

IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

M.S.Ct. No. 160436

vs

COA No. 346775

Oakland County Circuit Court No.
2017-265355-FJ

MUHAMMAD ALTANTAWI,

Defendant-Appellant.

**DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF
APPLICATION FOR LEAVE TO APPEAL**

NOTICE OF FILING AND CERTIFICATE OF SERVICE

***** ORAL ARGUMENT REQUESTED AND ORDERED *****

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STATEMENT OF THE BASIS OF JURISDICTION

Defendant-Appellant Muhammad Altantawi was charged in Oakland County Circuit Court, before the Honorable Martha D. Anderson, with one count of first degree premeditated murder pursuant to MCL 750.316(1)(A), arising out of the death of his mother, Nada Huranieh, on August 21, 2017. Muhammad was 16 years old at the time of his mother's death. In the trial court, the defendant moved to suppress (1) evidence of his alleged statements to police obtained without *Miranda*¹ warnings, and (2) surveillance video evidence from the family home seized and later searched without the defendant's consent and without a warrant.

The trial court held an evidentiary hearing on September 21, 2018, and October 8, 2018, denied both motions on November 20, 2018, and stayed the proceedings "pending appeal", which was timely filed by the defendant. (Ex. A: Trial Court Order, Apx 4a). The Court of Appeals granted the interlocutory application in an unpublished opinion, in March 2019, and affirmed the trial court's ruling, with a dissenting opinion, on September 5, 2019. (Ex. B: *People v Altantawi*, unpublished per curiam opinion of the Court of Appeals, issued September 5, 2019, Docket No. 346775, Apx 5a-17a).

Following his timely application for leave to appeal, pursuant to MCR 7.301(A)(2) and MCR 7.302(C)(2), this Court directed the Clerk to schedule oral argument on the application, pursuant to MCR 7.305(H)(1), as to issue (1) above, only (Ex. C: SC Order, Apx 18a). This is an interlocutory appeal. The defendant's case has not yet been tried.

¹ *Miranda v Arizona*, 38 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

STATEMENT OF QUESTION PRESENTED

WHETHER THE COURT OF APPEALS CLEARLY ERRED IN AFFIRMING THE TRIAL COURT'S DENIAL OF THE DEFENDANT'S MOTION TO SUPPRESS HIS STATEMENTS AND WHETHER THE COURT OF APPEALS CLEARLY ERRED IN AFFIRMING THE TRIAL COURT'S FINDING THAT THIS JUVENILE DEFENDANT WAS NOT SUBJECTED TO "CUSTODIAL INTERROGATION", AND THAT HIS FREEDOM OF MOVEMENT WAS NOT SUFFICIENTLY CURTAILED SO AS TO REQUIRE THE GIVING OF *MIRANDA* WARNINGS?

Court of Appeals answered: "No".

Trial Court answered: "No".

Defendant-Appellant answers "Yes".

Plaintiff-Appellee answers "No".

STATEMENT OF MATERIAL FACTS AND PROCEEDINGS²

On August 21, 2017, Defendant-Appellant (hereinafter “Muhammad”), then sixteen years old, lived at 36933 Howard Road in Farmington Hills with his mother, Nada Huranieh (the deceased), and two sisters: AA, aged 14 and SA, aged 9. (Ex. D: Hrg Tr 9/21/18, Jordan, pp 9-11, Apx 23a-25a). Muhammad’s parents were in the midst of a contentious divorce. His father, Dr. Bassel Altantawi, had not lived with the family for nearly two years. (Ex. E: Transcript of Interrogation of Defendant, 8/22/17, pp 10-11, Apx 162a-163a;³ Ex. D: Hrg Tr 9/21/18, Dr. Altantawi, pp 250-251, Apx 120a-121a, and Molloy, p 83, Apx 60a).

At about 6:30 a.m. that day, AA advised Muhammad that their mother appeared to have fallen, from a second story window to a concrete patio 29 feet below, while cleaning a window. (Ex. D: Hrg Tr 9/21/18, Jordan, pp 13, 22, 34-36, Apx 27a, 36a, 43a-45a, and Wehby, pp 181-183, 190, Apx 89a-91a, 98a). AA called 911, later handing the phone to Muhammad who followed a dispatcher’s directions to perform CPR on their mother. (Id., Jordan, pp 46-47, 54, Apx 50a-51a, 54a, and Molloy, pp 113-114, Apx 76a - 77a; Ex. E: Transcript of Defendant’s Interrogation, p 14, Apx 166a). SA remained asleep. (Ex. D: Hrg Tr 9/21/18, Jordan, pp. 24-25, Apx 38a-39a).

² Facts summarized herein are taken from transcripts three days of hearings relating to the defendant’s motions to suppress, with testimony taken on September 21, 2018, October, 8, 2018, and the trial court’s ruling, from the bench, on November 20, 2018. The transcripts were filed in their entirety in the Court of Appeals record.

³ A transcript of the defendant’s interrogation was admitted at the hearing on September 21, 2018, below as People’s Exhibit 15. The transcript of his interrogation is included in the attached Appendix (Ex. E: Interrogation, Tr 8/22/17, Apx 153a-181a).

Farmington Hills police responded to the address and Officer Nathan Jordan found Muhammad performing CPR on his mother with one hand, with his other hand holding the phone and talking to the police dispatcher. (Id., Jordan, pp 46-47, Apx 50a-51a). Officer Jordan noted that her body was still warm to the touch, but she had no pulse, and she was pronounced dead a short while later. (Id., Jordan, pp 20-21, Apx 34a-35a, and Molloy, pp 76-77, Apx 57a-58a). Jordan talked to AA and Muhammad immediately, neither of whom reported actually seeing their mother fall. (Id. Jordan, pp 24-25, 32-33, 52, Apx 38a-39a, 41a-42a, 52a). Both explained that their mother typically cleaned the house, starting at 4:30 or 5:00 a.m., prior to getting them off to school. (Id., Jordan, pp 32-33, Apx 41a-42a; and Wehby, p 220, Apx 108a).

