

No. _____

SUPREME COURT OF THE UNITED STATES

KEITH FOSTER,
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

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I. Question Presented

Where a police officer misrepresents the fundamental nature of an individual's interaction with police by lying about his status as a suspect, does this factor make a statement made in an otherwise non-coercive interaction involuntarily given?

Put another way, does Detective Sellers' lie about Mr. Foster's status as a suspect outweigh the other factors in considering the voluntariness of his statement?

II. Parties to the Proceeding

The parties to this proceeding are the Petitioner, Keith Foster (“Mr. Foster”), and the Respondent, the Commonwealth of Pennsylvania. All parties to this proceeding appear in the case’s caption on the cover page.

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IV. Petition for Writ of Certiorari

Mr. Foster, by and through Steven A. Tehovnik, Deputy – Trial, and Brandon P. Ging, Deputy – Appeals, of the Allegheny County Office of the Public Defender in Pittsburgh, Pennsylvania, respectfully petitions this Honorable Court for a Writ of Certiorari to review the judgment of the Pennsylvania Supreme Court’s affirmation of the Pennsylvania Superior Court’s Order and Opinion reversing the trial court’s grant of suppression of Mr. Foster’s statement as involuntarily made.

V. Opinions Below

The unpublished decision by the Superior Court of Pennsylvania (“Superior Court”) reversing the trial court’s suppression of Mr. Foster’s statement to officers is reported as *Commonwealth v. Foster*, 301 A.3d 923 (Table), 519 WDA 2022, 2023 WL 4118645 (mem.) (Pa. Super. June 22, 2023). That Opinion is attached as Appendix B. The Order of the Supreme Court of Pennsylvania decision affirming the Superior Court’s reversal is reported as *Commonwealth v. Foster*, 332 A.3d 1187 (Pa. 2025). The opinion and concurring opinion are attached as Appendix A.

VI. Jurisdiction

The Supreme Court of Pennsylvania ruled against Mr. Foster on March 20, 2025. Mr. Foster invokes this Honorable Court’s jurisdiction under 28 U.S.C. § 1257, having timely filed this Petition for a Writ of Certiorari within 90 days of the Supreme Court of Pennsylvania’s judgment. Rules of the Supreme Court of the United States (Effective January 1, 2023) Rule 13. Review on Certiorari: Time for Petitioning.

VII. Constitutional Provisions Involved

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor 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; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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.

VIII. Statement of the Case

This is a government appeal from the trial court's grant of suppression of Keith Foster's ("Mr. Foster") statement that he did not have sexual intercourse with the alleged victim in this case. Appendix A at 1191. This statement was made to Detective Bryan Sellers of the City of Pittsburgh Bureau of Police ("Detective Sellers"), who had already obtained a search warrant for a buccal swab of Mr. Foster's DNA, claiming in the warrant's affidavit that probable cause existed to obtain the DNA since male DNA was recovered from the alleged victim and Mr. Foster had been alone with the alleged victim on the evening of the alleged incident. *Id.*

Mr. Foster was not in handcuffs at the police station when he was questioned and arrived voluntarily. Appendix A at 1193. He was not read his *Miranda* rights, as he was not in custody. *Id.* Detective Sellers lied to Mr. Foster and told him that he was not a suspect in the sexual assault of the victim. *Id.* Mr. Foster then stated that he came across the alleged victim, who had crashed her car, on his way home. *Id.* Mr. Foster stated that the alleged victim appeared visibly intoxicated and argumentative when he saw her that night and he drove her back to the bar and left her with staff, who ordered a Lyft to take her home. *Id.* Detective Sellers' tone throughout was conversational and non-accusatory. *Id.* at 1192. Mr. Foster then denied ever having sex with the alleged victim. *Id.*

Detective Sellers did not inform Mr. Foster of the existence of a warrant for his DNA prior to Mr. Foster stating that he did not have sexual intercourse with the alleged victim. Appendix A at 1191. Ultimately, Mr. Foster consented to his DNA being taken, and it was later matched to the DNA found during the alleged victim's sexual assault examination. *Id.* As such, the Commonwealth intends to use Mr. Foster's statement against him as tending to show consciousness of guilt at trial.

Mr. Foster moved to suppress the statement, arguing that it was involuntary under the totality of the circumstances. Appendix A at 1192. The trial court found that Mr. Foster's statement was involuntary, agreeing with Mr. Foster that his "choice to give a statement was not free and unconstrained since Detective Sellers misrepresented the fundamental nature of the interaction by lying about his status as a suspect." Appendix C at 2-3. Without knowing that he was a suspect, Mr.

