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STATE OF WISCONSIN  
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DISTRICT II

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Case No. 2022AP161-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAMIAN L HAUSCHULTZ,

Defendant-Appellant.

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On appeal from an order denying suppression  
and judgment of conviction, both entered in the  
Manitowoc County Circuit Court, the  
Honorable Jerilyn M. Dietz, presiding.

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**BRIEF OF *AMICI CURIAE* THE WISCONSIN INNOCENCE PROJECT, PROFESSOR  
KIMBERLY THOMAS, PROFESSOR IMRAN SYED, AND CLINICAL FELLOW  
ELIZABETH COLE IN SUPPORT OF DEFENDANT-APPELLANT**

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## ARGUMENT

### I. Introduction

Contrary to intuition and public perception, false confessions happen at an alarming rate. Of the 375 documented DNA exonerations through 2020, 29 percent – or 108 cases – involved false confessions.<sup>1</sup> These cases reveal that current psychologically coercive police interrogation techniques “induce a frighteningly high percentage of people to confess to crimes they never committed.” *Corley v. United States*, 556 U.S. 303, 321 (2009). When psychological interrogations are applied to children, the risk of false or involuntary confessions is magnified and increases as the child’s age decreases.<sup>2</sup>

As *amicus* in this case, the Wisconsin Innocence Project is devoted to the exoneration of wrongfully convicted individuals and the improvement of the criminal justice system. *Amicus* Kimberly Thomas is an academic and clinician who focuses on criminal law and procedure and juvenile justice. *Amici* Imran Syed and Elizabeth Cole are academics and clinicians who focus on criminal law and wrongful convictions.<sup>3</sup>

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<sup>1</sup> Innocence Project, DNA Exonerations in the United State (1989-2020), <https://innocenceproject.org/dna-exonerations-in-the-united-states/> (accessed April 25, 2023).

<sup>2</sup> National Registry of Exonerations, Age and Mental Status of Exonerated Defendants Who Confessed, <https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20FINAL%20CHART.pdf> (accessed April 25, 2023).

<sup>3</sup> The views expressed by individual *amici* are their own and do not reflect the views of their institutions. A list of individual *amici* is included in an Appendix at the end of the brief.

*Amici* have an interest in ensuring that the full range of constitutional protections are afforded to all individuals – including children – during interrogation. *Amici* respectfully offers this brief to present a broad legal and scientific perspective on false and involuntary confessions to the end of informing the Court’s determination of the specific coercive factors in this case and how they may have affected a fourteen-year-old child.

**II. Psychological tactics commonly employed by police during interrogations are coercive and can lead to involuntary and false confessions.**

Acknowledging decades of social science research pointing to the coercive nature of police interrogations and subsequent false confessions, the Supreme Court has recognized that the interrogation process “contains inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely” and that “coercion can be mental as well as physical.” *Miranda v. Arizona*, 384 U.S. 436, 467 (1966); *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960). These severely stressful interrogations are designed to “manipulate a suspect’s perception of the situation, expectation for the future, and motivation to shift from denial to admission.” Richard A. Leo & Steven A. Drizin, *The Three Errors: Pathways to False Confession and Wrongful Conviction, in Police Interrogations and False Confessions* 9, 17 (G. Daniel Lassiter and Christian A. Meissner eds., 2010).

Two frequently used forms of psychological manipulation are maximization and minimization techniques. Maximization includes repeating accusations of guilt, rejecting denials, and using false evidence ploys, while minimization involves reducing severity of the crime, lessening the suspect's constitutional rights, and offering moral justification. Both are frequently used on adult and juvenile suspects to elicit confessions. Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3, 12 (2010). In a study surveying 631 detectives, 89% reported minimizing moral severity and 92% reported lying about evidence. Saul M. Kassin et al., *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 L. & Hum. Behav. 381 (2007). In a similar study, police reported using psychologically coercive techniques with juveniles as often as adults. Hayley M. D. Cleary & Todd C. Warner, *Police Training in Interviewing and Interrogation Methods: A Comparison of Techniques Used with Adult and Juvenile Suspects*, 40 L. & Hum. Behav. 270, 280 (2016).