Police summoned Dr. Altantawi to the scene to assist with the children. The doctor hesitated because he was on probation for a misdemeanor adjudication for domestic violence against the deceased, and a protective order barred him from being near the deceased or the family home. (Ex. D: Hrg Tr 9/21/18, Jordan, pp 37-39, 56, Apx 46a-48a, 56a, and Wehby, pp 180, 222, Apx 88a, 110a).⁴ After the officers advised that it would be alright for him to come to the house, he arrived and took the three children out to eat while EMS and Farmington Hills police tended to the deceased. (Id. Wehby, pp 180-181, 185, 187, Apx 88a-89a, 93a, 95a). They were too upset to eat anything. (Id, Dr. Altantawi, p 234, Apx 111a).

From approximately 7:00 a.m. to noon on August 21st, police investigated the scene. In the second-floor guest room suite, where the deceased typically put on her make up in the morning, detectives made note of a three-step ladder, upright and placed near the open window; a

⁴ Later police confirmed with the tether company that Dr. Altantawi had not been near the family home at the time of the death. (Ex. D: Hrg Tr 9/21/18, Molloy, pp 93-94, Apx 63a-64a).

bottle of Tilex sitting on the top step of the ladder; streaks of a fluid (“spray marks”) on the outside surface of the open window which appeared to have not been wiped yet; a screen that had been removed from the open window; and a bucket of water. (Ex. D: Hrg Tr 9/21/18, Wehby, pp 181-182, 187-189, Apx 89a-90a, 95a-97a, and Jordan, pp 34-35, Apx 43a-44a).⁵ Black hair consistent with that of the deceased was found on a dented, decorative, Stucco ledge that was four to six feet directly below the open window. (Id. Jordan, pp 14, 17, 35-36, Apx 28a, 31a, 44a-45a, and Wehby, pp 182, 191-192, Apx 90a, 99a-100a). A rag was found near the deceased’s body on the patio. (Id., Jordan, p 21, Apx 35a). She was laying on her back with her head perpendicular to, and inches away from, the westerly wall of the home, directly beneath the open window. (Id., pp 11, Apx 25a). There was “one inch” of blood under her head on the concrete. (Id, Wehby, p 195, Apx 103a). She was dressed in pajamas, the bottoms of which appeared to be partially wet. (Id. Apx 103a). Besides the head injury, she appeared to have no significant external injuries. A bruise on her lower lip and blood streaking down her cheek may have been related to intubation efforts by EMS, because those were not visible to Officer Jordan, the first responder. (Id, Jordan, p 52, Apx 52a and Wehby, p 185, Apx 93a).

Detectives noticed what appeared to be surveillance cameras on the exterior of the home, including one which was directed at the patio area. (Id. Wehby, p 187, Apx 95a, and Jordan, p 40, Apx 49a). When Dr. Altantawi and the children returned from breakfast on August 21st, both Dr. Altantawi and Muhammad told police that the cameras were on the home when it was purchased, and had never been used. (Id, Wehby, pp 187, 214-215, Apx 95a, 104a-105a). In a

⁵ Detectives noted no signs of a struggle in the room, and no signs of forced entry to the home (Ex. D: Hrg Tr 9/21/18, Jordan, pp 34-35, Apx 43a-44a, and Molloy, p 127, Apx 86a).

second floor laundry room, a bath mat with rubber backing was floating in standing water, in a front loader washing machine that was displaying with a flashing error code. A bath mat appeared to be “missing” in the master bathroom. (Id. p 193, Apx 101a). In the dryer were blue jeans and a pair of boy’s underwear. (Id. pp 193, 219, Apx 101a, 107a).

After detectives left the home on August 21st, they were given information by the deceased’s interior decorator that the home still had a functioning video surveillance system. (Ex. D: Hrg Tr 9/21/18, Molloy, p 96, Apx 66a). On August 22nd, Detectives Molloy and Hammond returned to the home for the purpose of recovering the DVR (digital video recorder) for the surveillance system, and they were allowed in by Dr. Altantawi, who said “[o]kay, you can go check that out.” (Id. pp 102-104, Apx 69a-71a). According to Detective Molloy, the doctor agreed that the detectives “could conduct an investigation”, meaning “[g]oing in the house, take a look around, see any signs of ... anything possibly criminal, take photographs, collect evidence”. “He said he didn’t have a problem with that.” (Id. p 84, Apx 61a).

While his name was on the title to the home, Dr. Altantawi had not lived in the home for over a year and a half, he was barred by a protective order from being there, he had not been in the house physically for over a year, and he was unsure of what would happen with the house in the divorce litigation. (Ex. D: Hrg Tr 9/21/18, Dr. Altantawi, pp 250-251, Apx 120a-121a, and Molloy, pp 82-83, Apx 59a-60a). In that lengthy time period, Muhammad had only seen his father “occasionally”. (Ex E: Transcript of Defendant’s Interrogation, p 10, Apx 162a). There is no indication that Muhammad was present when his father allowed police into the home, no indication that *Muhammad* allowed police entry into the home, no indication that *Muhammad* consented to any search or seizure of items in his home. Significantly, when Detective Molloy

asked Muhammad about the surveillance cameras “he told me he didn’t want to talk to me – he didn’t want to talk right now.” (Ex. D: Hrg Tr 9/21/18, Molloy, p 92, Apx 62a).

The detectives were in plain clothes, with their guns holstered on their hips. (Id. p 98, Apx 68a). They moved to various locations throughout the home, on every floor, looking for the surveillance equipment. After calls to an interior decorator and the camera installation company, detectives located the surveillance DVR behind a furnace on the second floor. (Id. p 106, Apx 73a, and Wehby, p 218, Apx 106a, and Dr. Altantawi, pp 238-242, Apx115a-119a).

There were disputes at the hearings below as to the circumstances surrounding the seizure of the family’s surveillance DVR, however, for purposes of this appeal (as narrowed by this Court),⁶ there is no dispute that while Muhammad was in the home, the detectives searched throughout the home including the area behind the furnace on the second floor, they unplugged the DVR, they confiscated it, they transported it to the main floor and they removed from the home.

At no time were any of the Altantawi children ever asked if *their* home could be searched, or if *their* property, including the surveillance DVR, could be taken from the home or searched. The record is fairly clear (and the prosecution has never disputed) that Muhammad was not present, within earshot, when consent for the DVR was discussed. The detectives had not secured a warrant before taking the DVR.