Foster’s capacity for self-determination was critically impaired. *Id.* The trial court clarified that it did not think Detective Sellers was “trying to be a wise guy,” but instead “misunderstood what he was doing.” Appendix A at 1192. The trial court also found that that “Detective Sellers’ misrepresentations were designed to, and did, induce Mr. Foster to speak with Detective Sellers.” Appendix C at 2-3. The trial court concluded that Mr. Foster’s “decision to speak with Detective sellers was borne solely from his affirmative misrepresentation that Mr. Foster was not a suspect in the sexual assault,” and not the “product of an informed and conscious choice.” *Id.*

The Superior Court ultimately agreed with the Commonwealth, finding that “the misrepresentation made by Detective Sellers in the present case did not render Foster’s statements involuntary.” Appendix B at 11. The Superior Court found the trial court’s failure to consider some of the factors involved in the totality-of-the-circumstances test rendered its decision invalid. Appendix B 11-12. For instance, it failed to consider the duration of the interview, Mr. Foster’s psychological state (including that he was able to place a phone call in the interview room), the door was not locked, or the conditions attendant to his detention, like that Detective Sellers’ manner and demeanor were not coercive. *Id.* Based on the totality of the circumstances, the Superior Court found that Mr. Foster’s at-issue statements were voluntary. Appendix B at 14.

The Superior Court focused on the fact that Mr. Foster knew that he *could* have been prosecuted and characterized Detective Sellers’ misstatement as a “misunderstanding” and “not intentional.” Appendix B at 14; *but see* Appendix B at

6 (citing the trial court's opinion, which stated that "Detective Sellers' misrepresentations were designed to, and did, induce Mr. Foster to speak with Detective Sellers."). Since Mr. Foster was not "pushed to confess, or subject to multiple, hours-long interviews," the Superior Court found that his statement was not involuntarily given, Detective Sellers' misrepresentation notwithstanding. Appendix B at 14.

The Supreme Court of Pennsylvania granted Mr. Foster's Allocatur Petition to review the following question:

Whether, under the applicable totality of the circumstances test, the detective's misrepresentation to Mr. Foster that he was not a suspect rendered his subsequent statement involuntary?

310 A.3d 718 (Pa. 2023) (*per curiam*).

The Supreme Court of Pennsylvania agreed that,

[U]nder the circumstances present here, the misrepresentation itself did not outweigh the non-coercive, voluntary nature of the interview. In other words, we hold that a misrepresentation to an interviewee that he is not a suspect, when in fact police consider him a suspect, does not, *per se*, transform a voluntary statement into an involuntary one under the Fifth Amendment.

Appendix A at 1189-90. The Court there held that the three coercive factors – Detective Sellers' lie to Mr. Foster about being a suspect, that Detective Sellers had obtained two warrants for his DNA, and that Detective Sellers had reached out multiple times to meet with him – did not render Mr. Foster's statement involuntary as his capacity for self-determination was not critically impaired, and he was able to make a "free and unconstrained choice" whether to continue with the interview.

Appendix A at 1196-97. “As applied to the present matter, an officer’s misrepresentation to an interviewee that he is not a suspect, when, in fact, the officer believes the interviewee may be responsible for a crime, does not so taint the interview as to render it involuntary *per se*.” Appendix A at 1201-2.

Mr. Foster respectfully asks this Honorable Court to raise the constitutional floor to prohibit police from lying to an interviewee about their belief that he is a suspect.

IX. REASONS FOR GRANTING THE WRIT

- A. Mr. Foster’s claim that his statement was involuntary in light of the police misrepresentation about his status as a suspect, and its treatment by Pennsylvania courts, is so intertwined with federal law that this case presents a substantial federal question for this Honorable Court’s review.**

As the claim presented here is intertwined with federal law, this Honorable Court should reach merits review on this case in light of the interwoven, important federal question presented.

It is well established that this Honorable Court’s jurisdiction is dependent on a determining federal question being presented to the highest court of a state, and the resolution of that federal question being necessary to the determination below. *Williams v. Kaiser*, 323 U.S. 471, 477-479 (1945). This Honorable Court will not review a decision if the state court relied on state grounds, “but it is likewise well settled that if the independent ground was not a substantial or sufficient one, it will be presumed that the State court based its judgment on the law raising the Federal question, and this court will then take jurisdiction.” *Id.* (internal quotation marks omitted).