Interrogation techniques like minimization and maximization effectively elicit false confessions because humans make decisions by optimizing choices based on available alternatives. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C.L. Rev. 891, 912 (2005). Investigators control suspects' thought processes by limiting alternative options, focusing attention to specific issues, and persuading them



to believe their fate is certain and will only improve by confessing. *Id.* at 912-13. Maximization and minimization tactics may be perceived by a suspect as an expectation of leniency and a threat of harsher punishment, which can lead to false confessions. Richard J. Ofshe & Richard A. Leo, *The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions*, 16 *Stud. In Law, Pol. & Soc'y* 189, 192-194 (1997). Other circumstantial pressures like psychological vulnerabilities, fatigue, and lack of support make it more difficult for suspects to cope. Gisli H. Gudjonsson, *The Psychology of False Confessions: A Review of the Current Evidence*, in *Police Interrogations and False Confessions* 31, 40 (G. Daniel Lassiter and Christian A. Meissner eds., 2010). Ultimately, when suspects believe there is not choice but to comply “their resulting compliance and confession are, by definition, involuntary and the product of coercion.” Leo & Drizin, *supra*, at 18.

### **III. Developmental deficiencies make juveniles uniquely susceptible to the pressures of police interrogation and subsequent involuntary statements.**

The Supreme Court has consistently recognized that children are fundamentally different than adults and therefore require special protections during criminal procedures. *Graham v. Florida*, 560 U.S. 48 (2011). Juveniles lack maturity and have an “underdeveloped sense of responsibility” that can lead to “impetuous and ill-considered actions and decisions.” *Roper v. Simmons*, 543 U.S. 551, 568 (2005). As a result, juvenile confessions should be

examined with “special caution” to ensure that they are “not the product of ignorance of rights or of adolescent fantasy, fright, or despair.” *In re Gault*, 387 U.S. 1, 55 (1967).

The adolescent decision-making process is impaired because the brain’s cognitive reasoning and emotional control centers develop at different rates. Kristin Henning & Rebba Omer, *Vulnerable and Valued: Protecting Youth from the Perils of Custodial Interrogation*, 52 Az. St. L.J. 883, 897 (2020). This makes teenagers more impulsive and emotionally reactive than adults, and forces prioritization of immediate reward over long-term consequence. *Id.* at 897. Even the most basic cognitive ability, to distinguish right from wrong, does not fully develop until the age of 16. Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. of Clinical Psych. 459, 467 (2009). The undeveloped brain makes adolescents highly suggestible and vulnerable to outside influences and pressures. Henning & Omer, *supra*, at 918. This suggestibility makes juveniles more likely to accept falsified information as true during interrogation. Tamar Birckhead, *The Age of the Child: Interrogating Juveniles After Roper v. Simmons*, 65 Wash. & Lee L. Rev. 385, 417 (2008). High suggestibility is even more likely due to approval-seeking and compliance tendencies. Kassin et al., *supra*, at 9.

These adolescent characteristics compromise a juvenile’s ability to end coercive questioning and act voluntarily during interrogation. Impulsivity may

manifest as unintentionally self-incriminating statements. Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 Cornell J.L. & Pub. Pol’y, 395, 411 (2013). Similarly, prioritizing immediate reward over long-term consequence might occur when juveniles confess under the false promise of going home. Drizin & Leo, *supra*, at 966. Finally, unless a child obviously understands their rights, it is highly unlikely that they would defy an officer’s wishes to speak to them or end the encounter, much less comprehend their option to do so. Tepfer et al., *Scrutinizing Confessions in a New Era of Juvenile Jurisprudence*, 50 Ct. Rev. 4, 6 (2014). These vulnerabilities make juveniles falsely confess to crimes at significant rates: of the 268 exonerated defendants who falsely confessed, 34% were juveniles; of those, children 15 years and young constituted 54%.<sup>4</sup>

Despite these known developmental deficiencies, “the law treats juveniles just like adults in the interrogation room.” Feld, *supra*, at 110. Experts offer suggestions to create fairer juvenile interrogations, including simplifying *Miranda* warnings with developmentally appropriate language and mandatory attorneys for children. Fair and Just Prosecution, *Youth Interrogation: Key Principles and Policy Recommendations*, 7-8 (2022). Children should not be confronted; instead, interrogators should use simple,

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<sup>4</sup> National Registry of Exonerations, Age and Mental Status of Exonerated Defendants Who Confessed, <https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20FINAL%20CHART.pdf> (accessed April 25, 2023).

open-ended, non-leading questions *Id.* at 8. Importantly, interrogators should avoid promising or implying benefits for confessing or negative consequences for remaining silent. *Id.* And false evidence ploys and deceptive tactics should not be used with children because they are more likely to become confused and unlikely to challenge it. Kassin et al., *supra*, at 30.

