IN THE CRIMINAL COURT FOR KNOX COUNTY, TENNESSEE
DIVISION I

STATE OF TENNESSEE	*	CASE NOS. 100250a, 100509
	*	
VS.	*	
	*	
CARLOS CAMPBELL	*	JUDGE SWORD

BRIEF OF CENTER ON WRONGFUL CONVICTIONS OF YOUTH & VANDERBILT PROFESSOR OF LAW AND MEDICINE TERRY A. MARONEY AS AMICI CURIAE

I. INTEREST OF *AMICI CURIAE*

The amicus attorneys submitting this brief are practitioners, law professors, and researchers who have studied the effects that coercive interrogation tactics have on suspects, especially those who are teenagers. *Amici* know from their combined experience that the more extreme the interrogation tactics, the greater likelihood the suspect will make involuntary or false admissions. When threats of harm and promises of leniency are used on younger suspects, like those used on the nineteen-year-old Carlos Campbell, the dangers are even greater.

Both the attorneys from the Center on Wrongful Convictions of Youth and Professor Maroney focus their work, in part, on ensuring that interrogation tactics follow best practices in efforts to assure voluntary and reliable confessions. *Amici* have an interest in this case because in viewing parts of this videotaped interrogation, or reviewing prepared transcripts of the interrogation, it is their collective opinion that the tactics in this case were amongst the most coercive they have ever seen employed on any suspect. It is their opinion these tactics resulted in statements that were not voluntarily made by the teenage Campbell.

A. Center on Wrongful Convictions of Youth, Northwestern Univ. School of Law

The Center on Wrongful Conviction of Youth's unique mission is to uncover and remedy wrongful convictions of children and adolescents, as well as to promote public awareness and support for nationwide initiatives aimed at preventing future wrongful convictions in the juvenile and criminal justice systems. The CWCY has filed many amicus briefs in jurisdictions ranging from state trial courts to the U.S. Supreme Court.

Much of the CWCY's research and work focuses on how young people react to police interrogation, and children and teenagers' particular vulnerability to making involuntary and false confessions. Attorneys from the CWCY, including the authors on this brief, have published numerous pieces on juvenile false confessions and wrongful convictions. *See, e.g.*, *True Stories of False Confessions* (Steven A. Drizin & Rob Warden eds., 2009); Joshua A. Tepfer, Laura H. Nirider & Lynda Tricarico, *Arresting Development: Convictions of Innocent Youth*, 62 Rutgers L. Rev. 887 (2010). The authors also have collaborated and worked with the International Association of Chiefs of Police and the Office of Juvenile Justice and Delinquency Prevention to publish a guide to best practices for questioning youth. *See Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, September 2012.[1] The CWCY attorneys authoring this brief know from their experience both researching and litigating these issues that adolescents' immaturity, vulnerability to external pressure, and diminished ability to weigh risks and long-term consequences renders them uniquely susceptible to making false confessions or unreliable statements when interrogated in a custodial setting.

The CWCY's founder and one of the authors of this brief, Steven A. Drizin, has twice been cited by U.S. Supreme Court as an authority on false confessions and wrongful convictions. *See Corley v. U.S.*, 129 S.Ct. 1558, 1570 (2009) (stating that "there is mounting empirical evidence that these pressures [associated with custodial police interrogation] can induce a frighteningly high percentage of people to confess to crimes they never committed") (citing Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 906-07 (2004); *J.D.B. v. North Carolina*, 131 S.Ct. 2394, 2401 (2011) (same). The *J.D.B.* majority also specifically cited the CWCY's amicus brief in explaining that the risk of false confession is "all the more acute" when a young person is interrogated. *J.D.B.*, 131 S.Ct. at 2401 (citing Brief for Center on Wrongful Convictions of Youth et al. as *Amici Curiae* at 21–22).

B. Terry A. Maroney, Professor of Law and Professor of Medicine, Health and Society, Vanderbilt University

Professor Maroney has taught and written extensively about both juvenile justice and wrongful convictions, with a particular expertise in developmental and social psychology. She has participated as an amicus party in a number of juvenile-justice and wrongful-conviction cases, including before the U.S. Supreme Court.

[1] This guide is available at http://www.theiacp.org/portals/0/pdfs/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf.

II. INTRODUCTION

On October 21, 2012, a police officer began what would become an almost seven hour interrogation of nineteen-year-old Carlos Campbell. During the first hour, the interrogator spent much time explaining to Campbell that his story of innocence was "bullshit." The officer told Campbell that he could only "save [his] ass" if he "cut that shit" and began telling a story that "made sense." The officer explained that it was his day off, and he was there only because he wanted to help Campbell: "If I wasn't on your side, I wouldn't be here."

Failing to obtain any admissions, a second police officer then entered the interrogation room. He immediately explained that "this is your last chance to make it right, this is your last out. . . . This is your last chance to straighten it out." He explained:

> You are 19, you got a lot of life to live and you are going to miss it if you stick with this [story]. [You are looking] at 23 hours a day in a metal 6 by 6 room, they tell you when to eat, tell you when to sleep. . . fighting every day for your life shit. Some real clink-clink metal bars shit, man…. You gotta make a decision. Are you gonna help yourself? … I don't want to put you in jail. I don't want to do that. The ball is in your court.

