No. 17-1172

In The
Supreme Court of the United States

BRENDAN DASSEY,

Petitioner,

v.

MICHAEL A. DITTMANN,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF THE INNOCENCE NETWORK AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

The Innocence Network is an association of independent organizations that work to exonerate innocent people who have been convicted of crimes they did not commit. Often the exonerations involve persons who falsely confessed. The Network's member organizations provide pro bono legal services to prisoners for whom evidence discovered post-conviction can provide conclusive proof of innocence. The Network's sixty-five organizational members represent hundreds of people in prison with innocence claims in all fifty states, the District of Columbia, and Puerto Rico.[2]

For purposes of this brief, the Network includes an ad hoc subcommittee of exonerees who falsely confessed as juveniles. These individuals, like the Network's member organizations, share an interest in protecting innocent people from wrongful convictions based on coerced and false confessions. The subcommittee is comprised of the following exonerees.

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[1] Pursuant to this Court's Rule 37.2, counsel of record received timely notice of the intent to file this brief. Written consent of all parties has been provided. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than *Amicus*, its members, or its counsel made a monetary contribution for the preparation or submission of this brief.

[2] A list of the Network's member organizations is included as an appendix to this brief.

Dennis Brown. When he was seventeen years old, Dennis Brown was convicted of rape based on his false confession. At trial, he testified that he was forced to confess when police threatened him at knife point. After serving nineteen years in prison, Mr. Brown was released from prison when DNA testing proved that he was innocent.

Anthony Caravella. Anthony Caravella was fifteen years old when he was arrested for failure to appear. Police then questioned him about the rape and murder of a woman the month prior. Mr. Caravella gave four statements to police – all of them inconsistent with one another and the evidence – implicating himself. Based on those false statements, Mr. Caravella was convicted. He was released from prison when DNA analysis excluded him as the rapist, after serving twenty-six years.

Jeff Deskovic. Jeff Deskovic was sixteen years old when his classmate was found raped and murdered. After six hours of interrogation and being told he had failed a polygraph test, Mr. Deskovic falsely confessed. A jury later convicted him of the crime despite DNA evidence that excluded him. After serving nearly sixteen years in prison, Mr. Deskovic was released from prison and his conviction was overturned when DNA from the rape kit matched that of a convicted murderer.

Adam Gray. Adam Gray was arrested when he was fourteen years old for the arson death of two people in a Chicago apartment building. During a

seven-hour interrogation, Mr. Gray repeatedly denied setting the fire but ultimately confessed falsely. His conviction was later overturned, and Mr. Gray was released from prison after serving twenty years of a life sentence.

John Horton. John Horton was seventeen years old when he falsely confessed to murder. At trial, the prosecution relied on Mr. Horton's false confession (despite its inconsistencies with the evidence), and the court excluded testimony by four witnesses that another person, Clifton English, had confessed to the crime. Mr. Horton's conviction was reversed based on evidence of his actual innocence, including a sworn confession by Mr. English to the crime. Mr. Horton spent twenty-three years in prison.

David McCallum. David McCallum was sixteen years old when he and another boy, Willie Stuckey, falsely confessed to carjacking and shooting the driver. The details of his false confession and exoneration are described below. *See infra* pp. 19-20.

Harold Richardson. Harold Richardson is one of the "Englewood Four," four juveniles who falsely confessed to the rape and murder of a Chicago woman and were later exonerated based on DNA evidence. Mr. Richardson was convicted despite DNA evidence at the time of trial that excluded him. Mr. Richardson was sixteen years old at the time of his false confession. He spent fifteen years in prison.

Davontae Sanford. When he was fourteen years old, Davontae Sanford falsely confessed to the murder

of four people. The details of his false confession and exoneration are described below. *See infra* pp. 22-25.

Yusef Salaam. Yusef Salaam is one of the "Central Park Five," five teenagers who falsely confessed to being involved in the rape of a woman in Central Park. Mr. Salaam was fifteen years old at the time. The boys' false confessions were a centerpiece at trial, even though they were inconsistent with one another. Mr. Salaam served more than five years in prison. His conviction was overturned based on DNA evidence.