**IV. The coercive psychological tactics used in this case should inform the Court’s *Miranda* custody and voluntariness analyses.**

The existence and extent of coercive police tactics plays a central role in both issues presented to this court. While the circuit court determined that the interviews were free of coercion, *amici* respectfully submits that all three interviews contained coercive psychological interrogation tactics. To highlight the coercive nature of the interviews, this brief will focus on the maximization and minimization techniques used and how those tactics might have affected a fourteen-year-old child.

a. Meaningful Consideration of Age

In considering the role of police tactics, age is more than a chronological fact, and while not dispositive it is a “critical factor.” *In re Jerrell C.J.*, 2005 WI 105, ¶ 26, 283 Wis. 2d 145, 699 N.W.2d 110. When considering the police tactics in this case, a court should meaningfully consider Damian’s age and how those specific tactics would have affected a fourteen-year-old child, rather than an adult. Simply acknowledging a child’s age and noting that “closer

scrutiny is warranted when a statement is made by a minor” without meaningfully considering *how* his age might affect his response or reaction to other details of the interrogation misapplies the totality of the circumstances test. *See Miller v. Fenton*, 474 U.S. 104, 116 (1985) (“[T]he admissibility of a confession turns as much on whether the techniques for extracting the statements, as applied to *this* suspect, are compatible with a system that presumes innocence and assures that a conviction will not be secured by inquisitorial means as on whether the defendant’s will was in fact overborne.”).

In this case Damian Hauschultz, a fourteen-year-old child, sat through three police interrogations without a parent present, attorney supervision, or *Miranda* warnings. As discussed in Section III, Damian’s decision-making process was inhibited by his underdeveloped brain and inexperience in the legal field. Although he appeared intelligent for his age – fourteen-years-old – even the *most basic* cognitive ability, competence, does not fully develop until the age of 16, even in low-stress situations. Steinberg, *supra*, at 467. When children are confused, they are unlikely to ask clarifying questions or challenge authority figures and it is unlikely that children like Damian, who have no prior experience with the legal system, are capable of understanding that a crime was being investigated, their statements could be used against them, or the rights to remain silent and to seek counsel.

Damian's tendency toward compliance with authority figures likely dictated his decision to speak with the detectives and his ability to freely end the interrogations. Unless a child clearly understands their rights, it is highly unlikely that they will defy an officer's wishes. Tepfer et al., *supra*, at 6. Because Damian was not *Mirandized*, it cannot be assumed that he clearly understood his rights. This is evident as Damian did not end the interrogations at any point: a phone call ended the first, Tim stopped the second, and Bessler ended the third. (Int. 1; Int. 2 at 8:14, Int. 3).

b. Minimization Tactics

In each interrogation, the detectives employed minimization tactics to elicit statements from Damian. The interrogators minimized both the severity of the situation and underplayed the importance of Damian's questioning. Statements such as "it's okay, we're not getting anybody in trouble, obviously this was an accident," (Int. 1 at 1:06) and "what can you tell me to help [EH]? What can we tell the doctors?" (Int. 2 at 7:21pm) gave the false impression that his subsequent statements would not be used against him. At one point, Damian alluded to his misunderstanding of the situation stating, "I know why you have to do this, try to get all the possible outcomes and all that, just to know what you can do to help [EH]." (Int. 2 at 7:25pm).

Despite this lack of understanding, instead of reading or clarifying Damian's *Miranda* rights, Detective Bessler minimized them. In one instance

she minimized his right to remain silent by joking that he could stop talking to her “because my coffee sucks.” (Int. 2 at 5:50pm). Later in the third interview, when Damian told her he was not supposed to talk, she said, “So you’re not going to talk, and take the fall for this?” (Int. 3 at 2:46am). Upon hearing that Tim told him not to talk to her, she said she was “kind of confused” by that and suggested Damian wanted the lawyer to tell him what to say. (Int. 3 at 2:43am). Instead of minimizing and joking about rights, best practices suggest that police should “administer *Miranda* warnings to youth using developmentally appropriate language” that makes it easy to understand. Fair and Just Prosecution, *supra*, at 8.