The officer continued:

> If you are going to keep sitting here acting like you ain't done nothing, . . . we gonna leave this room, we gonna send your ass back to jail, and the next time you see us you gonna be on one side, we gonna be on the side of the prosecutor, and she is going to eat your ass alive and you gonna be in jail the rest of your life. You gonna be in jail your whole life, you gonna get out a 50-60 year old man, missed your whole life.

Over the next ten minutes, the officers continued promising how much worse things were going to be for Campbell if he refused to confess and that Campbell could never say they "weren't trying to help him." But they could not help him because "You ain't giving us shit. You gonna give yourself a damn near life sentence cause you want to sit her stone faced and think, I ain't saying nothing."

Still without a confession, one of the interrogators picked it up a notch, raising his voice and saying:

> You ain't going down like a solider, you going down like a bitch. You gonna be in jail and fight every day. You a little dude Carlos. . . . You gonna come in there, gonna be a fresh face 19 year old kid and guess what is gonna happen. They coming at you every single day. You can stop this shit right now. But if you want to sit here and keep this shit up Carlos, ain't no help for you, man. Last straw. I can get the whole story. I can take what I got take it to the DA and say: "He didn't want to talk. He didn't want to say nothing." Guess what she gonna say: "Fine with me." Gonna put his ass under the jail. And guess what, she is gonna put your ass under the jail.

Campbell, at this point, asked: "You'd let her do that?" At which point the officers explained that he was doing it to himself by not talking. But if he starts talking, "they can go to the DA and say he was cool, he told the truth, she will take that into consideration, but if you keep feeding us the same bullshit, you will get the same shit [the others] got." When Campbell asked what the others got, one of the officers replied: "Fucked."

"Do you want to do a couple of years in prison? Or do you want to do some [*unintelligible*] in prison?" asked the officers. If you "man up" and tell the truth, "you probably get some time off." "Playing hardball," you are looking at 50 years at best. But I am here to "help you help yourself." When Campbell explained that "I just want to go home," the officers responded that he's not going home until at least Tuesday because of a violation of probation:

> Chance you might go home. I don't know. . . . But I can tell you this. This shit ain't gonna go away. You gotta help yourself. . . . Going home Tuesday, there is a chance, I don't know.

All of these themes continued. The officers explained that the DA "holds your future":

> She can help you a lot if you help yourself. But if you want to stay hush hush . . . you gonna be up shit's creek without a paddle. It means you are fucked. . . . You are gonna be swimming buck naked in shit.

…

> You gotta let us know what is going on. Or the legend of Carlos Campbell dies here today. Carlos Campbell will be no more. You know who you will be? TN123456…

At this point, the other officer interrupts and continues:

> And brother, they gonna rape you. They gonna fuckin' rape you. You are not a big man. You cannot fend them off. They will fuckin rape you . . . daily. Your hands ain't gonna do you no good when you got 10, my size, comin at you. They don't come individually. They cliqued up. You new, you fresh.

Similar themes continued for the next five minutes, where the officers continued essentially saying staying quiet would result in a lifetime of prison, where he would be subject to continual violence and rape. At that point, Campbell finally begins making admissions that he was present and driving during a shooting. But as the interrogation continued, and the officers were not satisfied with the statements of Campbell, they returned to the promises of leniency and threats of charges, prison, and violence, stating, for example:

> Who else is in jail with you right now? They are gonna kill you like what? Like fucking cancer. If I have to sit here and we have to drag the truth out of you and you don't even bother to help yourself. And then the DA is gonna say: "Fuck him. He is not redeemable. He does not have to be out on the fucking streets." I don't know why you are not saying what led up to all this, but you are screwing yourself.

The officers' continued use of tactics designed to communicate to this young suspect that the he would harmed – and violently at that – if did not confess, but receive leniency if he did, were clearly outside the bounds of what is constitutionally permissible. *Amici* submit this brief to explain how these types of overbearing tactics not only run the risk of resulting in involuntary confessions, but also create a very real danger of false confession, especially in younger suspects like Campbell.

Amici, strongly therefore, support Mr. Campbell's request to suppress his statements of October 21, 2012.

III. THERE ARE "INHERENTLY COMPELLING PRESSURES" PRESENT IN ANY STANDARD POLICE INTERROGATION THAT CAN LEAD TO INVOLUNTARY AND FALSE CONFESSIONS.

The U.S. Supreme Court has long embraced the basic premise that police interrogations entail "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." *Miranda v. Arizona*, 384 U.S. 436, 467 (1966); *see also Dickerson v. United States*, 530 U.S. 428, 435 (2000) (stating that "custodial police interrogation, by its very nature, isolates and pressures the individual"). "[C]ustodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals." *Miranda*, 384 U.S. at 455. "Any police interview of an individual suspected of a crime has 'coercive aspects to it.'" *J.D.B. v. North Carolina*, 131 S.Ct. 2394, 2401 (2011) (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (*per curiam*)).

