support a review of this Court's decision in *Colorado v. Connelly*.

II. ARGUMENT

The statements admitted by the trial court in this case were "voluntary" and do not implicate *Miranda* for purposes of the Self-Incrimination Clause of the Fifth Amendment of the United States Constitution. The Self-Incrimination Clause of the Fifth Amendment of the United States Constitution provides that "no person…shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. 5. This Honorable Court has held that the privilege protects an individual from legal compulsion to testify or to make a statement that is considered "testimonial" during in-custody questioning by law enforcement. *Miranda v. Arizona*, 384 U.S. 436 (1966). Incriminating statements made in response to questioning may not be introduced into evidence in the prosecution's case in chief unless the suspect has been advised of his right to remain silent, that any statement he does make may be used against him, and that he has the right to the presence of an attorney. *Miranda*, 384 U.S. at 444. If the suspect states that he wishes to consult with an attorney, questioning must be seized. *Id*. at 445.

On the evening of July 31, 2020, Anderson was in the booking center of Cumberland County Prison, awaiting arraignment for charges of receiving stolen property. It is undisputed that Anderson was "in custody" at that time. Anderson spoke to Sergeant Sweeney, who noticed that Anderson was acting out of character. Importantly, Anderson told Sergeant Sweeney that he would not harm himself and was tired because he had been up using ecstasy and marijuana for several days. Shortly after that conversation, Corrections Officer Corsiglia observed Anderson in a

cell through a monitor and realized Defendant was attempting to tie an elastic band from a COVID-19 mask around his neck; due to that possible suicide attempt, Anderson was placed in a suicide smock and dry cell, pursuant to jail policies.

A corrections officer stayed with him for half an hour to monitor him face to face and he could be monitored by close circuit television. At around 6:45-7:00 PM, Aderson, without any provocation or questioning by any corrections officers, Anderson knocked on the glass window of the cell and said to Corsiglia that he wanted to confess something, that he "killed them both." Anderson then muttered names that Corsiglia did not understand.

Corsiglia decided to call the detectives at the Carlisle Borough Police Department. Corsiglia asked them to come speak to Anderson and advised them that Anderson had confessed to killing someone.

Detectives arrived at the prison with signed search warrants to execute a search warrant for DNA collection and met with Anderson. Detectives had been actively investigating the homicides that Anderson was suspected of committing at that time. Upon arrival, the detectives were advised by prison staff that Anderson had confessed to killing both women. Detectives interviewed Anderson twice, but he requested a lawyer[3]; Anderson was then taken to medical for part of the booking process;

[3] The statements made by the defendant during those police interviews were suppressed because the defendant requested counsel, and the police did not stop the interrogation after he made that request.

detectives then asked that he be returned so they could execute the search warrants for a DNA swab. This interaction was recorded on body worn camera and played for the trial court at the suppression hearing. While police were executing the search warrants, Anderson, without provocation, said "I killed Sydney. And I killed Kaylee too."

Anderson alleges that these statements are not "voluntary" because the jail had not provided counsel during the time that he was incarcerated pending arraignment. Anderson had not yet been "booked" for any criminal charges and was waiting to be processed by the jail when the statements were made. This Honorable Court has held that the Sixth Amendment right of the accused to the assistance of counsel does not attach until a prosecution is commenced. *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991). The right to counsel is guaranteed by the Sixth Amendment at the first appearance before a judicial officer at which a defendant is told of the formal accusations against him and restrictions are imposed on his liberty. *Rothergy v. Gillespie County, Tex.*, 554 U.S. 191, 194 (2008). This Honorable Court has held that the practice of providing free counsel at the time of the first formal proceeding, as is done in most states, is appropriate. *Id.* (citing *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991).)

In Pennsylvania, when a defendant has been arrested without a warrant in a court case, a complaint shall be filed against the defendant and the defendant shall be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay. Pa. R. Crim. P. 519 (A)(1). At the preliminary arraignment, a copy

of the complaint is provided to the suspect. Pa. R. Crim. P. 540 (D). If the suspect was arrested without a warrant, the issuing authority shall read the complaint to the defendant and inform the defendant of his rights, including the right to counsel. Pa. R. Crim. P. 540 (F). The defendant is informed at that time of the date of his preliminary hearing. Pa. R. Crim. P. 540 (G)(1).