Raymond Santana. Raymond Santana is another member of the Central Park Five. After Mr. Santana served five years in prison, his conviction was overturned based on DNA evidence.

Larod Styles. Larod Styles is one of the "Marquette Four" who were wrongfully convicted of a double murder. Mr. Styles was sixteen years old when he falsely confessed. He was convicted and sentenced to life in prison without parole. He served twenty years in prison before his conviction was vacated based on fingerprint evidence proving his innocence.

Terrill Swift. Like Mr. Richardson, Terrill Swift is one of the Englewood Four. Mr. Swift was seventeen years old when he falsely confessed to rape and murder. DNA evidence excluded him at the time of his

trial. He was exonerated in 2011, after spending fourteen years in prison.

Marty Tankleff. When he was seventeen years old, Marty Tankleff falsely confessed to the murder of his parents. The details of his false confession and exoneration are described below. *See infra* pp. 17-19.

Daniel Taylor. Daniel Taylor was seventeen years old when he falsely confessed to a double murder that he could not have committed because he was in police custody at the time. Although police records confirmed Mr. Taylor's alibi, he was tried and convicted based only on his false confession. After more than twenty years in prison, Mr. Taylor was released from prison after new evidence came to light corroborating his alibi.

Robert Taylor. Mr. Taylor is one of the "Dixmoor Five," five teenagers who were wrongfully convicted of rape and murder. Mr. Taylor was fifteen years old when he falsely confessed, following a false confession by Robert Veal that implicated him in the crime. Although DNA evidence excluded each of the Dixmoor Five at the time of trial, Mr. Taylor was convicted and sentenced to eighty years in prison. Mr. Taylor's conviction was vacated after DNA testing matched the profile of an adult parolee. Mr. Taylor spent fourteen years in prison.

Robert Veal. Mr. Veal is one of the Dixmoor Five. When police interrogated him, Mr. Veal was fifteen years old and had mental disabilities. After his false confession, Mr. Veal pleaded guilty to murder. Mr. Veal

spent just under ten years in prison before the State dismissed all charges against him based on DNA evidence proving his innocence.

Larry Williams, Jr. Larry Williams was a minor when police investigating a robbery and murder interrogated him. Mr. Williams falsely confessed and later pleaded guilty to avoid a potential sentence of life without parole. At the time, DNA testing on the bandanas and gloves thoughts to be worn by the perpetrators of the crime excluded Mr. Williams. Based on new DNA evidence, Mr. Williams was declared factually innocent after completing his prison sentence.

Each of these individuals was convicted *after* this Court pronounced the rule that courts must exercise "special caution" in evaluating the confession of a minor. *In re Gault*, 387 U.S. 1, 45 (1967). From their lived experiences and the Network's work on behalf of exonerees, the Network knows that the young and intellectually disabled are especially susceptible to the psychological pressures of interrogation and most at risk of confessing involuntarily – and falsely – to crimes they did not commit. The Network thus writes to express the concern that innocent children will continue to be wrongly imprisoned for crimes they did not commit, unless this Court acts to ensure that courts use special care in evaluating the voluntariness of statements obtained from juveniles and particularly those with intellectual deficits.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The psychological pressures of police interrogation sometimes induce even the innocent to confess to crimes they did not commit. *See, e.g.*, *Miranda v. Arizona*, 384 U.S. 436, 455 & n.24 (1966); *Corley v. United States*, 556 U.S. 303, 321 (2009). When the suspect being interrogated is a juvenile, "[t]hat risk is all the more troubling [and] all the more acute." *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011).

Of course, this Court's voluntariness doctrine should preclude the use of a coerced confession to convict an innocent person. As to minors' confessions in particular, the Court has instructed courts to exercise "special caution" to ensure the confession is voluntary and not the mere result of police coercion. *Gault*, 387 U.S. at 45. Yet courts often fail to heed that instruction. The Network submits this brief to describe the miscarriages of justice that have occurred and will continue to occur unless this Court grants review to emphasize the need for special care to prevent the use of involuntary juvenile confessions.