Another common minimization tactic is to establish a familiar and trustworthy rapport with a subject. Detective Bessler did this by continuously validating his feelings, making casual conversation, and repeatedly reaffirming her concern for EH. She connected with Damian through his relationship with his school resource officer, noting that he would say “no fear; I won’t hurt you” and asked him about his dogs. (Int. 2 at 5:50pm, 8:04pm). She continuously expressed her empathy for EH and after he had died, she switched her concern in the final interrogation to “trying to make sure that the rest of the people in the house are safe... that’s our motive.” (Int. 3 at 2:49am). This tactic is often productive on the underdeveloped brain of children, as they

prioritize immediate rewards, like receiving praise from and helping a trustworthy adult, over long-term consequences.

Once trust was established, Detective Bessler started to develop a theme, a powerful minimization technique that encourages a suspect to morally excuse or justify their actions, and subsequently confess. Feld, *supra*, at 128. Bessler's first theme centered on providing justification for Damian's frustration at E.H., stating, "you're irritated that you gotta be out there [carrying logs], and then you're irritated that these two kids are making it more difficult?" (Int. 2 at 7:01pm). After E.H. died, she pushed this theme again saying, "I know that the boys tend to pester you... I mean they're annoying, you've told me that before. Was there something that was particularly annoying today?" (Int. 3 at 2:51am). Eventually, Bessler developed a second theme giving Damian an opportunity to place the blame on Tim. She noted that "Tim told you to make sure [carrying logs] gets done, correct?... And when you called him and said, 'hey [EH]'s not moving,' he said, 'just let him be, I'll be there'?" (Int. 2 at 7:17pm). Children are especially susceptible to minimization tactics like theme development and moral justification because they are highly suggestible, agreeable, and compliant, particularly with authority figures.



c. Maximization Tactics

During each interrogation the detectives employed maximization tactics to elicit statements from Damian. Throughout the interviews the detectives used tactics to convince Damian that denials of guilt would fail, such as urging Damian to “be honest with me. Something happened out there.” (Int. 1 at 0:05). This theme of truth telling continued with Bessler asking, “have you told the truth and nothing but the truth?” (Int. 2 at 8:00pm). In the third interrogation, Bessler was more aggressive with her demand for the truth: “You don’t know what to tell us? Well, the truth is usually...” (Int. 3 at 2:49am). This tactic of urging a child to tell the truth encourages their prioritization of immediate reward – praise for telling the truth – and preys on their highly suggestible and compliant tendencies by informing them that previous answers were unsatisfactory.

Simultaneously, the interrogators presumed Damian’s guilt with questions like, “Why did you do it? Did you mean to harm [EH]?” (Int. 2 at 7:15pm). These tactics escalated significantly during the third interrogation with Bessler yelling, “[EH] is dead! How did [EH] get dead? That’s a big thing!” (Int. 3 at 2:47am) and “Do you not care that [EH] is dead? ... It really doesn’t seem like you do – he’s dead!” (Int. 3 at 2:48am). Bessler then placed blame on Damian, presuming guilt: “We are trying to figure out how your cousin... is *dead*... what angered you today? Something must’ve happened.” (Int. 3 at

2:49am). This continued with a calculated narrowing of suspects: “Did Tim hurt [EH] today? Who did? Did [AH]?... Process of elimination, right?” (Int. 3 at 2:48am). Persistent presumption of guilt and disregard of denials invoke a child’s emotional, impulsive, and highly suggestive tendencies, making them more likely to succumb to such pressures. Henning & Omer, *supra*, at 918. Further, children often prioritize immediate reward over long-term consequences, which results in providing satisfactory answers to end the uncomfortable questioning.

Finally, despite recommendations to avoid leading questions and implicit false evidence ploys when interrogating children, the interrogators used both. Damian was repeatedly asked leading questions like “you noticed... [EH] was... physically exhausted? And that’s why you had to keep prodding him?” (Int. 2 at 7:20pm) and “how did [EH] get those bruises?” (Int. 3 at 2:46am). Bessler used an implicit false evidence ploy by saying she had “good information” from other siblings but wanted to give Damian a chance to tell his side. (Int. 3 at 3:03am). Children like Damian do not have the cognitive capacities to detect leading questions or lies, which further inhibit their understanding of the situation and encourage their compliance.

## **V. Conclusion.**

While the era of physical coercion in police interrogations is over, psychological interrogation techniques can be just as effective, especially on

juveniles. *Amici curiae* respectfully asks this Court to acknowledge the inherently coercive nature of interrogations and the unique susceptibility of juveniles to such psychological pressures; and urges the Court to consider the role of these coercive techniques in this case.

Dated: May 10, 2023

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## FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules as contained in s. 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 2,998 words.

Dated this 12th day of May, 2023.

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