IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 21-0756

STATE OF IOWA,
Plaintiff-Appellant,

vs.

GOWUN PARK,
Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR DALLAS COUNTY,
HONORABLE BRAD MCCALL

DEFENDANT/APPELLEE'S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

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ROUTING STATEMENT

Ms. Park agrees this case involves the application of settled legal principles and is appropriately routed to the Court of Appeals. Iowa R. App. P. 6.1101(3)(a).

CASE STATEMENT

The State has charged Ms. Park with first-degree murder relating to the death of her husband, Sung Woo Nam. (2/27/20 TI). Ms. Park has filed defenses of justification, Battered Women's Syndrome, and necessity. (8/24/20 Notice).

Ms. Park was interviewed by law enforcement on five separate occasions:

1. At her home after calling 911 on February 15, 2020;
2. At the police station on the evening February 15, spilling into February 16;
3. At the police station later in the morning on February 16;
4. At her apartment on February 18;
5. At the police station on February 19.

Ms. Park moved to suppress all of her statements. (App. 6; App. 61). After a hearing at which four police officers and a cultural/family

violence expert testified, the District Court granted Ms. Park's motion to suppress. (6/4/21 Ruling).

The District Court suppressed Ms. Park's first statement because she was in custody but was not *Mirandized*. The District Court suppressed her second statement because she did not validly waive her *Miranda* rights. The District Court also found that, later on in the second interview, the detectives made implied promises of lenience to Ms. Park. Accordingly, the District Court suppressed all of Ms. Park's statements following those implied promises, which included her statements on February 16, 18, and 19.

The District Court's suppression ruling is now before the Court on interlocutory review.

FACTS

The investigation regarding Ms. Park started on February 15, 2020, when she called 911 around 6:47pm to report that her husband was not breathing. Officers Sweeden, McCarthy, and Henrichsen arrived at Ms. Park's home around 6:52pm. (Supp. Trans. 14:11). Ms. Park was initially interviewed in her home by Ofc. Sweeden, who told her that she would be able to call a family member for a ride to the hospital after they were done talking. (Sweeden Body

Cam 1, 25:00-28:00).[1] The officers told Ms. Park that she could not drive herself to the hospital. (*Id.* at 26:28–45, 29:00–29:10). Ms. Park was required by officers to go into her bedroom at various points. (*Id.* at 27:00). The officers then shut the door. (*Id.* at 18:41, 27:20). When Ms. Park tried to open her bedroom door, Ofc. Sweeden forced it closed. (*Id.* at 30:25).

Ms. Park asked to leave her apartment at least eight times:

- *Id.* at 25:20 – Ms. Park asks to go to the hospital. Sgt. McCarty responds that the officers need to get some information from her.
- *Id.* at 26:25 – Ms. Park again asks to go the hospital. Ofc. Sweeden tells her she will be allowed to get a ride from someone after she provides information.
- *Id.* at 29:04 – Ofc. Sweeden required Ms. Park to go into her bedroom. Ms. Park asks to go to the hospital. Ofc. Sweeden tells her she has to wait until Ofc. Hinrichsen tells them they can come out.
- *Id.* at 30:25 – Ms. Park starts to open her bedroom door to exit and Ofc. Sweeden blocks her and shuts the door, telling Ms. Park that she has to wait.
- *Id.* at 30:45 – Still in her bedroom with Ofc. Sweeden, Ms. Park asks to leave and Ofc. Sweeden ignores her and continues to question her.

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[1] All time stamps to videos in this motion are hh:mm:ss or mm:ss. At the suppression hearing, multiple videos were submitted on a flash drive marked as State's Exhibit 5. The videos cited in this brief are all contained on State's Exhibit 5.

- *Id.* at 31:05 – Still in her bedroom with Ofc. Sweeden, Ms. Park asks to go and Ofc. Sweeden tells her they have to wait.
- *Id.* at 35:30 - Still in her bedroom with Ofc. Sweeden, Ms. Park asks if Ofc. Sweeden can check to see if Sung is okay and Ofc. Sweeden responds that they cannot leave the room until Ofc. Hinrichsen tells them.
- Sweeden 2 at 13:20 – Ms. Park asks Det. Morgan why she cannot go to the hospital and he tells her it is because she has all of the information. Ms. Park then asks if she can go to the hospital and then the station, to which Det. Morgan replies that she can't do anything to help Sung and the hospital will not even let her in his room.

Ms. Park asked if she could change out of her pajamas, and Ofc. Sweeden initially said yes. (*Id.* at 31:00-33:00). However, before she could change, Sgt. McCarty interrupted and began questioning Ms. Park. (*Id.* at 33:00-34:00). The officers then told Ms. Park that she could not have access to her phone. (*Id.* at 36:00-37:00).

