No. 24-6891

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

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE.

John R. Mills
PHILLIPS BLACK, INC.
1721 Broadway
Suite 201
Oakland, CA 94612
(888) 532-0897
j.mills@phillipsblack.org

Robert Brett Dunham
Counsel of Record
PHILLIPS BLACK, INC.
1901 S. 9th Street, Suite 608
Philadelphia, PA 19148
(888) 532-0897
r.dunham@phillipsblack.org

Counsel for Davone Unique Anderson

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Petitioner Davone Unique Anderson respectfully submits this reply brief in support of his petition for writ of certiorari to the Supreme Court of Pennsylvania in this death penalty case.

INTRODUCTION

This case presents issues previously unanswered by this Court as to the point at which custodial conditions to which state actors subject an emotionally distraught and suicidal suspect become so coercive that they render an uncounseled inculpatory statement involuntary or a product of custodial interrogation.

The Commonwealth's response does not address these issues. Instead, it disregards the coercive interplay between the conditions of confinement and interrogation to which Mr. Anderson was subjected before confessing and then conclusorily asserts, in the absence of the evidence it has disregarded, that the statements were voluntarily made without questioning or provocation.

But denying a suspect counsel for hours on end matters. Endlessly delaying processing his paperwork, without which a suicidal young man cannot call his mother matters. Forcibly stripping a suicidal person of his clothing and forcibly re-dressing him in a suicide-prevention "turtle suit" and moving him to an isolation cell with no toilet or running water matters. Strategically delaying serving a search warrant over the course of two extended unlawful interrogations matters. The totality of the circumstances matter.

This Court should not ignore the evidence that the Commonwealth has overlooked. For the reasons presented herein and in Mr. Anderson's petition for writ of certiorari, it should grant the petition and hear Mr. Anderson's case.

ARGUMENT

Mr. Anderson has argued that the trial court in his case failed to suppress two confessions that were the product of coercive confinement and illegal interrogation. The trial court, affirmed by the Supreme Court of Pennsylvania, ruled that the statements had been unprompted by questioning by law enforcement and therefore were voluntary. App. 140a, Conclusions of Law ¶¶ 1 & 2. Respondents fashion the issues in this case in the same way in their Brief in Opposition ("BIO"). *See* BIO at i (Counterstatement of the Questions Presented: "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"; "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.").

The Commonwealth and the Pennsylvania courts are wrong. The voluntariness of a statement is not determined in isolation from the circumstances of custody in which it is made and without consideration of the declarant's mental state. Properly evaluated, Davone Anderson's statements were the product of physically and psychologically coercive state action — the conditions of Mr. Anderson's confinement, his extreme emotional disturbance, the unreasonable failure of Commonwealth actors to honor his request for a lawyer, and pervasive unconstitutional interrogation by homicide detectives.

I. Davone Anderson's Uncounseled Inculpatory Statement to Corrections Officer Corsiglia from a Suicide-Proof Cell, 11 Hours After First Requesting a Lawyer and in the Immediate Aftermath of an Attempt to Kill Himself, was a Product of Physically and Psychologically Coercive Conditions of Custody in Violation of the Fifth, Sixth, and Fourteenth Amendments.

The Commonwealth defends the admission of the first statement at issue — Mr. Anderson's comment to Cumberland County Prison Correctional Officer Matthew Corsiglia that "I killed them both" — on the grounds that it was "voluntary," "spontaneous," and made "without provocation" and "without any prompting whatsoever" by the corrections officer. BIO at 6, 9, 12. It further argues that "[t]he 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." BIO at 11.

In *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), this Court explained that "[t]he ultimate" and "clearly established" test of voluntariness is:

> 'Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process.'

Bustamonte, 412 U.S. at 225-26 (quoting *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961)). The Court assesses "the totality of all the surrounding circumstances," including the characteristics of the accused and the circumstances in which the statement was made, in determining whether a defendant's will was overborne. *Id*. at 226.