ARGUMENT

I. INTERROGATION INDUCES FALSE CONFESSIONS AND CONVICTIONS AT ALARMING RATES

For many, it is counterintuitive to think that an innocent person might confess to a crime he did not

commit. But the danger that police interrogation may compel an innocent person to confess is anything but imaginary. Law enforcement officers themselves estimate that they elicit false confessions in ten percent of all interrogations. Meyer & Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility*, 25 Behav. Sci. Law 757, 775 (2007). And nearly a decade ago, the Court recognized the "mounting empirical evidence" that police interrogation "induce[s] a frighteningly high percentage of people to confess to crimes they never committed." *Corley*, 556 U.S. at 321 (citing Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 906-07 (2004)).

That evidence continues to mount. Of the 354 DNA exonerations tracked by the Innocence Project to date, one in four involved a false confession or admission. The Innocence Project, *False Confessions or Admissions*, *available at* https://goo.gl/tW54gc (last visited Mar. 21, 2018). Twelve percent of all exonerations (DNA-based or not) recorded by the National Registry of Exonerations involved a false confession. National Registry of Exonerations, *Age and Mental Status of Exonerated Defendants Who Confessed*, *available at* https://goo.gl/iop9Nj (last visited Mar. 21, 2018). And of the 139 exonerations recorded just last year, a "record" twenty-nine involved false confessions. National Registry of Exonerations, *Exonerations in 2017* 6-7 (Mar. 14, 2018), *available at* https://goo.gl/Kssfmu.

As startling as these figures are, they "surely represent the tip of the iceberg." Kassin, et al., *Police*

Induced Confessions: Risk Factors and Recommendations, 34 Law & Hum. Behav. 3, 3 (2010). These statistics include only proven false confessions among exonerees. They exclude false confessions that did not lead to actual conviction. And they exclude false confessions (and resulting wrongful convictions) that have yet to be uncovered. Researchers at the National Registry of Exonerations have cautioned that its figures understate the problem for this very reason, explaining that its records "certainly miss most . . . false convictions" even as to crimes like homicide and rape for which exoneration is most common. Gross & Shaffer, *Exonerations in the United States, 1989-2012: Report by the National Registry of Exonerations* 17 (June 2012), *available at* https://goo.gl/RWh1IL.

In the proceedings below, the Seventh Circuit acknowledged that these studies might suggest an "epidemic of false confessions," when "even one is very troubling." App. 38a n.8. Yet the court concluded that the incidence rate of false confessions is essentially zero. *See id.* It did so based on its own calculation of the number of exonerees who falsely confessed as compared to the number of *violent felons who pleaded guilty* – a proxy, the court believed, for the "number of all confessions." *Id*.

The court's math is "flat wrong and badly misleading." Gould & Leo, *One Hundred Years Later: Wrongful Convictions after a Century of Research*, 100 J. Crim. L. & Criminology 825, 835 (2010) (criticizing a similar calculation). As Judge Rovner explained in dissent, "[d]efendants plead guilty in all manner of situations,"

often without being subject to coercive interrogation at all. App. 62a. By sweeping in all guilty pleas – even in cases *without* police interrogation – the court distorted how often police interrogation compels false confessions.

Further, the court compared apples to oranges. In its numerator, the court counted only proven false confessions by *exonerees* – exonerations having come predominantly in cases of rape or murder (just two percent of all felonies) – and yet in the denominator the court included guilty pleas across *all violent felonies. Cf.* Gould & Leo, *supra*, at 835-36 ("[T]he numerator and denominator . . . must be comparable."). And, of course, the court included in its numerator only those false confessors who have been exonerated to date. "The universe of people who falsely confess is undoubtedly larger than the subset of people who have confessed and then been fortunate enough to have been exonerated by objective, irrefutable evidence." App. 62a (Rovner, J., dissenting). There is every reason to believe the number of known false confessors will continue to mushroom. As the number of exonerations has swelled over recent years, so too has the number of proven false confessions. *See, e.g.*, Garrett, *Contaminated Confessions Revisited*, 101 Va. L. Rev. 395, 395-96 (2015). In short, the empirical evidence of false confessions remains "frightening[ ]," despite the Seventh Circuit's efforts to fiddle with the math. *Corley*, 556 U.S. at 321.