⁶ In its order entered April 21, 2020, this Court declined to allow oral argument on Defendant-Appellant’s second argument raised herein, that the search for and removal of the DVR from the home amounted to an unconstitutional search and seizure. (Ex. C: SC Order, Apx 18a).

After the DVR was seized, Detective Molloy asked the doctor if he could “check[] in on Muhammad ... to see how he was doing”, and the doctor said “it was okay”. (Ex. D: Hrg Tr 9/21/18, Molloy, p 111, Apx 74a). Despite the fact that Muhammad had told the detective the previous day that he did not want to talk, the detective engaged him in questioning, asked how he was doing and then quickly revisited the issue of the security system. In response to this questioning, Muhammad said “... he knew how to use it ... how it worked”, he thought it wasn’t working, that “several phones ago” his mom “would access it via her phone”, but that he didn’t think that information would still be on her current phone. (Id. p 92, 111-112, Apx 62a, 74a-75a). Muhammad then asked Molloy where the cameras were, and whether there were any inside the house, and the detective responded that he didn’t know. (Id. p 112, Apx 75a).

Molloy then redirected the questioning to what Muhammad remembered about the time line of August 21st. Muhammad repeated what he had told the detectives the day before, however, this time, he remembered waking up at 6:00 a.m. and showering in the bathroom attached to his bedroom before being notified by AA that their mother had fallen. (Id. pp 112-113, Apx 75a-76a). Muhammad agreed that his parents’ divorce was “contentious”, that he and his mother argued a lot, but that their relationship had gotten better recently, and that in general he got along with his father better. (Id. p 114, Apx 77a). Muhammad said he was not surprised that his mother fell out the window because she had had “several car accidents in one week several months” prior. (Id. p 115-116, Apx 78a-79a).

After returning to the station, the detectives eventually were able to access a video excerpt, from 5:55 a.m. on August 21st, of the lower portion of the deceased’s fall to the patio, as well as “moving shadows” cast on the ground below, generated by the guest room light, which

Detective Molloy claimed, in his opinion, reflected a second person in the guest bedroom, possibly male, flipping the body out the window, followed by the appearance of a shadow of a ladder. (Id. pp 116-122, Apx 79a-85a).

At 3:00 p.m. on August 22nd, after viewing the surveillance video, the detectives returned to question Muhammad again, this time, as a potential suspect in his mother's death. (Ex. D: Hrg Tr 9/21/18, Molloy, pp 122, 298-300, 336, Apx 85a, 122a-124a; Ex. F: Hrg Tr 10/8/18, Molloy, pp 8, 21, Apx 184a, 187a). Detectives asked Dr. Atlantawi if they could take the children to the police station for questioning, and the doctor said he did not want them subjected to that. The doctor asked "Should I have an attorney here?" That request was batted away by the detectives, who implied falsely that there would be no need for an attorney, that this process was "just standard procedure", and that they were just "trying to get the time line down." (Ex. G: Hrg Tr 11/20/18, Opinion, pp 10-11, Apx 219a-220a).

With these assurances, Dr. Altantawi did allow the detectives to speak with Muhammad at the home. (Ex. D: Hrg Tr 9/21/18, Molloy, pp 302-303, Apx 126a-127a). Detectives went upstairs and collected Muhammad: "You're gonna come downstairs with us." (Id. pp 346-347, Apx 148a-149a; Ex. E: Transcript of Defendant's Interrogation, p 2, Apx 154a). At that moment, "[i]t doesn't appear that [the doctor]" was upstairs with Muhammad. (Ex. D: Hrg Tr 9/21/18, Molloy, pp 302-304, 342, 346-349, Apx 126a-128a, 147a-151a). Muhammad was alone with the detective when the detective ordered Muhammad to come downstairs, and detectives alone escorted him down the stairs.

At that point, Dr. Atlantawi told the detectives that he had to pick AA up at the library bus stop, which was a mere three miles from the home. (Id. p 342, Apx 147a; Ex. F: Hrg Tr

10/8/18, Molloy, p 18, Apx 186a, and Wehby, p 73, Apx 198a). Before leaving to pick up AA, the doctor and Muhammad asked if they could pray privately in a basement, dedicated prayer room, however, detectives would only allow them to do so, in the upstairs family room, within earshot of the detectives. (Ex. D: Hrg Tr 9/21/18, Molloy, pp 303-305, Apx 127a-129a; Ex. F: Dr. Altantawi, Hrg Tr 10/8/18, pp 213-214, Apx 211a-212a).⁷ The detectives gave the doctor misleading information that in questioning Muhammad, they “just want[ed] to check a time line”. (Ex. D: Hrg Tr 9/21/18, Molloy, pp 337-338, Apx 142a-143a). They did not tell the doctor they had seen the video and that they now believed that the death was not an accident because of the second figure seen in the shadows, and they did not tell the doctor that his son was a potential suspect in the murder of his mother. (Id. pp 336-338, Apx 141a-143a).

Dr. Altantawi left the home to pick up AA at the bus stop, and the detectives immediately began interrogating Muhammad at the dining room table. (Id. Molloy, pp 306-308, Apx 130a-132a). The detectives were seated next to and across from Muhammad. (Id. pp 309-310, 340-341, Apx 133a-134a, 145a-146a; Ex. F: Hrg Tr 10/8/18, Molloy, p 43, Apx 192a, and Wehby, pp 75, 78, Apx 200a-203a). Eventually, three detectives and at least three uniformed police officers arrived at Muhammad’s home, with three detectives participating in the interrogation: Wehby, Molloy and Hammond. (Ex. F: Hrg Tr 10/8/18, Molloy, p 9, Apx 184a and Wehby, pp 58-62, Apx 193a-197a, and Bretz, p 166, Apx 205a).⁸

⁷ For Muslims like Muhammad, the five daily prayer times, called Salat, are among the most important obligations of the faith. (Ex. E: Transcript of Defendant’s Interrogation, p 6, Apx 158a).

⁸ The trial court found that only the three detectives would be visible to persons inside the home. (Ex G: Hrg Tr 11/20/18, Opinion, p 14, Apx 221a). However, the record in this case demonstrates that while the uniformed officers outside were directed to hide until after Dr.