It is true that trial counsel presented no expert testimony concerning Mr. Anderson's mental state at the time of his statements — a failure that led Justice McCaffery to sharply criticize counsel's deficient performance. Nevertheless, the record contains ample evidence that, in Mr. Anderson's exhausted and emotionally distraught mental state, the circumstances of his confinement were sufficiently oppressive to overbear his will:

- Mr. Anderson had requested counsel immediately after being arrested at 4:08 a.m. More than 13 hours later, he had not received it.

- Corrections officers reported observing him cowering in a corner and sobbing in his cell.
- He wanted to call his mother but was denied the opportunity to do so because, after 13 hours, the prison had failed to processing his arrest and provided no timeline for when they would do so.
- Eleven hours into his ordeal, Mr. Anderson tried to kill himself. In response, guards descended on his cell and forcibly stripped him of his clothing. They then re-dressed him in an anti-suicide suit so humiliating in its appearance that it was known as a "turtle suit," and removed him 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.
- Homicide detectives who observed him over the course of several hours shortly after his statement to C.O. Corsiglia described his behavior as "fuckin' nuts."

For purposes of the voluntariness inquiry, the Commonwealth's argument that Mr. Anderson's right to counsel had not yet attached because the county jail had not yet formally booked him on any charges and he had yet to be arraigned, BIO at 9-10, is immaterial. What is material is that after 13 unexplained hours of not being processed, with no end in sight to the delay, Mr. Anderson was isolated, hopeless, helpless, and desperate — and his conduct provided objectively verifiable evidence of that fact. What is also material is that not providing Mr. Anderson counsel for more than 13 hours, not allowing him to call his mother, stripping him of his clothing, dressing him in a turtle suit, and placing him in a suicide-proof cell is coercive "state action" that is "causally related to the confession." *Colorado v. Connelly*, 479 U.S. 157, 164-65 (1986).

The Commonwealth's argument that "there was no finding that [Mr. Anderson] was 'emotionally disturbed' or in a 'mental health crisis,'" BIO at 11 is equally unavailing. The trial court found that Mr. Anderson "was obviously distraught," App. 139a, Findings of Fact ¶ 18, but did not address his mental state one way or the other in its conclusions of law, App. 140a, or in its post-trial ruling, Appendix H, App. 244a-264a. Nor did the Pennsylvania Supreme Court address Mr. Anderson's mental state in its opinion on this issue. App. 17a. The state court's silence on this matter is not evidence that Mr. Anderson's will had not been overborne. It is evidence that the state courts did not consider the circumstances of his exhaustion, emotional distress, suicide attempt, and hours isolated in a booking cell followed by forcible removal to a suicide cell when it concluded that his statement was voluntary.

Finally, the Commonwealth appears to argue that the totality of the circumstances analysis under *Connelly* "should be made within the framework of the state's evidentiary rules." BIO at 11-12. Of course, there is no such requirement. Evidence that is unconstitutionally presented does not suddenly become constitutional because its admission is permissible under state evidentiary law. What this Court actually said in *Connelly* is that the constitution leaves to the states issues of admissibility arising out of a defendant's state of mind when the confession was given in circumstances "divorced from any coercion brought to bear on the defendant by the State." *Connelly*, 479 U.S. at 167.

Far from being voluntary, Mr. Anderson's inculpatory statement was the culmination of a chain of coercive state action denying him counsel and access to the outside world 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 statement should have been 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 emotional disturbed defendant that results in an inculpatory statement requires suppression. The Court should agree to grant certiorari, and relief to Mr. Anderson on this issue.

II. Davone Anderson's Uncounseled Confession to Detectives Miller and Dolan After He Had Been Denied Counsel for 16½ Hours, Subjected to Two Prior Unconstitutional Interrogations by the Detectives, Removed from the Medical Unit to Execute Physically Intrusive Search Warrants in a Third Custodial Interview, and Believed the Officers Would Kill Him if He Did Not Cooperate was a Product of Inherently Coercive Police Conduct in Violation of the Fifth, Sixth, and Fourteenth Amendments.