And those numbers tell only part of the story. Frequency aside, there remains the question of impact. As

the Court has made clear, "[a] confession is like no other evidence" in its "profound impact . . . upon the jury." *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991). That is especially so for innocent people who confess. For them, "false confessions often trump factual innocence." Kassin, *Why Confessions Trump Innocence*, 67 Am. Psychologist 431, 431 (2012); *see id.* at 434 (describing the "myth that legal decision makers can be trusted to disbelieve false confessions and serve as a safety net for innocent confessors"). That risk is all the more severe in cases like this, where interrogating officers feed non-public details of the crime to the suspect. *See* App. 26a-27a (noting evidence that Dassey's "confession was the product of suggestions and/or a desire to tell the police what they wanted to hear"); *id.* at 49a-54a (Wood, J., dissenting) (charting non-public facts fed to Dassey). After all, "[i]f the suspect truly lacks knowledge of how the crime occurred, the bare admission of culpability will not be very convincing to a jury." Garrett, *The Substance of False Confessions*, 62 Stan. L. Rev. 1051, 1067 (2010); *see id.* at 1066-91 (detailing study of forty false confessions by exonerees proven innocent by DNA testing, thirty-six of which included specific details about the crime).

The aftershocks of a false confession often reverberate further, beyond the impact on the jury itself. According to one study, false confessors were four times more likely than other exonerees to plead guilty to crimes they did not commit. Kassin, *supra*, at 439. ("This difference suggests that many innocents who confess ultimately surrender rather than assert a

defense."). Armed with one false confession, police often elicit a cascade of false confessions from other innocent individuals in the very same case. *See, e.g.*, Garrett, *The Substance of False Confessions*, *supra*, at 1065. And a false confession often taints the police investigation itself. "Once police elicit a confession – even if it is obtained by questionable or prohibited means, is internally inconsistent, is contradicted by case facts, and does not lead to corroboration – they will almost always arrest the confessor and consider the case solved." Ofshe & Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 Denv. L. Rev. 979, 984 (1997). Just one potent example of this phenomenon is the fact that – at the time of conviction itself – DNA evidence *excluded* a substantial number of recent exonerees who falsely confessed. Garrett, *Contaminated Confessions Revisited*, *supra*, at 404-08 (2015).

II. INTERROGATION PUTS MINORS AND THOSE WITH MENTAL DISABILITIES AT MOST RISK OF FALSE CONFESSION

A. Minors and Those with Mental Disabilities Are Most Vulnerable to the Pressures of Police Interrogation

Police are trained to use *on children* – and in fact do use on children – the same pressure-filled interrogation tactics that elicit false confessions from adults. Malloy, et al., *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 Law & Hum. Behav. 181 (2014). Under the strain of these

tactics, innocent children and adolescents are disproportionately likely to confess.

Data from the National Registry of Exonerations shows that children and adolescents are almost *four times* as likely as adults to confess to crimes they did not commit. *See* National Registry of Exonerations, *Age and Mental Status of Exonerated Defendants Who Confessed*, *supra*.[3] Indeed, though juveniles account for less than ten percent of all exonerations tracked by the Registry, they comprise almost *thirty percent* of the exonerees who falsely confessed. *Id.* Other empirical studies present equally troubling findings. *E.g.*, Garrett, *Contaminated Confessions Revisited*, *supra*, at 400 & n.16 (finding that nearly a third of all DNA exonerees who falsely confessed were juveniles); Drizin & Leo, *supra*, at 944 (finding juveniles accounted for a third of all false confessions, in a study of 125 proven false confessions); Tepfer, et al., *Arresting Development: Convictions of the Innocent*, 62 Rutgers L. Rev. 887, 904 (2010) (finding that false confessions contributed to 31.1% of the juvenile wrongful conviction cases studied, as compared to just 17.8% of adult wrongful convictions). And even law enforcement officers recognize the immense risk that a minor will succumb to police interrogation by confessing to a crime he did not commit. *See* International Association of the Chiefs of