Detective Wehby did most of the questioning seated at the head of the table, in a position of authority, in a “big ‘ol hooded chair ... that looks like a space ship.” (Ex. D: Hrg Tr 9/21/18, Molloy, pp 312, 340-341, Apx 136a, 145a-146a). Muhammad was not given *Miranda* warnings, he was not told he was free to go, and he was not told that he could refuse to answer. (Ex. D: Hrg Tr 9/21/18, Molloy, pp 312-313, 317, 338-339, Apx 136a-137a, 138a, 143a-144a; Ex. F: Hrg Tr 10/8/18, Molloy, pp 22-23, 30, Apx 188a-189a, 190a). Muhammad indicated at various points that “he didn’t want to talk about it anymore, he just didn’t want to talk about it” (Ex. G: Hrg Tr 11/20/18, Opinion, p 17, Apx 224a), and yet the detectives pressed on.

Under pressure from the detectives to keep talking, Muhammad began by reiterating the account he had given to the detectives the day before. (Ex. D: Hrg Tr 9/21/18, Molloy, p 319, Apx 140a; Ex. E: Defendant’s Interrogation, pp 13-14, 17-18, Apx 165a-166a, 169a-170a). Muhammad said repeatedly that “I didn’t see anything until after everything happened.” (Ex. E: Defendant’s Interrogation, p 18, Apx 170a). The detectives rejected this account, telling Muhammad that they had recovered video showing a second person in the room with his mother.

Altantawi left to pick up AA at the bus stop, once he left, they would clearly be visible in the driveway. (Ex. F: Hrg Tr 10/8/18, Bretz, pp 166-167, Apx 205a-206a). Moreover, the recording demonstrates that the doctor left at the very beginning of Muhammad’s interrogation. In addition, both officers’ testimony and the recording of the interrogation make clear that in Muhammad’s presence, the inside detectives were communicating with the officers stationed outside, telling the officers if and when the doctor will be allowed to approach the home. (Id. pp 167-168, Apx 206a-207a; Ex. E: Defendant’s Interrogation, p 10, Apx 162a).

Officers Bretz and Swanderski testified to being in the driveway, blocking it (Ex. F: Hrg Tr 10/8/18, Bretz, pp 166-168, Apx 205a-207a, and Swanderski, pp 184-185, 197, Apx 208a-209a, 210a), and Detective Wehby is heard saying on the recording “Smith’s out there too”, and “Okay. They’re coming in”. (Ex. E: Defendant’s Interrogation, pp 10, 16, Apx 162a, 168a). Consequently Muhammad knew that significantly more than three detectives were present, he knew that the police were controlling ingress and egress to the home and the driveway, he knew that for some reason his father had been delayed or blocked, and ultimately, he knew that he was surrounded by police and isolated from family.

They become more accusatory, saying that they thought Muhammad knew more than he was telling them. (Ex. D: Hrg Tr 9/21/18, Molloy, p 319, Apx 140a; Ex. E: Defendant's Interrogation, pp 16-17, Apx 168a-169a).

During the 40 minute tape-recorded interrogation, Detective Wehby is heard suggesting the word "accident" "a number of times". (Ex. D: Hrg Tr 9/21/18, Molloy, p 341, Apx 146a). "That's was the story [the detectives] were feeding [Muhammad], suggesting [it was] an accident." (Id. p 342, Apx 147a). They suggested to Muhammad that his mother's death was the result of an accident, but that Muhammad must have been present. "Tell us it's an accident." (Id. Apx 147a). "If it was an accident, you need to tell us." (Id. Apx 147a). "We're trying to find out if it was something done by accident, which ... accidents happen all the time ..." (Ex. E: Defendant's Interrogation, p 18, Apx 170a).

The detectives then proceeded to add detail to the suggested accident scenario, reassuring Muhammad all the while that if he just tells them that this is what happened, the situation can be resolved. "We want to get a resolution to this." (Ex. E: Defendant's Interrogation, p 17, Apx 169a). The detective suggested the following scenario.

DETECTIVE 2: "Yeah, I was helping my mom clean out the windows, and she was having trouble with the screen, "or something like that. "And I was trying to hold the ladder and she slipped and fell. And I panicked". That's something you need to tell us now.

... "Shit I didn't hold the ladder good enough." Or something like that. "I turned around to look at my phone, and I was supposed to be holding the ladder. And she fell."

(Id. pp 19-20, Apx 171a-172a).

At no time did they tell him that their suggestions about what may have happened are leading him into admissions that will result in murder charges and a possible life sentence for this

juvenile. When the detectives suggested these things, Muhammad repeatedly countered that he doesn't remember it happening the way they are suggesting, and that he doesn't know. (Id. pp 21-22, Apx 173a-174a). "That's not really how it happened." (Id. Apx 173a-174a).

The detective then resorted to more deception, and suggested that time is of the essence, because they will be shipping the video out to the Michigan State Police lab, they will "blow it up", "... it's gonna show who was there." "[T]hat's what MSP's doing right now." (Id. p 20, Apx 172a). Ultimately, all of the information eventually supplied by Muhammad in his alleged "confession" to Farmington Hills police on August 22nd could also have derived either from the information disclosed by AA at 6:30 a.m. on August 21st, or from information encompassed in the detectives' numerous suggestions of how Muhammad may have been present and/or played a role in his mother's accidental fall. Eventually, a frustrated, emotional and exhausted Muhammad tells the detectives, simply, that "*I'm gonna agree with what you say.*" (Id. p 25, Apx 177a) (emphasis supplied).