Recognizing that it is often unclear whether a case was disposed of on federal or state grounds, this Honorable Court made clear that only a plain statement of state grounds can defeat review in the face of an otherwise ambiguous state opinion. *Michigan v. Long*, 463 U.S. 1032, 1037-1044 (1983). There, this Honorable Court analyzed a decision by the Supreme Court of Michigan where the Fourth Amendment

was the basis for the ultimate decision that a search was proscribed by said amendment. *Id.* The *Long* Court explained:

[W]hen, as in this case, a state court decision fairly appears to rest primarily on federal law, or to be *interwoven with the federal law*, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way that it did because it believed that federal law required it to do so...If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.

Id. at 1040-1041 (emphasis added). See *Florida v. Powell*, 559 U.S. 50, 55-60 (2010) (holding state court decision that “treated state and federal law as interchangeable and interwoven” did not provide the clear statement required under *Long*); *Pennsylvania v. Muniz*, 496 U.S. 582, 587 (1990) (finding that although the state judgment referenced a state constitutional provision holding testimony should be excluded from a criminal trial, that provision’s protections were identical to that provided by the Fifth Amendment, and “[t]he decision therefore does not rest on an independent and adequate state ground.”).

As Justice Wecht aptly put it, this Honorable Court “has ruled that, while lies and deceptive tactics are ‘relevant’ factors within a ‘totality of the circumstances’ test, they are ‘insufficient’ standing alone to render an ‘otherwise voluntary confession inadmissible.’” Appendix A at 1202-3. Mr. Foster asks that this Honorable Court find, first, that a federal question is presented here and, second, that a police officer lying about someone’s status as a suspect runs afoul of our federal Constitution. Mr.

Mr. Foster respectfully asks this Honorable Court to find that the grounds relied upon below were not adequate and independent from federal law. In *Pennsylvania v. Labron*, 518 U.S. 938 (1996), this Honorable Court granted review despite citations below to Pennsylvania cases because the state law appeared to be “interwoven with federal law,” and the independence and adequacy of the state grounds were not plain from the opinion. *Id.* at 941.

With respect to the voluntariness of the statements, the Pennsylvania Supreme Court has held that the Pennsylvania Constitution and United States Constitution are interpreted the same way. *Commonwealth v. Bishop*, 217 A.3d 833, 835 (Pa. 2019) (“To date, Article I, Section 9 has not been interpreted by this Court to provide any greater protection than does the Fifth Amendment in the relevant regard.”).

As this Honorable Court held in *Oregon v. Kennedy*, 456 U.S. 667(1982), “[e]ven if the case admitted of more doubt as to whether federal and state grounds for decision were intermixed, the fact that the state court relied to the extent it did on federal grounds requires us to reach the merits.” *Id.* at 671. That is because “it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action.” *Long, supra* (internal citation omitted). The same is true for Mr. Foster’s case. The Pennsylvania Supreme Court’s decision was, at least, intertwined with a federal question, and did not rest on independent and adequate state grounds.

Respectfully, this Honorable Court should reach merits review on this case in light of the interwoven, important federal question presented.

B. When police lie about an interviewee's status as a suspect, an individual's ensuing statement is rendered involuntary by the police's misconstruction of the fundamental nature of the interaction.

Mr. Foster's statement was involuntary under the totality of the circumstances. In particular, Detective Sellers' lie to Mr. Foster that he was not a suspect deprived Mr. Foster of his ability to make an unconstrained choice. As the trial court correctly observed, "Detective Sellers' misrepresentations were designed to, and did, induce Mr. Foster to speak with Detective Sellers." Appendix C at 2-3. This lie altered the fundamental nature of Mr. Foster's interaction with police and rendered his statement involuntary.

I. Voluntary Statement Precedent

As Justice McCaffery apply summarized in the Pennsylvania Supreme Court:

A defendant's confession or inculpatory statement is not admissible at trial unless it was made **voluntarily**. This mandate is grounded in both the Fifth Amendment's right against self-incrimination and the Fourteenth Amendment's Due Process Clause. *See Dickerson v. United States*, 530 U.S. 428, 433 (2000).

Appendix A at 1195. That said, "[a]ny police interview of an individual suspected of a crime has coercive aspects to it." *J.D.B. v. North Carolina*, 564 U.S. 261, 268 (2011) (internal citation and quotation marks omitted). Thus, some elements which "influence a criminal suspect to make incriminating admissions" are permitted. *United States v. Washington*, 431 U.S. 181, 187 (1977). To determine voluntariness,

this Honorable Court has set out a “totality of the circumstances” test, which requires “a careful scrutiny of all the surrounding circumstances” rather than the test turning “on the presence or absence of a single controlling criterion.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973); *Arizona v. Fulminante*, 499 U.S. 279, 285-286 (1991).