[3] Even adolescents close to the age of majority falsely confess at alarming rates – nearly one-third of exonerees who were sixteen or seventeen years old at the time of the crime falsely confessed, a rate that is more than four times that among adults with no reported mental disabilities. *Id*. The frequency of false confessions among younger children is even higher. *Id.*

Police, *Reducing Risk: An Executive's Guide to Effective Juvenile Interview and Interrogation Report* 1 (Sept. 2012) ("IACP Report").

The evidence of false confessions by individuals with intellectual disability is more overwhelming still. Among exonerations tracked by the National Registry of Exonerations, a full seventy percent of exonerees with mental illness or intellectual disability falsely confessed. National Registry of Exonerations, *Age and Mental Status of Exonerated Defendants Who Confessed*, *supra*. This is *tenfold* the false confession rate among adult exonerees without such disabilities. *See id.*

That innocent juveniles and individuals suffering from intellectual and social deficits are at particular risk in the interrogation room is unsurprising. As the Court has repeatedly observed, children and adolescents are "more vulnerable or susceptible to . . . outside pressures" than adults. *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *accord Miller v. Alabama*, 567 U.S. 460, 471 (2012); *J.D.B.*, 564 U.S. at 272; *Graham v. Florida*, 560 U.S. 48, 68 (2010), *as modified* (July 6, 2010). Further, the Court has recognized, juveniles make decisions impulsively, lacking "mature judgment" and a full "ability to understand the world around them." *J.D.B.*, 564 U.S. at 273; *see also Graham*, 560 U.S. at 78 (juveniles have "[d]ifficulty in weighing long-term consequences"). Given these attributes of youth, the Court has concluded that juveniles lack the "experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *Bellotti v. Baird*,

443 U.S. 622, 635 (1979). And so too has the Court recognized the increased vulnerability and decreased capacity of those with intellectual disabilities. *E.g.*, *Atkins v. Virginia*, 536 U.S. 304, 318 (2002).

These characteristics are crippling in the interrogation room – a fact borne out not only by the statistics cited above but also by years of research. Numerous studies have shown that juveniles are disproportionally at risk of false confession. *See* Kassin et al., *supra*, at 19-20 (collecting studies). And the social science research confirms that juveniles are softer targets for police interrogation, both because they are eager to please authority figures and because they are less equipped to process the high-stakes choices that police interrogation presents. Grisso, et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 Law & Hum. Behav. 333, 357 (2003). These problems, of course, are only compounded when the youth being interrogated suffers from intellectual disabilities. *See* Gould & Leo, *supra*, at 847 (such disabilities often make an individual "unusually suggestible and compliant").

Too often, minors and those with intellectual deficits respond to the pressure of interrogation simply by saying whatever they believe interrogating officers want to hear. In the words of some juvenile false confessors:

- *Marty Tankleff* (age 17). "It's like having an 18-wheeler driving on your chest. And

> you believe that the only way to get that weight off your chest is to tell the police whatever they want to hear."[4]
>
> - *Johnathon Adams* (age 12). "I thought if I told them something they'd let me go."[5]
> - *Terrill Swift* (age 17). "I signed the confession under the pretense that I was going to go home later on that night, but it didn't work out that way. . . . I had that perception that the police were there to help."[6]
> - *Calvin Ollins* (age 14). "I thought I was going home. I didn't understand [the] seriousness of what was going on. I didn't understand exactly what I was getting into once I signed that statement."[7]

As these accounts suggest, juveniles often falsely confess with the childlike hope that once they do so, they will be allowed to go home. *See* Birkhead, *The Age of the Child: Interrogating Juveniles After* Roper v. Simmons, 65 Wash. & Lee L. Rev. 385, 416-17 (2009). Brendan Dassey's case is no different: after confessing, Dassey asked if he could get back to school in time for "sixth hour" when he "h[ad] a project due." App. 439a.