Pressed by the detectives to articulate a scenario, and given the road map, Muhammad tells them that he woke up earlier than he has told them previously. His mother was cleaning windows, and at her request, he retrieved what he thought was the right spray bottle cleaner. He held the ladder while she cleaned the window. "She stood on it. She leaned over. I came over. She fell. I looked over, and ... that's it ..." Muhammad thinks that she had one foot on the "step stool" and the other on the railing of the window. He "assume[s]" that "something with her pants got caught", possibly on the window's "turning handle", and she fell out the window. He went back to his room because "I thought I was dreaming or whatever ... I wanted something else to happen." (Id. p 21-28, Apx 173a-180a). "And I just wanted to forget about it because I just saw

my mom fall, man.” (Id. p 25, Apx 177a). “My mom just died. I thought I was dreaming.” (Id. 29, Apx 181a). “I don’t want to think about it I’m not gonna think anymore about what specifically happened.” (Id. p 26, Apx 178a). The detectives explained that he was emotional and he cried when they asked if he did anything to help. At one point, Muhammad asks to go upstairs to “show” the detectives, and they reject that suggestion, directing him to keep talking. (Id. p 28, Apx 180a).⁹

The last interrogation session of the defendant took approximately forty minutes. This entire time, Muhammad was alone with the detectives. From Muhammad’s perspective, a three mile routine trip to the library bus stop would not have taken his father that long. Per his tether data, Dr. Altantawi had some difficulty finding AA at the bus stop. “It took longer” than the doctor expected. (Ex. G: Hrg Tr 11/20/18, Opinion, p 16, Apx 223a). Per the officers, there was some delay in allowing him back into the house after the trip to the bus stop. The trial court found that during the interrogation of Muhammad, Dr. Altantawi was stopped at the driveway by officers, he was stopped again at the entrance, and he was prohibited from going into the home, for approximately fifteen minutes. (Id. p 15, Apx 222a). Once the doctor was allowed to reenter the home, the doctor told the detectives that he wanted them to stop talking to his son, that he wanted an attorney, and that the attorney said to do that. (Id. p 16, Apx 223a).

The trial court denied Muhammad’s motion to suppress his statement from the bench on November 20, 2018, finding that as Muhammad was not in police custody, he was not entitled to

⁹ “Defendant eventually told the police that he was in the guest bedroom when [his mother] fell out the window. He stated that he held the ladder for [her] while she cleaned a window but she fell.” (Ex. B: *People v Altantawi*, unpublished per curiam opinion of the Court of Appeals, issued September 5, 2019, Docket No. 346775, p 9, Apx 13a).

Miranda warnings: he was in his own home, the interrogation was not overly long or overly coercive, and both Muhammad and his father had agreed that the detectives could talk to him. (Id. p 8, 17-18, Apx 217a, 224a-225a).

The trial court stayed proceedings pending a determination in the Court of Appeals. The Court of Appeals granted the application for leave to appeal, and then, after full briefing, a majority of the Court affirmed both rulings of the trial court. (Ex. B: *Altantawi, supra*, Apx 5a-14a). Judge Deborah Servito dissented in part, finding that Muhammad’s freedom of movement was sufficiently curtailed to trigger the giving of *Miranda* warnings. (Id., Servito, J, dissenting in part, concurring in part, Apx 15a-17a).

SUMMARY OF ARGUMENT

Defendant-Appellant, Muhammad Altantawi, was charged with murder in the death of his mother. Sixteen years old at the time, he was subjected to “custodial interrogation” such that he should have been given *Miranda* warnings: he was isolated from family, deprived of his freedom of action in a significant way, and interrogated at home relentlessly in a “police dominated atmosphere” by a team of police detectives using an accusatory tone.

The United States Supreme Court has recognized in a series of recent decisions that the physical and psychological isolation of custodial interrogation can undermine an individual’s will to resist and can compel him or her to speak where he would not otherwise do so freely. Moreover, there is mounting empirical evidence that the pressures attendant to custodial interrogation are so powerful that they can induce a frighteningly high percentage of people (particularly juveniles) to confess to crimes they never committed.

Muhammad’s statement to police regarding his mother’s death has the core earmark of a false confession – it did not fit the physical facts of the death scene. Worse, the incriminating statements at issue here were prefaced by Muhammad’s repeated statements that he did not know how his mother died. Ultimately frustrated, distraught and exhausted, Muhammad said simply to the officers, “*I’m gonna agree with what you say.*”

The trial court and the Court of Appeals erred in applying proper *Miranda* analysis. Among its errors, these courts took into account the fact that Muhammad went to a “school for extremely bright children” in deciding whether he was entitled to *Miranda* warnings. This is a forbidden factor under both Michigan and federal law. US Const, Amend V, Const 193, Art 1§ 17. This Court should grant the application for leave to appeal, or, alternatively, it should order a peremptory reversal of the decision of the Court of Appeals as to this issue.

ARGUMENT

THE COURT OF APPEALS CLEARLY ERRED IN AFFIRMING THE TRIAL COURT’S DENIAL OF THE DEFENDANT’S MOTION TO SUPPRESS HIS STATEMENTS AND THE COURT OF APPEALS CLEARLY ERRED IN AFFIRMING THE TRIAL COURT’S FINDING THAT THIS JUVENILE DEFENDANT WAS NOT SUBJECTED TO CUSTODIAL INTERROGATION AND THAT HIS FREEDOM OF MOVEMENT WAS NOT SUFFICIENTLY CURTAILED SO AS TO REQUIRE THE GIVING OF *MIRANDA* WARNINGS.

Standard of review

“‘The ultimate question whether a person was ‘in custody’ for purposes of *Miranda* warnings is a mixed question of fact and law, which must be answered independently by the reviewing court after reviewing de novo of the record.’” *People v Coomer*, 245 Mich App 206,

219; 627 NW2d 612 (2001) (citations omitted); *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). The Court reviews for clear error the trial court's factual findings concerning the circumstances surrounding statements to police. *Coomer*, 245 Mich App at 219. "A finding is clearly erroneous if, after reviewing the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *Id.*

Discussion

The Supreme Court, in *Miranda*, recognized that custodial police interrogation brings with it "inherently compelling pressures". The physical and psychological isolation of custodial interrogation can "undermine the individual's will to resist and ... compel him to speak where he would not otherwise do so freely." 384 US at 467. US Const, Amend V, Const 1963, Art 1, § 17.

The Court has also recognized, more recently, that there is "mounting empirical evidence" that the pressures attendant to custodial interrogation are so powerful that they "can induce a frighteningly high percentage of people to confess to crimes they never committed." *Corley v United States*, 556 US 303, 321; 129 S Ct 1558; 173 L Ed 2d 443 (2009), citing Steven A. Drizin & Richard A. Leo, The Problem of False Confessions in the Post-DNA World, 82 NC L Rev 891, 906-907 (2004); see also *Miranda*, 384 US at 455-457 (incommunicado "police-dominated atmosphere" and the "evils it can bring").