If a statement is obtained by police while the suspect’s will is overborne and the suspect’s capacity for self-determination is critically impaired, due process prevents such a statement from being admitted as evidence. *Rogers v. Richmond*, 365 U.S. 534 (1961). A confession must thus be the product of an unconstrained choice by its speaker. *Rogers*, 365 U.S. at 534.

A review of this Honorable Court’s precedent in this area is instructive. In *Fulminante*, this Honorable Court found that a confession was coerced due to the use of deception by the government via a fellow inmate, who was an FBI informant. 499 U.S. at 287-288. The informant relayed a credible threat of violence was conveyed – the informant threatened to leave the suspect unprotected during a violence while incarcerated. *Id.* While that case involved the threat of violence, it serves to underscore the effect of coercion on the voluntariness of a statement. *Id.*

Similarly, this Honorable Court found the confession in *Ashcraft v. Tennessee* coerced and therefore involuntary in light of the 36 hours of interrogation without rest. 322 U.S. 143, 153-154 (1944). This Court held that some police interrogation techniques are unacceptably coercive and violate due process. *Id.* This Court emphasized that confessions borne from police deceit are incompatible with the

possession of mental freedom, rendering them involuntary. *Id.* Importantly, this is so irrespective of a suspect's will being overborn. *Id.* In other words, *Ashcraft* supports the proposition that a single factor be sufficiently severe to outweigh the remaining factors in a totality of the circumstances evaluation.

Further, this Court found in *Rogers*, that whether a confession is voluntary is dependent on whether police actions overbore the defendant's will to resist and brought about confessions not freely self-determined, rather than the truth or falsity of the confessions. 365 U.S. at 534. There, the police falsely threatened to arrest the suspect's wife if he did not confess. *Id.* The *Rogers* Court thus established that the Fourteenth Amendment imposes limits on the techniques¹ police use to elicit confessions regardless of the truth of those confessions. As the government must establish guilt by evidence freely secured, not by coercion, such evidence offends fundamental norms of justice. *Id.*; *But see Illinois v. Perkins*, 496 U.S. 92 (1990) (holding a coercive atmosphere in police-dominated environment is not present when suspect speaks freely with someone he erroneously believes is a fellow inmate.).

In this vein, the Court had previously found in *Spano v. New York*, that a confession was involuntary due to police deception and psychological manipulation. 360 U.S. 315, 324 (1959). There, Mr. Spano was indicted for murder, and the police used a childhood friend of the defendant to falsely claim the defendant's actions had caused trouble for the friend and put his wife and child's financial security in danger. *Id.* at 321-23. The friend, a new police officer, played on the insecurities and

¹ The "third degree" interrogation technique at issue in *Ashcraft* was a prominent police tactic prior to this Honorable Court's decision there.

vulnerabilities of the young father at the direction of superior officers. *Id.* Mr. Spano received limited education, was emotionally unstable, and had no prior contact with the justice system. *Id.* at 560. He was subjected to an eight-hour interrogation and, after multiple pleas from his “friend,” confessed, was convicted, and sentenced to death. *Id.* at 323. Indeed, this Honorable Court held that society’s repugnance for such investigative tactics arose from the “deep-rooted feeling that the police must obey the law while enforcing the law.” *Id.* at 320

In *Frazier v. Cupp*, the most directly on-point precedent, this Honorable Court found that police deception does not necessarily render a statement involuntary. 394 U.S. 731 (1969). There, police told the suspect that his accomplice had confessed when in fact, he had not. *Id.* at 739. Mr. Frazier stated, “I think I had better get a lawyer before I talk any more. I am going to get into trouble more than I am in now.” *Id.* at 738. Police lied and said, “You can’t be in any more trouble than you are now.” *Id.* Mr. Frazier gave a full, signed confession. *Id.* This Court held that while deception is a factor to consider, it does not *per se* render a statement involuntary. *Id.* at 739 (“The fact that the police misrepresented the statements that [the accomplice] had made is, while relevant, insufficient [alone] to make this otherwise voluntary confession inadmissible.”). Instead, the voluntariness of a confession is assessed based on the totality of the circumstances, which includes the presence of any coercive tactics. *Id.*

Lastly, this Honorable Court’s holding in *Moran v. Burbine*, underscores how some police deception – misleading an attorney and lying to the suspect about their

efforts to get the attorney in *Moran* – does not render a statement involuntary as long as it does not affect the suspect’s understanding of their rights and the consequences of abandoning them. 475 U.S. 412, 416-18, 421-24 (1986). There, Mr. Burbine was arrested for another crime but determined to be a suspect in a murder investigation. *Id.* at 416-18. His sister contacted an attorney, who called the police, but was misled about when the interrogation would occur. *Id.* Mr. Burbine was not told of these efforts but was aware of his rights when he confessed. *Id.* The police actions there were improper but fell short of shocking society’s sensibilities. *Id.* at 433-34. The *Burbine* Court concluded that “on facts more egregious than those presented” there, “police deception might rise to a level of a due process violation.” *Id.* at 432.