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[4] Holguin, *Long Island Murder Case Revisited*, CBS News (Oct. 25, 2004).

[5] Plummer, *"Never Say You Did Something You Didn't,"* Atlanta J. & Constitution (Apr. 19, 2006), at B1.

[6] *Tell Me More, After 15 Years in Prison, Hope for Chicagoans*, NPR (Nov. 23, 2011).

[7] IACP Report, *supra*, at 10 (alteration and citation omitted).

Simply put, the very naivety that makes minors immature also makes them ready victims of the pressures of interrogation.

B. Juvenile False Confessions Illustrate the Susceptibility of the Young to the Pressures of the Interrogation Room

This Court has instructed lower courts to take "special care" and "special caution" in evaluating the voluntariness of a minor's confession. *Gault*, 387 U.S. at 45 (quoting *Haley v. Ohio*, 332 U.S. 596 (1948)); *Gallegos v. Colorado*, 370 U.S. 49, 53 (1962) (same). The following examples embody why such care is critical. So too do these examples illustrate why it is incumbent upon a court to evaluate the confession of a minor as just that – the confession of a minor – and not that of a "miniature adult[]." *J.D.B.*, 564 U.S. at 274.

1. Marty Tankleff was seventeen years old when he found his parents stabbed in their Long Island home.[8] He called 911 and police arrived at the house to find Tankleff's mother dead and his father near death. Police immediately suspected Tankleff. Tankleff, however, "felt that [police] were trying to help me and I was trying to help them."

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[8] This account is compiled from *People v. Tankleff*, 199 A.D.2d 550, 606 N.Y.S.2d 707 (1993) (subsequent history omitted), *People v. Tankleff*, 49 A.D.3d 160, 848 N.Y.S.2d 286 (2007), and *Marty Tankleff's Fight for the Truth*, CBS News (Jan. 26, 2008), *available at* https://goo.gl/CwxTV5.

Believing his father's business partner was involved in the attack, Tankleff agreed to talk with police. But in an interrogation room at police headquarters, officers pressed a different theory of the crime. They insisted it was Tankleff who stabbed his parents. In Tankleff's words, it was a "constant barrage that 'Marty, we know you did it, everything will be ok, just tell us you did it. We know you did it.' And the on and on and on questioning. Over and over." At one point, a detective left the interrogation room and pretended to talk on the phone. When he returned, he told Tankleff that his father had come out of a coma and accused him of murdering his mother.

That was a lie, but it served its purpose. Faced with the accusation of his father, Tankleff asked, "Could I have blacked out and done it?" He next asked, "Could I be possessed?" One detective responded, "Marty, I think that's what happened to you." Tankleff then confessed. The entire interrogation lasted about two hours.

Tankleff never signed the statement and almost immediately recanted. Still, the unsigned confession was the cornerstone of the prosecution's case at trial. Tankleff was convicted and sentenced to fifty years to life in prison. An appellate court rejected Tankleff's challenge that his statement was involuntary without any mention of his age, much less any special care in the voluntariness inquiry. *See People v. Tankleff*, 199 A.D.2d 550, 553, 606 N.Y.S.2d 707, 710 (1993) (subsequent history omitted). After new evidence came to light, an appellate court overturned the conviction.

People v. Tankleff, 49 A.D.3d 160, 183, 848 N.Y.S.2d 286, 303 (2007). Tankleff was released after serving seventeen years in prison.

2. David McCallum was sixteen years old when he and another boy, Willie Stuckey, confessed to carjacking and shooting the driver.[9] The boys' statements were inconsistent with one another and conflicted with the forensic evidence. Still, both boys were convicted of murder and sentenced to twenty-five years to life.