The Court, in *Miranda*, defined "custodial interrogation" as "questioning initiated by law enforcement officers after a person as been taken into custody or otherwise deprived of his freedom of action in any significant way." 384 US at 444. A finding of custodial interrogation under *Miranda* does not require formal arrest, or the confining of a subject at a police station or

jail house. Custody can include other “restriction[s] on a person’s freedom.” *Oregon v Mathiason*, 429 US 492, 495; 97 S Ct 711; 50 L Ed 2d 714 (1977) (per curiam).

An assessment as to whether a suspect has been subjected to custodial interrogation is a two-pronged, objective inquiry:

[F]irst, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave.

Thompson v Keohane, 516 US 99, 112; 116 S Ct 457; 133 L Ed 2d 383 (1995); *JDB v North Carolina*, 564 US 261, 270-271; 131 S Ct 2394; 180 L Ed 2d 310 (2011) (the analysis is limited to the objective circumstances of the interrogation, and asking how a reasonable person in the suspect’s position would understand his freedom to terminate the questioning and leave).

The former prong of the analysis examines the “circumstances surrounding the interrogation”, including location and length of the interrogation, statements made by the interrogating officer (i.e., advice that the subject is free to leave or stop the questioning), any restraints, and whether the subject is arrested following the interrogation. *Howes v Fields*, 565 US 499, 509; 132 S Ct 1181; 182 L Ed 2d 17 (2012). No one circumstance is controlling. *Id.* at 517, discussed in *People v Barritt (On Remand)*, 325 Mich App 556, 563; 926 NW2d 811 (2018).

The latter prong of this inquiry focuses on “whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at in issue in *Miranda*.” *Howes*, 565 US at 509; *People v Elliot*, 494 Mich 292, 311; 833 NW2d 284 (2013). The subjective views harbored by either the interrogating officers or the person being questioned are irrelevant. *Barritt*, 325 Mich App at 566.

Given the inherently coercive nature of custodial interrogation, the Court, in *Miranda*, held that prior to questioning, a suspect “must be warned that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to the presence of an attorney, either retained or appointed.” *Miranda*, 385 US at 444.

In *JDB*, 564 US at 277, the Court held that a child’s age may properly be considered under *Miranda*’s objective test for determining whether a defendant has been subjected to “custodial interrogation”, so long as the child’s age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer.

[C]hildren cannot be viewed simply as miniature adults.

.... The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.

... Time and again, this Court has drawn these common sense conclusions for itself. We have observed that children “generally are less mature and responsible than adults ... that they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them[.]”

[C]hildren are “most susceptible to influence” ... and “outside pressures ...”

.... In some circumstances, a child’s age “would have affected how a reasonable person” in the suspect’s position “would perceive his or her freedom to leave.” ... That is, a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.

.... Addressing the specific context of police interrogation, we have observed that events that “would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.” ... “[N]o matter how sophisticated,” a juvenile subject of police interrogation “cannot be compared” to an adult subject.

Id at 271-275 (citations omitted).

Applying the foregoing principles, the following were objective factors which should have been considered in the *Miranda* custody analysis in light of the Court's decision in *JDB*. First and foremost, the defendant was not only a minor, but an especially vulnerable minor. He had been living separately from his father for almost two years due to his parents' contentious divorce and a domestic violence conviction by his father against his mother.

During that time period, he saw his father only occasionally.¹³ The defendant's mother had died the day before, with the defendant in direct contact with her body, attempting CPR. The defendant explained to the detectives that prior to her death, his mother would be the person he would go to if he had a problem. His angst at her death was readily apparent from this record.

While his father succeeded in keeping his children at the house for what he thought was brief questioning about the "time frame",¹⁴ the questioning was by no means brief and by no means was it just about a time frame. Significantly, Muhammad did not pick the time or the location of police interrogation. The prosecution argued that he must have said "yes" when asked if wanted to talk, however, even the interrogating officer acknowledges that no such "yes" is audible on the police recording. Muhammad simply acceded to a directive of the detective. During the interrogation, the only adults in the home were police officers. In the moments preceding the interrogation, his father had left to pick up Muhammad's sister at a bus stop three miles away in what should have been a short trip.

¹³ During the pendency of the divorce action, given the violence in the home, Dr. Altantawi was allowed only supervised visitation with his children, which he chose not to exercise.

¹⁴ The detectives asked to question the children at the police station.

However, Dr. Altantawi did not return promptly as expected, leaving the defendant alone with three interrogating detectives who repeatedly ignored his account of what he knew about his mother's death, who ignored his expressed wishes not to talk about the death anymore, and who became increasingly confrontational and accusatory to this minor during a forty minute interrogation. They told Muhammad that based on their review of the video "we know you were in there", implying that once the video gets cleared up by MSP, they will easily be able to see him. (Ex. E: Transcript of Defendant's Interrogation, p 26, Apx 178a). In fact, the officers knew the video showed only shadows.

Prior to his alleged confession, the defendant was never told he could remain silent, he was never told that he was free to leave, and he was never told that he had the right to consult with an attorney. Not surprisingly, the defendant was never able, successfully, to assert any of these rights.¹⁵ As to this issue, Dr. Altantawi's successful later assertion of Muhammad's right to remain silent – after his son's interrogation was complete – must be contrasted with Muhammad's own experience with police.

Muhammad's repeated efforts to remain silent were not honored by police. His father's greater success was no doubt due to the fact that (a) he is an adult, (b) children "are not miniature

¹⁵ The trial court found that Muhammad's repeated statements during the interrogation – that he did not want to talk any more – somehow bear in favor of a finding that the defendant was not subjected to custodial interrogation. The trial court has misapplied this factor. The detective ignores the defendant's verbalized assertion of the right to remain silent, he immediately resumes the questioning, and the defendant capitulates.

At another point, the defendant asks to go upstairs to the second floor bedroom to show the detectives something. The detective again overrides him, ordering him to stay where he is and to keep talking. These exchanges, especially in combination, demonstrate that the defendant's will was overborne by the officer and by this police dominated environment even when he attempted to assert his rights to leave and to remain silent.

adults”, *JDB*, 564 US at 274, and (c) Dr. Altantawi had his lawyer on the phone when he asserted his son’s rights. Moreover, that the doctor asserted his rights while his son did not only underscores the Supreme Court’s observations in *JDB*. “It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances will feel free to leave.” *Id.* 264-265.