Custodial interrogations derive their coercive nature from the use of common and well-intended – but psychologically manipulative and pressure-filled – interrogation tactics. *See Miranda*, 384 U.S. at 448-454 (discussing the psychological pressures exerted by commonly used police interrogation tactics); Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3-38 (2010). Many police departments follow a standardized set of interrogation procedures known as the Reid Technique, named after the firm that markets the procedures to police departments around the country. *See* Fred E. Inbau, John E. Reid, Joseph P. Buckley, & Brian C. Jayne, *Criminal Interrogation and Confessions* (5th ed. 2013). Under the Reid Technique, police interrogators begin by separating the suspect from his family and friends, often isolating the suspect in a small interrogation room specially designed to increase his anxiety and incentive to escape. *Kassin*, 34 L. & Hum. Behav. at 7. In the first stages of the interrogation, the questioners deploy a series of tools intended to shake the

suspect's adherence to his claim of innocence. They repeatedly accuse the suspect of lying, refuse to listen to his claims of innocence, and exude unwavering confidence in his guilt. *See* Richard J. Ofshe and Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 Denv. U. L. Rev. 979, 990 (1997). Police interrogators also often inform a suspect that they possess evidence implicating him – fingerprints on a murder weapon, for example, or the statement of an eyewitness – even if such evidence does not actually exist. *See id.* This stage continues until the suspect feels thoroughly hopeless and trapped.[2] *See id.*

After this is accomplished, police interrogators then switch to the second stage of interrogation by offering the suspect a way out of his predicament: confession. To communicate this message, they indicate that the benefits of confessing will outweigh the costs of continued resistance and denial. *See id.* Interrogators frequently minimize or rationalize the suspect's involvement in the crime, for instance, by telling the suspect that he must have been merely a witness or that the criminal act must have been unintentional, a mere accident, or an act of justifiable self-defense, all in an effort to make confessing seem less damaging. Steven A. Drizin & Richard A. Leo, *The Problem of False Confession in the Post-DNA World*, 82 N.C. L. Rev. 891, 916 (2004). They also assure the suspect that confessing is in his best interest and communicate to him that he will avoid harm or receive leniency if he confesses.[3] *See id.* By

[2] Every one of these tactics was used within the first two hours of Campbell's interrogation. The videotape shows him isolated, alone in a windowless room with two interrogators much larger than him just feet away. One of his interrogators explicitly attempts to make him feel isolated, where, after telling him he will be in jail his "whole life" he asks: "Who's gonna come and visit you? Who's gonna put money on your books? Grandma? None of these guys, they don't care about you."

Further, many of the quotes shown *supra* Section II clearly show the officers accusing Campbell of lying and demonstrating 100% confidence that they know the truth. And just minutes before his first admission, the officers tell Campbell that witnesses are putting "two shootings" and "two robberies" on him. Shortly thereafter, they tell him they "got prints off the fucking guns. . . . We got guns from Cuben, guns have your prints, shell casings match those guns, people saying you shooting."

[3] Again, every one of these tactics was employed on Campbell. The officers repeatedly communicated to Campbell that either they or the DA would help him if he confessed. Indeed, at times, the officers were far more explicit in their threats and promises than any interrogation training manual would recommend, telling Campbell he would get

deploying these tactics at the right psychological pressure points, experienced interrogators can be extraordinarily effective in causing a suspect to produce self-incriminating information.

Sometimes, however, these potent tactics become far too effective: the psychological tricks and subtle coercion of custodial interrogation can cause not only the guilty, but also the innocent, to confess. To date, 306 individuals have been exonerated on the basis of DNA testing after having been convicted of crimes that they did not commit, and approximately one-quarter of those individuals falsely confessed to the crimes in question under police interrogation.[4] These false confessions, in turn, lead to the wrongful prosecution and incarceration of the innocent, while the guilty remain at large. *See* Drizin & Leo, 82 N.C. L. Rev. 891 (examining 125 proven false confessions in the United States and concluding that 81% of false confessors whose cases went to trial were wrongfully convicted).

Forty-four years ago, the U.S. Supreme Court recognized this reality by noting that the "heavy toll" of custodial interrogation has resulted in false confessions. *Miranda*, 384 U.S. at 455, fn. 24. Over the last several years, this Court continued to acknowledge the gravity of the problem, finding that "there is mounting empirical evidence that these pressures [associated with custodial police interrogation] can induce a frighteningly high percentage of people to confess to crimes they never committed." *Corley v. United States*, 129 S. Ct. 1558, 1570 (2009) (citing Drizin & Leo, 82 N.C. L. Rev. 891, 907 (2004). *Accord J.D.B.*, 131 S.Ct. at 2401. The pressures

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"50 years at best" or spend the rest of his life in prison if he did not confess versus "a couple of years," or maybe even "going home" on Tuesday if he did.

The officers also try to give Carlos an out by explaining that they like Carlos, and want to help him, but he needs to say the other guy was the shooter if they were going to help him. Because the other guy, Cuben, was putting the shooting on Carlos, and the officers would have to go with that if Carlos didn't start talking.