McCallum's challenge to the voluntariness of his statement was rejected by the state appellate court and the federal district court upon habeas review. *People v. McCallum*, 157 A.D.2d 861, 551 N.Y.S.2d 808 (1990); *McCallum v. Miller*, No. 97CV1919(SJ), 2002 WL 750844 (E.D.N.Y. Apr. 17, 2002). The state court decision nowhere mentions McCallum's age, let alone exhibits any special care in the voluntariness inquiry on that basis. 551 N.Y.S.2d at 808. The federal court noted McCallum's age but found he "presumably was familiar with arrest procedure" given prior police contacts. 2002 WL 750844, at *4.

After discovery of DNA evidence that excluded McCallum and Stuckey, their convictions were overturned. The court acted at the request of the Brooklyn district attorney. According to him, McCallum's confession (and that of Stuckey) were "false in large part

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[9] The details of McCallum's confession and exoneration are from the following article: *New York Man Wrongfully Convicted of Murder Freed After 29 Years in Prison*, The Guardian (Oct. 15, 2014).

because these 16-year-olds were fed false facts." McCallum was released after serving nearly thirty years in prison; Stuckey had already died in prison at the time of his exoneration.

3. Nga Truong was sixteen years old when her one-year-old son, Khyle, was found nonresponsive in his crib.[10] Khyle was pronounced dead later that day.

Investigating officers soon learned that eight years earlier – when Truong was just eight years old – Truong's mother had left her to care for her three-month-old brother, Hein. Truong found the baby unconscious and brought him to an adult neighbor. Hein was taken to the hospital and later pronounced dead of SIDS. Armed with this information, police questioned Truong about her son's death.

During an interrogation that lasted just over two hours, the interrogating officers repeatedly made the false representation that they had medical and scientific evidence that Truong killed her son. Truong told officers "I would never kill him," but the officers refused to believe her. When she insisted that she was telling them everything she knew, one officer responded, "No you're not. Stop. Don't lie to me."

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[10] The following details of Truong's confession come from the trial court's ruling on her motion to suppress, *Commonwealth v. Truong*, No. CV20090385, 2011 WL 1886500 (Mass. Super. Feb. 25, 2011), and a news story covering the case, All Things Considered, *How a Teen's Coerced Confession Set Her Free*, NPR (Dec. 30, 2011).

At the same time as they accused her, the interrogating officers offered Truong help, presenting themselves as her allies and empathizing with her. They said that her home situation was unfair and that her mother had put too much pressure on her. They promised: "You tell us what happened. We walk right out here. To special crime, juvenile, get on the phone, talk with a social worker, and try to get you some help." And they also promised they would help Truong's brothers if she confessed:

> There's no doubt what happened in there. All everyone's waiting for today is for you [sic] admit to what you did so that we can start the process of getting you some help, getting you into a social program. Getting your brothers out of that house. And getting them in a better home, where there's a mom that gets up in the morning and takes care of them.

The officers also made clear if Truong did not confess, no one would help her or her brothers.

After just a two-hour interrogation, Truong confessed. She then asked if she and her brothers would be placed in foster care. The officers told her they were placing her under arrest. She asked, "Is it going to be more than a day?"

The court ultimately ruled the confession involuntary, concluding that the circumstances suggested "a situation potentially coercive to the point of making an innocent person confess to a crime." *Truong*, 2011 WL 1886500, at *10. After viewing the videotaped

recording of the interrogation, the court described Truong as a "frightened, meek, emotionally compromised teenager who never understood the implications of her statements." *Id.* at *8. Following this Court's instruction to account for a confessor's age in the voluntariness inquiry, the Court held that "the particularly aggressive interrogation conducted by the police given Nga's age together with her lack of sophistication and experience with the criminal process, coupled with her emotional state are all factors that lead to the conclusion that Nga's statement was not voluntary." *Id.* at *9. The Court's ruling – and its consideration of Truong's youth and vulnerability – illustrate the kind of special care that this Court mandates and, by comparison, the absence of such care in the Tankleff and McCallum cases.