Authorities have recognized that an unfortunate, but predictable byproduct of the “physical and psychological isolation of custodial interrogation” is false confession, a risk that is “is all the more troubling – and recent studies suggest, all the more acute – when the subject of custodial interrogation is a juvenile. See Brief for Center on Wrongful Convictions of Youth et. al. as Amici Curiae 21-22 (collecting empirical studies that ‘illustrate the heightened risk of false confessions from youth’).” *JDB*, 564 US at 269. That risk was readily apparent in this case.

Prior to his alleged “confession” the defendant heard his sister’s description of the scene and what she thought had happened, as well as the detective’s suggestions as to how an accidental death could have occurred. Virtually every fact included in Muhammad’s eventual “confession” was articulated previously by the detective, or the defendant’s sister. Muhammad was encouraged, repeatedly, to embrace the “it was an accident” scenario even though the detectives knew full well that the facts uncovered during the investigation did not fit the scenario they were pushing at the defendant. They implored that time was of the essence, that he had to tell them “the whole thing” soon or he would lose the opportunity.

The detectives also downplayed the legal significance of his acceptance of the accident scenario, implying to this juvenile that by capitulating, by agreeing it was an accident, there would be a resolution – never telling him that he was hypothesizing and guessing and

capitulating his way into first degree murder charges, and a possible life sentence. It is no surprise that an exhausted, exasperated Muhammad ultimately told the detectives “*I’m gonna agree with what you say.*”

Also contributing to the psychological pressures on this minor defendant, police had clearly taken complete control of this home prior to the interrogation. Police came to his bedroom, police ordered him down the stairs, police told him and his father where they could (and could not) pray, police roamed through the house, on all three floors, confiscating “evidence”, including the family’s surveillance system. The latter action would have appeared all the more intimidating because Muhammad was not present when his father allowed detectives to take the DVR. As such, he would have thought that the detectives’ powers were limitless.

His father’s absence from the outset of interrogation, and his failure to return during the interrogation, in turn, would have telegraphed to this young man that police had full control over ingress and egress to this home, and that his father would not be coming back in. Muhammad was all alone with the officers. In light of all the foregoing, any reasonable minor, surrounded by detectives, with other officers acting as back up nearby, would hardly have felt free to leave or free to terminate the interrogation.

The fact that this interrogation occurred in the defendant’s own home did not make the encounter less intimidating, nor does it preclude a finding that the defendant was subjected to “custodial interrogation” under *Miranda* analysis. In *United States v Craighead*, 539 F3d 1073, 1083 (CA 9, 2008), the Court articulated the realistic futility of either trying to leave or ending an interrogation when it is taking place in a “police dominated atmosphere” in one’s own home.

If a reasonable person is interrogated inside his own home and is told he is “free to leave,” where will he go? The library? The police

station? He is already in the most constitutionally protected place on earth. To be “free” to leave is a hollow right if the one place the suspect cannot go is his own home.

Id at 1083-1084.

Moreover, “a reasonable person interrogated inside his own home may have a different understanding of whether he is truly free ‘to terminate the interrogation’ if”, as here, “his home is crawling with law enforcement agents” *id*, who have no intention of leaving until the search warrant arrives and they can complete yet another search of the defendant’s home.

Consequently, the Supreme Court has held that questioning within a suspect’s home may rise to custodial interrogation in some circumstances. See *Orozco v Texas*, 394 US 324, 325-326; 89 S Ct 1095; 22 L Ed 2d 311 (1969) (finding that an interrogation was “custodial” where four police officers arrived at the suspect’s home, entered his bedroom, and behaved as though the suspect was not free to leave).

The trial court considered the fact that Muhammad attended the International Academy, “a school for extremely bright students”, in its second-prong *Miranda* assessment of whether a reasonable person would have known that he was free to leave or to remain silent. (Ex. G: Hrg Tr 11/20/18, Court, pp 16-17, Apx 223a-224a). However, a suspect’s intelligence and education were notably *not* included as permissible factors by the Michigan Court of Appeals in *Barritt*, 325 Mich App at 563, nor by the United States Supreme Court in *JDB*, 564 US at 270-271. In its response to the instant application for leave to appeal, the prosecution countered that the trial court could properly consider where Muhammad went to school, reasoning that his young age was not a significant factor because his schooling suggests that he is intelligent.

This reasoning is flawed, however. The Supreme Court has been steadfast in limiting the facts that can be considered under *Miranda*'s objective assessment, and has held that while a subject's age can be considered (*JDB, supra*), factors such as a defendant's background with law enforcement, prior *Miranda* warnings, and previous military history are subjective factors that cannot be considered. *Yarborough v Alvarado*, 541 US 652, 668-669; 124 S Ct 2140; 158 L Ed 2d 938 (2004), citing *Berkemer v McCarty*, 468 US 420, 431-432; 104 S Ct 3138; 82 L Ed 2d 317 (1984) (suspect's history with law enforcement cannot be considered). See also, *United States v Peck*, 17 F Supp 3d 1345, 1360 (ND Ga, 2014) (previous military history).

In *Yarborough*, the Supreme Court distinguished between the many factors that can be considered in a court's assessment as to whether the defendant's statement to police was voluntary versus those that can be considered under the *Miranda* custody analysis. Significantly, this defendant is not raising a voluntariness challenge to the admission of his statements.

Consequently, and in contrast, under the *Miranda* custody assessment, subjective factors such as intelligence, education and experience with law enforcement play no role. *Yarborough*, 541 US at 667-668. The Court in *Yarborough* likewise rejected the specific tact attempted here by the prosecution in its response to the application – “subsum[ing] a subjective factor into an objective test by making the latter more specific in its formulation”, i.e., styling the objective inquiry as allowing consideration of what a “reasonable 17-year old, with no prior history of arrest or police interviews’ would perceive.” *Id.* 667.

Here, the prosecution “subsum[es] a subjective factor [impermissibly] into an objective test”, *id.*, by arguing that the trial court only relied on Muhammad's attendance at the International Academy “as part of its conclusion that his age was not a determinative or

significant fact, not as part of the custody analysis itself.” Brief in Response to Application, p 31.