[4] See The Innocence Project, http://www.innocenceproject.org/understand/False-Confessions.php. This statistic does not include false confessors who have been exonerated on the basis of non-DNA evidence or false confessors who have yet to be exonerated. To date, scholars have uncovered at least 250 false confessions made over the last twenty years, and there are likely a great many more individuals who have falsely confessed whose stories are simply not known. See Richard A. Leo, Police Interrogation and American Justice 243 (2008). In a 2007 survey, law enforcement officers estimated that about 10% of all interrogations result in false confessions. Jessica R. Meyer & N. Dickon Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibilit*y, 25 Behav. Sci. & L. 757, 770 (2007).

of custodial interrogation, accordingly, pose an ongoing threat not only to the constitutional right to be free from coercion, but also to public safety. When innocent people who falsely confess are wrongfully convicted, the real perpetrators are left on the street to commit new crimes.

IV. WHEN POLICE GO BEYOND ALREADY INHERENTLY COERCIVE STANDARD INTERROGATION TACTICS BY MAKING THREATS AND PROMISES TO SUSPECTS, THE DANGER OF INVOLUNTARY AND FALSE CONFESSIONS RISES EXPONENTIALLY.

The proprietors of the Reid Technique themselves say that it is an "improper" interrogation tactic when a "promise [of leniency] is coupled with a threat." Fred E. Inbau et al., *Criminal Interrogation and Confessions* 344 (5th ed. 2013). Indeed, Reid explains that "threatening a suspect with inevitable consequences has no place in a properly conducted interrogation."[5] Reid also specifically instructs it interrogators to "avoid interrogations centered on 'helping' the suspect," including references to asking suspect's to help himself. Inbau et al. at 331.

Section II of this brief demonstrates that that the officers repeatedly and relentlessly communicated to Campbell that he would inevitably spend the rest of his life in prison, unsuccessfully attempting to fend off gang rapists and homicide, if he stayed quiet and did not confess. They countless times explained how they were trying to "save [his] ass," or that they "wouldn't be here" if he wasn't trying to help, or asked him if he was willing to "help [him]self?" Campbell could never say the "weren't trying to help him" they explained. Indeed, they told Carlos they were only there to "help you help yourself." And the DA "can help you a lot if you 'help yourself,'" they explained. These overbearing "promises of leniency" and threats would never be countenanced by Reid. *See Id.* at 331.

[5] *See* John E. Reid & Associates, Inc., Investigator Tips, http://www.reid.com/educational_info/r_tips.html?serial=1299080308558447.

If a criminal defendant's confession is not "'the product of an essentially free and unconstrained choice by its maker'" and "'if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process.'" *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973) (quoting *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961)). "To determine voluntariness, the reviewing court must examine the totality of the circumstances surrounding the confession to determine 'whether the behavior of the State's law enforcement officials was such as to overbear [the defendant's] will to resist and bring about confessions not freely self-determined—a question to be answered with complete disregard of whether or not [the defendant] in fact spoke the truth.'" *State v. Ackerman*, __ S.W.3d __, 2012 WL 2870568, *21 (Tenn. Crim. App., July 13, 2012) (quoting *Rogers v. Richmond*, 365 U.S. 534, 544 (1961).) The totality of the circumstances includes the characteristics of the person in custody and the details of the interrogation that resulted in the statement. *Schneckloth*, 412 U.S. at 225–26. The inquiry "must be broad" and no specific factor must be demonstrated. *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960) (quoting *Fikes v. Alabama*, 352 U.S. 191, 197 (1957)); *Schneckloth*, 412 U.S. at 226 (explaining that voluntariness is determined by "the factual circumstances surrounding the confession" and its "psychological impact on the accused"); *see also, e.g., United States v. Wertz*, 625 F.2d 1128, 1134 (4th Cir. 1980) (explaining that "none of these various factors is to be considered in isolation" and that the determination of voluntariness does not "rest solely upon any one circumstance").

Coercion, of course, can be mental as well as physical. *Blackburn*, 361 U.S. at 206. Indeed, a great number of interrogation tactics can render a statement or confession involuntary without physical violence. *See, e.g., Fikes*, 352 U.S. at 193-97. For instance, "[a] false promise of lenience is 'an example of forbidden tactics, for it would impede the suspect in

making an informed choice as to whether he was better off confessing or clamming up."' *U.S. v. Stadfeld*, 689 F.3d 705, 709 (7th Cir. 2012) (quoting *United States v. Baldwin*, 60 F.3d 363, 365 (7th Cir. 1995)). Likewise, "[t]hreats to a suspect's family or children, even if implicit, certainly may render confessions involuntary for purposes of due process." *Sornberger v. City of Knoxville*, 434 F.3d 1006, 1023 (7th Cir. 2006); *Rogers v. Richmond*, 365 U.S. 534, 543 (1961) (confession coerced when police threatened to take suspect's wife into custody if he did not confess); *Spano v. New York*, 360 U.S. 315, 323 (1959) (confession coerced when officer, a close friend of defendant, told defendant that officer would get in trouble if defendant did not confess)); *see also Lynumn v. Illinois*, 372 U.S. 528, 533-34 (1963) (holding that a defendant's confession was coerced when the police implied that she would lose custody of her children and state financial benefits if she did not cooperate); *United States v. Lopez*, 437 F.3d 1059, 1066 (10th Cir. 2006) (concluding that federal agents' misrepresentation of the evidence, combined with their promise that the defendant would be sentenced to a much shorter prison term if he confessed, rendered a confession involuntary).