4. Davontae Sanford was fourteen years old when he was arrested for the murder of four people in a drug house in Detroit.[11] Police first encountered Sanford near the scene of the crime. Sanford, a special education student, could barely read or write at the time.

Sanford told police he did not want to help in the investigation. But when police learned that Sanford was related to a former Detroit homicide detective, they called Sanford's relative, and he urged Sanford to "be truthful." Sanford then offered to assist officers. He

[11] This account of Sanford's confession is taken from an interview of Sanford, *Davontae Sanford Recalls the Night of the Murders*, Detroit News, *available at* https://goo.gl/iFc2oz (last visited Mar. 21, 2018), and from Phippen, *How an Innocent Teenager Confessed to Murder*, The Atlantic (Jun. 10, 2016).

got into a police car with officers, including the head of Detroit's Major Crimes Division, and drove around for two hours. At one point, in Sanford's words, "[w]e . . . got something to eat . . . we went back to 1300 Beaubien [police headquarters]; they let me get on the computer. [They were] friendly. It wasn't hostile at all." Sanford then gave a statement that he and other friends met at a restaurant, planned to rob the house where the murders occurred, and passed out guns. When they approached the house, Sanford said, he asked to get out of the car and walked home while his three friends went to the house. After the officers left, Sanford spent the night sleeping on the couch at the police station.

Officers took Sanford home the next day. Then they investigated his story and found it made no sense. The restaurant had been closed for months; Sanford's description of his friends did not match descriptions by witnesses, and Sanford's description of the gun caliber was wrong.

Officers returned to Sanford's house. They told his mother, "We think your son knows something; we think your son's lying; he needs to tell the truth." They told Sanford they needed to take him in for questioning but assured him he would be home in time for school the following day. When Sanford got in the car with the officers, "that's when stuff started to change, with the questioning." The officer told him, "We found blood on your shoes." When Sanford denied that, the officer assured him that blood had been found on his shoes and had been tested already.

At police headquarters, one officer showed Sanford pictures of the victims' dead bodies and another officer then drew a diagram of the house, telling Sanford that he could go home if he identified where the dead bodies were found. In Sanford's words, "They had already showed me the pictures before . . . so I'm thinking like, 'I know from these pictures where they were at, so maybe if I do this, I'll go home.'" Sanford confessed. This time, he said he committed the murders himself. He changed the location where he claimed to have met friends: now Sanford said they met in a park, not a restaurant. And Sanford's description of the guns now matched those used in the killings.

Officers next took Sanford to make a videotaped statement, still assuring him that he would then go home. Once he gave the statement police wanted, Sanford was arrested, booked, and sent to juvenile detention. About his confession, Sanford later said, "I wanted everything to be right . . . because if it wasn't right he wasn't going to believe me and he would keep me longer. I really wanted to go home."

Within weeks, Sanford recanted, saying he made up the story and police had provided him the details of the crime. But after the videotape was played at his trial, Sanford pleaded guilty to second-degree murder on the advice of his lawyer. The lawyer never moved to suppress Sanford's confession.

Just two weeks after sentencing, a professional hitman was arrested and told police that he and a single adult accomplice were responsible for the killings.

After a reinvestigation by Michigan State Police, the state prosecutor moved to dismiss all charges against Sanford and a state court vacated his conviction and ordered his release. Sanford served nine years in prison.

* * *

Just as it would be absurd to decide the need for *Miranda* warnings without considering the age of the child being interrogated, *J.D.B.*, 564 U.S. at 276, so too is it absurd – and unjust – to evaluate the voluntariness of a juvenile confession without due account for the age and vulnerability of the child who gave it. For that reason, the Court has mandated that courts must exercise special caution before ruling that a child's confession is voluntary. And yet coerced confessions still lead to the imprisonment of juveniles for crimes they did not commit. The above stories provide but a few examples of the need for the Court to remind police, prosecutors, defense counsel, and the courts of the special care that must be taken to avoid wrongful convictions of children based on coerced false confessions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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