Mr. Anderson made a second inculpatory admission, this one to Detectives Thomas Dolan and Christopher Miller, during the course of four custodial interviews in which the detectives committed a litany of what the trial court described as "blatant violation[s] of [Mr. Anderson's] rights under the 5th and 6th Amendments," App. 253a. However, it permitted the admission of Mr. Anderson's statement to detectives that, "I killed Sydney. … I killed Kaylee too," App. 176a, that was made after the detectives initiated a third interrogation session in which they executed several search warrants and begin swabbing Mr. Anderson's hands for gunshot residue but before they began directly questioning him about the murders.

The trial court, affirmed by the Pennsylvania Supreme Court, deemed the confessions admissible, holding that they "were voluntary statements and not made in response to any questioning." App. 138a, Conclusions of Law ¶ 2; App. 252a ("Defendant made unsolicited,

voluntary statements to the detectives, in which he admitted to killing Sydney and Kaylee."); App. 17a.

Mr. Anderson's petition sets forth in detail at pages 10-19 and 26-29, the context of the custodial environment in which these statements were given. The third "interview" session, he argued, involved "a measure of compulsion above and beyond that inherent in custody itself," *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980), that constituted an interrogation from the outset.

The Commonwealth's response to those facts and this argument is to ignore them.[1] Its entire rejoinder on the circumstances in which Mr. Anderson made his statement to the officers is: "While detectives were performing the execution of the DNA search warrant and doing their paperwork, Anderson made a completely unsolicited confession to the murders." BIO at 12.

That argument "blinks reality." *Miller-El v. Dretke*, 545 U.S. 231, 266 (2005). During their four questioning sessions with Mr. Anderson, the detectives persistently solicited incriminating information in a manner that "blatantly violated" his rights. 16½ hours had passed since he had first asked for a lawyer but he had never been given one. He had already attempted suicide and been forcibly stripped and moved to the bare concrete slab of a suicide-prevention cell. He had twice had been denied the opportunity to call his mother because the prison inexplicably had still failed to process him. He had already been subjected two prior grueling interviews by the same detectives, one 43 minutes long, the other taking 52 minutes. His repeated requests for counsel during those interrogations had been rebuffed. He had finally been taken to the medical unit for processing that would have allowed him the phone call to his mother that he had twice requested, only to be involuntarily returned to the same interrogation

[1] The Commonwealth's Brief in Opposition also advances the same general arguments in support of admitting the statement to the police officers as it did with respect to the statement to the correctional officer. Mr. Anderson incorporates his response to those arguments here.

room to be questioned by the same detectives. He was fearful and paranoid throughout the course of his encounters with the detectives, believed that the correctional officers were trying to kill him, and believed the detectives would kill him if he did not cooperate with them.

Mr. Anderson did not need for Detectives Miller and Dolan to invoke any magic words or formally ask a question to know he was being interrogated. "[A] measure of compulsion above and beyond that inherent in custody itself" was already present when he was involuntarily returned to the interview room for yet another interview session with the detectives who had already systematically violated his rights. 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. Anyone who had already experienced more than one and one-half hours of questioning by the detectives would have considered their third trip to the interview room an "interrogation."

The detectives' conduct in this case was "oppressive," "overreaching," overbore Mr. Anderson's will, and had a direct causal relationship to his confession. *Connelly*, 479 U.S. at 163-64. As a result, it violated *Miranda v. Arizona*, 384 U.S. 386 (1966), due process, and the Fifth, Sixth, and Fourteenth Amendments.

This court should grant Mr. Anderson's petition for writ of certiorari and grant him relief on this issue.

CONCLUSION

For the reasons presented herein and in his petition for writ of certiorari, Petitioner Davone Anderson respectfully requests that this Court grant his petition for writ certiorari and reverse his convictions and death sentence.

Respectfully submitted,

/s/Robert Brett Dunham
Robert Brett Dunham
Counsel of Record
PHILLIPS BLACK, INC.
1901 S. 9th Street, Suite 608
Philadelphia, PA 19148
(888) 532-0897
r.dunham@phillipsblack.org

John R. Mills
PHILLIPS BLACK, INC.
1721 Broadway,
Suite 201
Oakland, CA 94612
(888) 532-0897
j.mills@phillipsblack.org

Counsel for Davone Unique Anderson

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