"The critical question is 'whether the behavior of the state's law enforcement officials was such as to overbear petitioner's will to resist and bring about confessions not freely self-determined.'" *State v. Smith*, 933 S.W.2d 450, 455-56 (Tenn. 1996) (quoting *State v. Kelly*, 603 S.W.2d 726, 728 (Tenn. 1980)). In *Ackerman*, the Tennessee Criminal Appellate Court recently suppressed a confession where police utilized the mother of the suspect's children as an agent to threaten that the suspect would not be permitted to see his children "unless he admitted the allegations against him and apologized." *Ackerman*, 2012WL 2870568, at *23. If he did confess, "she would 'let this go,' that they 'won't ever talk about this again and … go back to the way things were,' and that she would 'let this all be bygones' if he 'came clean.'" *Id.* But if he didn't

confess, "he would never be permitted to see the victim again." Campbell, herein, was similarly threatened with extreme punishment if he did not confess, yet a much better fate if he did. He confessed within five minutes after the most extreme of these threats, when the officers described that prison would involve his "daily" gang rape by ten large men.

Unsurprisingly, overbearing tactics involving threats of physical harm and promises of leniency such as those herein, can result in false confessions. Twenty-two-year-old Christopher Ochoa's falsely confessed to rape and murder when he was told that he would get the death penalty if he did not confess – a false confession that landed him in a Texas prison for more than a decade. Welsh S. White, *Confessions in Capital Cases*, 2003 U. Ill. L. Rev. 979, 1009-11 (2003). Seventeen-year-old Paula Gray – whose false confession implicating four others led to their two decades of wrongful conviction – similarly testified that police threatened to "kill" her if she didn't confess. Brandon L. Garrett, Convicting the Innocent, 39 (Harvard Univ. Press 2011). Kevin Fox falsely confessed to murdering his daughter after "detectives threatened him with being raped in jail" during an all-night interrogation.[6] Scores of other proven false confessors have described the threats and promises police made to them to induce their false confessions. *See e.g.*¸ CBS' 60 Minutes, *Chicago: The False Confession Capital,*[7] December 9, 2012 (including interviews of members of the Dixmoor Five and Englewood Four, nine men who spent two decades in prison for crimes they did not commit. Seven of men, all teenagers at the time, confessed, explaining that police officers threatened long prison sentences if they maintained their innocence but promised they could go home if they did confess).

[6] *See* Ben Bradley, *Jury reaches verdict in Fox lawsuit*, Dec. 20, 2007, available at http://abclocal.go.com/wls/story?section=news/local&id=5846775.
[7] http://www.cbsnews.com/video/watch/?id=50136707n

V. WHEN A YOUNG SUSPECT IS INTERROGATED, THE RISK OF INVOLUNTARY AND FALSE CONFESSIONS IS ALSO ENHANCED.

Going on seven decades now, the U.S. Supreme Court has recognized that teenagers experience police interrogations differently than adults. In *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948), the Court suppressed a teenager's confession because he was an "easy victim of the law" and could easily succumb to coercion during the police interrogation process if he were left without adequate protections. The Court emphasized: "That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens." *Id.* at 599. Fourteen years later, in *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962), the Court again suppressed a teen's confession, this one given almost immediately after he had been taken into custody, explaining that teenager, "no matter how sophisticated, is . . . a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights." *Id.* "He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions." *Id.*

Five years later, in the landmark decision of *In re Gault*, the Court affirmed that the privilege against self-incrimination protects all defendants, explaining that "common observation and expert opinion" both compel the conclusion that one should "distrust" the interrogation-induced confessions of children "from an early age through adolescence." 387 U.S. 1, 48 (citing 3 Wigmore, Evidence § 822 (3d ed. 1940)). Indeed, the Court plainly stated that "authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of 'confessions' by children." *Id.* at 52. The Court went on to admonish that if counsel was not present during interrogation, "the greatest care must be taken to assure that the admission was voluntary, in the

sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair." *Id.* at 55.

The Supreme Court's recent sentencing jurisprudence outlawing draconian sentences for certain teenagers only reinforces the conclusion that young people are uniquely susceptible to making statements that are either involuntary, unreliable, or both during the pressure-cooker of police interrogation. *See Roper v. Graham*, 543 U.S. 551 (2005) (abolishing the death penalty for all those under 18); *Graham v. Florida*, 130 S.Ct. 2011 (2010) (outlawing life without parole for those under 18 who committed nonhomicide offenses); *Miller v. Alabama*, 132 S.Ct. 2455 at 2469 (2012) (barring the mandatory imposition for life without parole for those under 18). In so holding, the Court repeatedly explained that adolescents are more vulnerable than adults to the application of external pressure; they are suggestible, impulsive, eager to please authority figures, and hampered by immature decision-making. *Miller*, 132 S.Ct. at 2464-68; *Graham*, 130 S. Ct. at 2026, 2032; *Roper*, 543 U.S. at 569. These same traits make young people particularly ill-suited to engage in the high-stakes risk-benefit analysis inherent in any police interrogation. Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3-38 (2010); *see also Miller*, 132 S.Ct. at 2468 (citing *J.D.B. v. North Carolina*, 131 S.Ct. 2394, 2400-01 (2011)) (noting that "the incompetencies associated with youth" put children at a significant disadvantage in the criminal justice system).