II. Police misrepresentation about interviewee’s status as a suspect renders subsequent statement involuntary.

Mr. Foster’s statement to Detective Sellers was involuntary under the totality of the circumstances. Mr. Foster’s statement was obtained through police deception that overbore his free will and, as such, was involuntary. While deception alone does not make a confession involuntary, it is a significant factor in the totality of the circumstances test. *Sparo*, 360 U.S. at 323-24. Detective Sellers’ lie deprived Mr. Foster of his free will and his ability to make an unconstrained choice about whether to speak.

The deception used here led Mr. Foster to make a statement he otherwise would not have made in light of the false sense of security predictably created by

Detective Sellers' lie about his status as a suspect.² This aligns with this Honorable Court's holding in *Ashcraft* establishing that psychological manipulation can be coercive to the point of rendering a statement involuntary. 322 U.S. 153-154. As in *Ashcraft*, the lie overbore Mr. Foster's will and capacity for self-determination through the psychological effect it had on his understanding of the nature of the interaction. *Id.*

Whether a co-conspirator implicated a defendant or whether certain evidence does or does not exist is fundamentally different than whether a defendant is a suspect. *Frazier*, 394 U.S. at 739; *Moran*, 475 U.S. 416-18. A statement is not voluntary when the suspect does not understand that he is giving a statement as a suspect, which undermines his self-determination. A confession must be the product of an unconstrained choice by its speaker. *Rogers*, 365 U.S. at 534. Coercion used in obtaining that statement is prohibited. *Fulminante*, 499 U.S. at 287-88; *Rogers*, 365 U.S. at 534. Further, some interrogation techniques are so reprehensible to the "deep-rooted feeling that the police must obey the law while enforcing the law[,"] *Spano*, 360 U.S. at 320, that they are prohibited regardless of officer intent or reliability of the confession. *Ashcraft*, 322 U.S. 153-154. These techniques outweigh all other facts and factors in the totality of the circumstances test when they are used because they shock society's sensibilities. *Spano*, 360 U.S. at 320; *Burbine*, 475 U.S. 421-24, 433-34. The technique used here – deception by falsely telling Mr. Foster he

² It is worth noting here that this Honorable Court has already recognized "mounting empirical evidence" that the pressures of interrogations "can induce a frighteningly high percentage of people who confess to crimes they never committed." *Corley v. United States*, 556 U.S. 303, 321 (2009).

was not a suspect – is one such reprehensible interrogation technique that outweighs the other factors in the totality of the circumstances test due to its effect on Mr. Foster’s understanding of the nature of the interaction, which made his statement involuntary.

Though this Honorable Court has effectively held that deception about whether an interrogation is even taking place is permissible, society’s norms of what is acceptable have changed. *See Appendix D.* Someone who knows they’re a suspect likely would not talk to police, particularly about his relationship to the alleged victim, regardless of whether they had sex. This is particularly true for an innocent person, who may inadvertently tell an innocent lie – one he believes to be innocent because he is not a rapist - to avoid becoming a suspect and, unknowingly, becoming the prime suspect in doing so.

In reality, Mr. Foster was put in a Catch-22 situation by Detective Sellers’ lie about the fundamental nature of Mr. Foster’s interview – if he said he did not know the alleged victim, but it was later shown that he had sexual intercourse with her, that statement would be incriminating. On the other hand, if he admitted to having sexual intercourse with the alleged victim, this too would be used against him. Thus, his status as a suspect in this case and, more to the point, his false belief that he was not a suspect necessarily influenced his decision to speak to police. *See Moran*, 745 U.S. at 420 (1986) (holding that where a misrepresentation “deprives a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them,” the subsequent statement is involuntary).

There was more than a mere misrepresentation of evidence which, as the trial court noted during the suppression hearing, commonly happens during interrogations. This type of misrepresentation “deprives a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.” *Moran*, 745 U.S. at 420. Without accurately understanding the nature of his interaction with Detective Sellers, Mr. Foster’s capacity for self-determination was critically impaired.

Based on the totality of the circumstances, Mr. Foster’s statement was not voluntarily given and should therefore have been suppressed. Mr. Foster thus respectfully requests this Honorable Court to review this case on the merits and grant him relief.

X. CONCLUSION

For the foregoing reasons, Mr. Foster respectfully requests that this Honorable Court issue a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania.

DATED this 29th day of July, 2025

Respectfully Submitted:

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