Under *Yarborough*, this is forbidden. A bright-line rule and strict adherence to an “objective test furthers ‘the clarity of [*Miranda*’s] rule’ . . . ensuring that the police do not need to ‘make guesses as to [the circumstances] at issue before deciding how they may interrogate the suspect.’” *Id.*, quoting from *Berkemer*, 468 US at 430-431.

In contrast to intelligence and education, after the Supreme Court’s decision in *JDB*, an interrogated person’s age is an established, permissible factor for *Miranda*’s custody analysis. The fact that Muhammad was 16 years old at the time of the interrogation “helps to show that he was unlikely to have felt free to ignore his” father’s request that he speak with police. *Yarborough*, 541 US at 673 (Breyer, J, dissenting), discussing *Schall v Martin*, 467 US 253, 265; 104 S Ct 2403; 81 L Ed 2d 207 (1984). “And a 17-year-old is more likely than, say a 35-year-old, to take a police officer’s assertion of authority to keep parents outside the room as an assertion of authority to keep their child inside as well.” *Yarborough*, 541 US at 673.

The prosecution quibbled in its response to the instant application for leave to appeal as to whether the defendant was “ordered” to go downstairs just prior to the interrogation. Brief at p 33. However, the officer’s own testimony resolves the dispute. Officer Molloy acknowledges saying “You’re gonna come downstairs with us.” Those words spoken by a police officer to a teenager constitute a command, not a request. Moreover, the officer admits that at that point, Muhammad’s father was not upstairs with Muhammad. . (Ex. D: Hrg Tr 9/21/18, Molloy, pp 302-304, 342, 346-349, Apx 126a-128a, 147a-151a).¹⁶

¹⁶ The prosecution argued in its response to the application that because Muhammad only presented one witness of his own at the hearing on the motion to suppress (his father, Bassel Altantawi), and because the trial court did not find this witness credible in some respects (Brief

The prosecution implied in its response that because Muhammad told police that his mother died as a result of an accidental fall, and did not “confess” his guilt, somehow this is significant to the Court’s analysis. Brief at p 32. However, this is a distinction without a difference. The prosecution likely will use the defendant’s statement at trial as evidence of guilt because the defendant (at the suggestion of the police) places himself in the room with his mother at the time of her fatal fall, and police claim that other evidence (the video) refutes that this was an accident. As such, the error in its admission would not be harmless. *People v Dandron*, 70 Mich App 439, 444; 245NW2d 782 (1976); *People v Hoffman*, 142 Mich 531; 105 NW 838 (1905) (false exculpatory statements).

The prosecution has argued that the duration of the questioning, which it claims lasted only 40 minutes, weighs against a finding of custodial interrogation. *Howes*, 565 US 499. However, the prosecution’s reliance solely on the tape-recorded, final interrogation ignores that police questioned Muhammad on multiple occasions, over the course of two days, often asking him the same questions over and over.

Similarly, the prosecution downplays the extent to which Muhammad asked explicitly to remain silent. Brief at pp 34-35. On the contrary, Muhammad said at various points that “he didn’t want to talk about it anymore, he just didn’t want to talk about it” (Ex G: Hrg Tr 11/20/18, Opinion, p 17, Apx 224a), and his assertion of the right was ignored by the officers.

at n 11, p 32), the defendant could not carry his burden of proof on the motion, and the lower court rulings should be upheld. This argument ignores the abundance of other evidence supporting the defendant’s position, including admissions made during the officers’ testimony and the tape recorded evidence. As such, the defendant sustained his burden of proof even disregarding those aspects of his father’s testimony that the trial court found incredible.

The fact that he eventually succumbed to relentless pressure -- by three police officers, over the course of days, in a highly coercive atmosphere -- does not diminish in any way the fact that he did express his desire to remain silent and he was simply rebuffed. Moreover, while the officers did not explicitly accuse Muhammad of murder, they made it abundantly clear to him that they knew the true facts and that they believed the story he was telling them was a lie. As such, the interrogation was accusatory in nature.

The Court of Appeals noted in this case that police did not arrest the defendant until 20 minutes after the end of the interrogation. (Ex. B: *Altantawi, supra*, p 9, Apx 13a). As to this factor, the dissenting judge from the Court of Appeals disagreed that Muhammad would have reasonably believed that he was actually free to leave at that point.

[At the end of the questioning],[t]he officers refused to allow defendant to sit next to his sister, stating that the officers with the search warrant would show up soon. One of the officers stated, “until that happens, ... we’re keeping everybody here, okay.” Thus, defendant was not released after the interview but instead kept at the home, under the supervision of the police, in a police dominated atmosphere, and away from his sisters.

(*Id. Servito, J., dissenting*, p 2, Apx 16a).

Three seasoned detectives led this juvenile defendant straight into parroting an “accident” scenario which they knew did not fit the known physical facts relating to this death, and which exposed him to first degree murder charges and a possible life sentence. As such, the very risk identified by the Supreme Court in *Corley*, was intolerably high: that the pressure of custodial interrogation is so powerful that it “can induce a frighteningly high percentage of people to confess to crimes they never committed,” 556 US at 321, with juveniles especially at risk. *JDB*, 564 US at 269. The defendant’s confession should have been suppressed by the trial court, and

the Court of Appeals clearly erred in failing to do so. Application for leave to appeal should be granted as to this issue. Alternatively, the Court should reverse the decisions of the trial court and Court of Appeals as to this issue.

RELIEF REQUESTED

Based upon all the foregoing, Defendant-Appellant Muhammad Altantawi respectfully requests that this Court grant his application for leave to appeal from the Court of Appeals' erroneous interlocutory (merits) decision in this case, affirming the trial court's denial of his motion to suppress his statement. In the alternative, Defendant-Appellant requests that this Court order a peremptory reversal of the decisions of both the trial court and the Court of Appeals on this issue.

Respectfully submitted,

Dated: June 2, 2020

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

I hereby certify that on the 2nd June, 2020, I electronically filed Defendant-Appellant's Supplemental Brief in Support of Application for Leave to Appeal, Appellant's Appendix, and this Notice of Filing and Certificate of Service with the Clerk of the Supreme Court using the Court's e-file and serve system, which will send notification of such filing to Joshua J. Miller, Assistant Oakland County Prosecuting Attorney, an e-filer, at appellatedivision@oakgov.com.

/s Carole M. Stanyar
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