Indeed, two years ago, building on its decisions in the Eighth Amendment context, the Court issued an opinion that was founded squarely on the principle that children and teenagers are particularly likely to make involuntary and false confessions. In *J.D.B.*, 131 S.Ct. at 2398, the Court held that age is properly considered during a *Miranda* custody analysis, because young people "will often feel bound to submit to police questioning when an adult in the same

circumstances would feel free to leave." The Court reiterated that custodial interrogation can induce false confessions—even from adults—at an alarming rate, and it emphasized that this problem is "all the more acute" when the subject is a youth because young people are "most susceptible to influence and outside pressures." *Id.* at 2401, 2405 (citing Brief for Center on Wrongful Convictions of Youth et al. as *Amici Curiae* at 21-22).

Studies of false confessions and wrongful convictions unanimously confirm the point made explicit in *J.D.B.* The leading study of 125 proven false confessions, cited by the Supreme Court in *Corley v. U.S.*, 129 S.Ct. 1558, 1570 (2009) and *J.D.B.*, 131 S.Ct. at 2401, found that 63% of false confessors were under the age of twenty-five. *Drizin & Leo*, 82 N.C. L. Rev. at 945. In another respected study of 340 exonerations that have taken place since 1989, researchers found that youth were three times as likely to falsely confess as adults. *See* Samuel R. Gross et al., *Exonerations in the United States, 1989 Through 2003*, 95 J. Crim. L. & Criminology 523, 544-45 (2005). Brandon L. Garrett's detailed examination of the first 250 DNA exonerations identified forty cases involving a defendant's own false confession, and 33% of those involved youth. Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* 38 (2011). And an examination of 103 wrongful convictions of factually innocent teenagers and children found that a false confession contributed to 31.1% of those cases studied, as compared against only 17.8% of adult wrongful convictions. *Tepfer et al*., 62 Rutgers L. Rev. at 904. The study similarly found that youth are also particularly likely to respond to the pressures of interrogation by offering false information against another person; in over half of the cases studied, a demonstrably false statement made by a teenager or child contributed to the ultimate wrongful conviction, whether that statement implicated himself or another person. *Id.* at 905-10.

Law enforcement also agrees that young people must be treated with more "care and caution" than adult suspects.[8] A developer of the Reid Technique, Fred E. Inbau, wrote that "special protections must be afforded to juveniles and to all other persons of below-average intelligence, to minimize the risk of untruthful admissions due to their vulnerability to suggestive questioning." Fred E. Inbau, *Miranda's Immunization of Low Intelligence Offenders*, Prosecutor: J. Nat'l District Att'ys Ass'n, Spring 1991, at 9-10. The International Association of Chiefs of Police (IACP), with support from the Office of Juvenile Justice and Delinquency Prevention, recently published a juvenile interrogation guide, co-authored by attorneys from co-amici counsel from the CWCY. Entitled *Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation*, this law enforcement guide explicitly recognizes the unique vulnerabilities of teenagers during interrogations, explaining that "an ever-growing body of research . . . demonstrates that young people are particularly vulnerable to making false or involuntary statements when subjected to pressure-filled questioning tactics." *Reducing Risks*, at 15.[9] As the IACP guide explains, portions of the brain that are essential to mature judgment, problem-solving, and decision-making undergo significant development over the course of adolescence and through the early twenties. *Id.* at 4. Behavioral data are consistent with what we know about such brain maturation. For example, adolescents tend to place more emphasis on immediate rewards rather than long-term consequences, have more difficulty assessing risks, and are more vulnerable to external pressures than adults. *Id.* The IACP guide explains that "[t]hese traits also make adolescents particularly likely to respond to the fear and stress of interrogation by making involuntary or false statements." *Id.*

[8] *See* John E. Reid & Associates, Inc., Critics Corner, http://www.reid.com/educational_info/criticfalseconf.html.
[9] *See* http://www.theiacp.org/portals/0/pdfs/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf.

Although Campbell, at age nineteen, falls just outside the artificial cut off line the criminal justice system has generally developed for juvenile court jurisdiction or sentencing, it would be unwise to simply dismiss the role his young age played in his vulnerability. Unlike in these other contexts, the totality of the circumstances analysis of voluntariness requires the court to take the suspect's age into account, not whether he is technically a juvenile. *See Colorado v. Connelly,* 479 U.S. 157 (1986). By any consideration, nineteen-year-old Campbell was certainly young when his older, far more experienced interrogators continually induced his confession with threats and promises. Although a younger teenager might have been even more vulnerable to these officer's tactics, Campbell was by no means a mature adult. Indeed, the studies indicate that the extreme threats used against Campbell have been sufficient to overwhelm the will of people far older than him, and Reid prohibits such direct threats of harm and promises of leniency regardless of the age of the suspect.