Here, Anderson had been arrested for receiving stolen property because he was found in possession of the victim's missing car (homicide charges were filed at a later date). Anderson was still pending arraignment and had not appeared before a magistrate at the time he made the statements to the corrections officers. The Commonwealth was not required to provide him with free counsel and did not violate his Sixth Amendment Right under the circumstances. Anderson did request counsel during the interrogation conducted by detectives; those statements were suppressed by the trial court. Therefore, the questions at issue in this case should not be presented within the framework of the defendant's Sixth Amendment right to counsel because the defendant was not entitled to free counsel while he waited to be processed at the jail.

Anderson has requested that this Honorable Court re-examine *Colorado v. Connelly* in light of the instant case. This Court held in *Connelly* that a defendant's mental condition may be a "significant" factor in the voluntariness calculus, but it does not justify a conclusion that his mental condition, by itself and apart from its relation to official coercion, should ever dispose of the inquiry into constitutional voluntariness. *Colorado v. Connelly*, 479 U.S. 157, 158 (1986). This Honorable Court

also concluded that admissibility of a "voluntary statement" is governed by the state rules of evidence, rather than decisions regarding coerced confessions and *Miranda* waivers. *Connelly*, 479 U.S. at 159. The Commonwealth submits that the state court in this case made the appropriate legal analysis and properly admitted the statements within the evidentiary laws of the Commonwealth; there is no need to revisit *Connelly* as this case is clearly an issue of "voluntariness." Although Anderson claims the jail was an "oppressive custodial environment" and that the defendant was "emotionally disturbed," there are no facts or evidence in the record to support these claims. There is no testimony or evidence within the record to support additional findings related to the defendant's mental health at the time of the statements, nor has there been any testimony or evidence presented in the history of this case to show that defendant was in any way incompetent or unable to control his actions at that time. The record contains no evidence to substantiate the claim that any procedure used within the jail was "oppressive" or somehow morphed the interactions with corrections officers into an interrogation. The trial court did consider and find as a fact that the defendant was crying and emotional- there was no finding that he was "emotionally disturbed" or in a "mental health crisis." There was no testimony or evidence presented to establish such a finding.

As this Court held in *Connelly*, the court must consider factors beyond just the mental health of the defendant when making a determination as to the voluntariness of a statement, and that determination should be made within the framework of the state's evidentiary rules. Here, the trial court reviewed the totality of the

circumstances, including the recording of Anderson's voluntary statement to the detectives, and determined that they were admissible. The decision was based on case law and evidentiary rules within the Commonwealth and affirmed by the Pennsylvania Supreme Court.

This Honorable Court has previously addressed the admission of a spontaneous utterance in the Commonwealth. In *Pennsylvania v. Muniz*, the defendant made self-incriminating statements on camera while intoxicated and undergoing field sobriety testing. *Pennsylvania v. Muniz*, 496 U.S. 582, 603 (1990). Because the statements made by Muniz were not prompted by interrogation or in response to questions by the police, this Court held that *Miranda* did not require suppression of the statements. *Id*. at 605.

Similarly, Anderson confessed to the corrections officer without any prompting whatsoever. Anderson requested that the corrections officer come to his cell by tapping on the glass window. When the corrections officer approached, Anderson confessed to the murders without any prompt or question being posed by the corrections officer. While detectives were performing the execution of the DNA search warrant and doing their paperwork, Anderson made a completely unsolicited confession to the murders. These statements were properly considered by the trial court and the Pennsylvania Supreme Court to be spontaneous utterances, which were voluntary and not in response to prompting by law enforcement. See *Commonwealth v. Johnson*, 42 A.3d 1017, 1029 (Pa. 2012); *Commonwealth v. Baez*, 720 A.2d 711, 720

(Pa. 1998) ("Volunteered or spontaneous utterances are admissible even though declarant was not 'Mirandized.')[4]

This case does not provide any additional facts or details that warrant revisiting or changing precedent regarding voluntary statements. The record does not contain any evidence that would support the claims that the defendant was in a mental health crisis or emotionally disturbed in a manner that would make his statements involuntary. Accordingly, this Honorable Court should Deny the Petition for Writ of Certiorari.

[4] Anderson outlines statements made during the police interrogation and in a subsequent car ride. The Commonwealth does not address those statements here because they were suppressed by the trial court and clearly no longer at issue given they were not used during the defendant's trial. The first statement made by the defendant to the corrections officers occurred before the police arrived to question the defendant. The second statement, made during the execution of the search warrants, was recorded on video and made at random with no prompting whatsoever by police.

CONCLUSION

Wherefore, the Commonwealth respectfully submits that the statements made by the defendant were voluntary and did not implicate *Miranda* for purposes of the right against self-incrimination, and there is no need to revisit this Court's decision in *Connelly*, the Commonwealth requests that this Honorable Court dismiss the request for certiorari in this case.

Respectfully submitted,

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