Moreover, Campbell's youth was not lost on his interrogators. The continually used his youth as part of their inducements. "You are 19, you got a lot of life to live and you are going to miss it if you stick with this [story]," they began in communicating that only a confession could help him. And when it came to the threats of gang rape, the interrogators also capitalized on his young age: "You gonna come in there, gonna be a fresh face 19 year old kid and guess what is gonna happen. They coming at you every single day." They continued: "Your hands ain't gonna do you no good when you got 10, my size, comin at you. They don't come individually. They cliqued up. You new, you fresh." Having deliberately sought to take advantage of his youth during his interrogation, the State may not now deny its impact.

VI. THE THREATS OF VIOLENCE AND EXPLICIT PROMISES OF LENIENCY DURING THE INTERROGATION OF CARLOS CAMPBELL SHOULD RESULT IN THE SUPPRESSION OF HIS CONFESSION, ESPECIALLY IN LIGHT OF A PATTERN OF SUCH CONDUCT BY TENNESSEE LAW ENFORCEMENT OFFICERS.

As detailed in Section II of this brief – which really is only a sampling of the mind-boggling coercive tactics used on Carlos Campbell during his seven hour interrogation – the officers repeatedly communicated to this young man that he needed to confess to help avoid a draconian prison sentence. They upped the ante greatly by promising him "daily" gang rape in prison if they didn't let the officers "know what is going on." But Campbell could "stop this shit right now" if he came clean and "helped himself." But if he stayed "hush hush," he was "fucked" … "They are going to kill you."

Courts have condemned interrogators relating stories of prison rape even to Guantanamo detainees. *See O.K. v. Bush*, 377 F.Supp.2d 102 (D.D.C. 2005) (giving "close[] scrutiny" to the request for an injunction on the cruel or degrading treatment of petitioner, who alleged, among other things, that he received "multiple threats of . . . rape" during his detention). Indeed, an interrogator of the Guantanamo suspect in *O.K.* admitted telling a false story to the accused terrorist about the rape of an Afghan youth in an American prison. While the court did not suppress later statements, it reached that conclusion because the Guantanamo suspect did not confess until much later, and the statement was not "derived from, the product of, or connected to" the story told by Interrogator #1. *United States v. Omar Ahmed Khadr*, D-094, D-111, Ruling on Suppression Motions, Patrick J. Parrish, Military Judge.[10] Here, of course, Campbell began making admissions within five minutes of explicitly being told "They gonna fucking rape you. . . You cannot fend them off … Your hands ain't gonna do you no good when you got 10, my size, comin at you."

[10] http://www.defense.gov/news/D94-D111.pdf.

This is not the first time in recent years that Tennessee law enforcement officials have crossed the line in threatening harm to young suspects. In fact, *Amici* have uncovered a pattern of overbearing psychologically coercive tactics in their investigations. For example, Codey Miller, a seventeen-year-old from Johnson City, confessed to murdering his mother and raping her corpse after an interrogation so coercive that it shocked an experienced judge. Criminal Court Judge Robert Cupp recently suppressed the entirety of Miller's confession based, in part, on the fact that the interrogating officer repeatedly accused Miller of lying, yelled at him and told him he could receive the death penalty. *See* Becky Campbell, *Judge Tosses Confession from Teen Accused of Killing Mom, Having Sex with Corpse*, Johnson City Press, Dec. 1, 2011.[11] According to Judge Cupp, the death penalty threat can be heard clearly on the recording of the interrogation, and its effect on the young suspect was obvious. Miller had denied involvement in his mother's murder dozens of times prior to the death penalty threat but made his first admission within minutes of hearing of the possibility of a death sentence. *Id.* Judge Cupp described the interrogation as "incredible" and "mind-boggling," explaining that he had "never [seen] an interview like this in his life."[12]

The same death penalty threat was made to Chattanooga sixteen-year-old Brendan Barnes. During the part of his interrogation that was recorded with audio equipment, Barnes clearly stated he was making a statement only because his interrogator threatened the death penalty, a claim his interrogator did not deny but rather said was why the police needed Brendan's cooperation"[13]:

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[11] An online link to this article is currently accompanied with video excerpts of Judge Cupp reading his decision. In this video, Judge Cupp explains that his rationale for suppressing the confession was based, in part, on the threat of the death penalty and the officer repeatedly accusing Miller of lying. Judge Cupp found the interrogation "incredible" and mind-boggling," having "never [seen] an interview like this in his life." *See* http://www.johnsoncitypress.com/News/article.php?id=96320.

[12] *Id.*

[13] This interrogation transcript is on file with *Amici* CWCY.

Officer:	Alright. Why did you lie about the first (1st) [story you told me]?
Brendan:	Just .. uh.. I wadn't trying. I'd be no snitching.. it ain't be it my life.
Officer:	Okay.
Brendan:	In my life and then you told me the death penalty.
Officer:	Well I mean that.. that is definitely an option. Any time we're discussing a ..uh.. a murder.
Brendan:	Yeah.
Officer:	The death penalty is.. is one of the options.
Brendan:	Yeah.
Officer:	Yes, I mean it can go anywhere from, you know, I've seen people in crimes of passion get probation all the way up to, you know, the death penalty so that definitely is an option and that's something that ..uh.. you know, that we need your cooperation period.
Brendan:	Yes sir.
Officer:	For.. for the prosecution of this, for.. for your own benefit, for our benefit, so.. and also because this is a terrible thing.

The recorded interrogations of seventeen-year-old Codey Miller, sixteen-year-old Brendan Barnes, and nineteen-year-old Carlos Campbell suggest a troubling pattern of Tennessee law enforcement officers threatening violent harm – assault, rape, and death – to young suspects during interrogations. Indeed, there are reasons to believe that these types of threats have happened to many other suspects. Unlike more than a dozen other states,[14] Tennessee does not have any rules that mandate the electronic recording of interrogations.[15] Absent a requirement to record custodial interrogations, the interrogator can turn on a recording

[14] The following states have rules or laws mandating the electronic recording of at least some custodial interrogations: *Stephan v. State*, 711 P.2d 1156, 1162-65 (Alaska 1985); 705 Ill. Comp. Stat. Ann. §405/5-401.5 (minors), 725 Ill. Comp. Stat. Ann. §5/103-2.1 (adults) (Illinois);IN Evidence Rule 617 (Indiana); Maine Rev. Stat. Ann., Title 25, §2803-B(1)(K) (Maine); *State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994); Mo. Rev. Stat. ch. 590.700.1 (2009) (Missouri); Mont. Code Ann. §46-4-406-410 (2009) (Montana); Neb. Rev. Stat. Ann. §§29-4501-4508 (2008) (Nebraska); NJ Rule of Court, Rule 3:17 (New Jersey); N.M. Stat. Ann. §29-1-16 (2006) (New Mexico); N.C. Gen. Stat. §15A-211 (North Carolina); Or. Rev. Stat. §133.400 (2010) (Oregon); Wisc. Stat. Ann. §§968.073 and 972.115 (2005) (Wisconsin).

Two other states have enacted similar laws that will be effective soon: Public Act No. 11-174 (2011) (eff. Jan. 1, 2014) (Connecticut); Public Act No. 479 (2012) (eff. March 28, 2013) (Michigan).

Several other states have laws that strongly encourage electronic recording: *State v. Hajtic*, 724 N.W.2d 449, 456 (Iowa 2006); MD Code, Criminal Procedure § 2-402 (Maryland); Com. v. DiGiambattista, 813 N.E.2d 516, 533-34 (2004) (Massachusetts); *State v. Barnett*, 789 A.2d 629, 633 (2001) (New Hampshire);

[15] *See* H.B. 596, An Act to Amend Tennessee Code Annotated, Title 40, Chapter 7, Relative to the Electronic Recording of Certain Custodial Interrogations, www.capitol.tn.gov/Bills/106/Bill/HB0596.pdfhttp://www.capitol.tn.gov/Bills/106/Bill/HB0596.pdf. The Tennessee General Assembly never voted on the bill. *See* Tennessee General Assembly, Bill Information for HB0596, http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0596&ga=106.

device after already getting the suspect to confess, thereby leaving the public in the dark as to what happened before. Alternatively, interrogators could choose never to record at all.

From *Amici's* collective experience, it is rare that law enforcement officers are brazen enough to threaten a suspect – especially a young person – with such coercive threats on a recording. The fact that it has now clearly happened in three recent Tennessee cases involving young suspects raise serious questions about how often the threat is utilized in unrecorded and partially recorded interrogations in Tennessee. In a state where the "'[t]est of voluntariness for confessions under Article I, § 9 of the Tennessee Constitution is broader and more protective of individual rights'" than the federal due process standard, these three cases represent an extremely troubling trend. *See Ackerman*, 2012 WL 2870568, at *22 (quoting *Smith*, 933 S.W. 2d at 455 (citing *State v. Stephenson*, 878 S.W.2d 530, 545 (Tenn. 1994)). Just as Judge Cupp did in Codey Miller's case,[16] this Honorable Court should suppress the involuntary statements of Carlos Campbell. Suppression here is necessary not only to protect Campbell's constitutional rights; not only to safeguard against false confessions; but to deter Tennessee police officers from engaging in these tactics in the future.

[16] Brendan Barnes pled guilty to lesser charges of facilitating felonies in exchange for a twelve-year-sentence (with eligibility for parole in fewer than four years) prior to a ruling on his motion to suppress his confession. *See Barnes Pleads Guilty in Murder of Rev. Strong*, The Chattanoogan, April 23, 2013, available at http://www.chattanoogan.com/2013/4/23/249644/Barnes-Pleads-Guilty-In-Murder-Of-Rev..aspx.

Respectfully submitted,

Terry A. Maroney
TN Attorney Reg. No. 026151
Counsel on behalf of *Amici Curiae*

Joshua A. Tepfer
Steven A. Drizin
Northwestern University School of Law
Bluhm Legal Clinic (IL Atty No. 15245)
375 East Chicago Avenue, 8th Floor
Chicago, IL 60611
Phone: (312) 503-8576
Fax: (312) 503-8977
Email: j-tepfer@law.northwestern.edu
s-drizin@law.northwestern.edu

Terry A. Maroney
Professor of Law
Professor of Medicine, Health and Society
Vanderbilt University
131 21st Avenue South
Nashville, TN 37203
Phone: (615) 343-3491
Fax: (615) 322-6631
Email: terry.maroney@vanderbilt.edu