Det. Morgan arrived and began questioning Ms. Park around 7:33pm. He took Ms. Park's Apple Watch away from her so that she could not use it to access her phone. (Supp. Trans. at 75:20–24). Ms. Park was interviewed by Ofcs. Sweeden, McCarty and Morgan for just over an hour in her apartment before they asked her to go to the police department. (Sweeden Body Cam 1 from approximately 30:00 to the end, Sweeden Body Cam 2 from 00:00 to 34:00). The officers restricted Ms. Park's movements, limiting her to only certain parts of

her apartment and making her stay in a bedroom with the door closed for part of the time. *Id.* They refused her repeated requests to go to the hospital to be with her husband. *Id.* She was not given *Miranda* warnings at the apartment. During this time, Sung was pronounced dead at the hospital. (Supp. Trans. at 57:5–14, 64:17–21).

Det. Morgan told Ms. Park that the officers were going to take her to the police station so they could collect evidence from her apartment. (Sweeden Body Cam 2 at 12:40–13:15). Ms. Park asked why she couldn't go to the hospital and Det. Morgan responded that it was because she had all of the information. (*Id.* at 13:15–13:40). Ms. Park asked if she could go to the hospital instead of the police station. (*Id.* at 13:35–13:45). Morgan told her that she would not be allowed to see her husband at the hospital, anyway. (*Id.* at 13:40–45). He stated, "So we're gonna need you to go down to the station with us so we can figure out what's going on here." (*Id.* at 13:45–14:05). Det. Morgan told her that they would give her a ride to the station, accompanied by either him or his supervisor, Sgt. Countryman. (*Id.* at 14:55–15:05). Det. Morgan told her that they

would sit down and talk and they would let her go to the hospital as soon as they could. (*Id.* at 14:55–15:10).

Det. Morgan then left the apartment for a period and upon reentering told Ms. Park again that she needed to put her shoes on because Sgt. McCarthy was going to give her a ride to the station, where they would sit down and talk. (*Id.* 28:10–29:00). Ms. Park was sitting cross-legged on the floor as three officers stood around her. Ms. Park asked if she could put on a pair of socks and change before they left. The officers declined and told her that they were "wasting time" with her requests to change her clothes. (*Id.* 29:00-31:00). They did permit her to wear a coat but did not let her fetch the coat from the bedroom herself. (*Id.* at 31:00-33:00). She still did not have access to her phone. Ms. Park explained that she really wanted to go to the hospital. The officers ignored this and instead repeatedly insisted that she put on her shoes. (*Id.* at 33:00-34:00). Det. Morgan and St. McCarthy escorted Ms. Park out of her apartment around 8:15pm. (*Id.* 33:55). Sgt. McCarty drove Ms. Park to the Des Moines Police Department, where she waited in the conference room of the police department lobby until the detectives were ready to speak with her. (Supp. Trans. at 113:11–13).

Ms. Park was then interviewed by Detectives Morgan and Hatcher around 9:00p.m. on February 15, 2020. The interview took place in a small, windowless, cinder-block room, with both detectives sitting in-between Ms. Park and the door. (*See* Hatcher Body Cam 4 :30–40).[2] Ms. Park was audibly and visibly upset—sobbing—as officers began to question her. (*Id.* at :30–2:30). The detectives read Ms. Park her *Miranda* rights and handed her a waiver to sign. (App. 72-73 at 3:50-4:45). When Morgan stated, "You can decide at any time not to answer any questions or make statements, ok. Do you understand that?" Ms. Park responded "Um, meaning?" (App. 73 at 4:45-4:50). Det. Morgan repeated, "We want to talk to you about what happened." (App. 73 at 4:50-4:54). Ms. Park attempted to end the interview again, stating "I'm not so sure what I," but Det. Morgan cut her off, trying to get her to read the *Miranda* form. (App. 73 at 4:45-5:01).

[2] Ms. Park's interview at the station that night, captured on Hatcher's body camera, was transcribed into two documents. These transcripts were submitted as Defendant's exhibits B and C.

Ms. Park continued attempting to end the interview. She asked, "Can you talk after I find out about my husband?" Det. Morgan responded:

> Well, we need, we need to be able to talk to you at the same time because maybe you know something that helps him. You know what I'm saying? Like, I don't know your situation. I don't know his situation. Could he have eaten something that hurt him, you know? Could he had taken a medication that he's allergic to? We need to be able to talk to you and ask you questions to figure out if there's something we can tell the hospital that will help him out. So we gotta talk to you now.

(App. 74 at 5:10-5:35). Ms. Park then asked to speak to the doctor first. (App. 74 at 5:35). Det. Morgan told her she could not speak to the doctors. (App. 74).

When detectives gave her a written *Miranda* warning, Ms. Park asked, "what is this for?" She asked, "If I'm not willing to talk to you right now then can I talk to you later?" Det. Morgan responded, "Well, we want to talk to you right now, ok. (App. 75 at 6:45-6:55). Det. Morgan told her that she could say she did not want to talk, but they were not going to be able to leave the police station until they "figure out what's going on." (App. 75 at 6:55-7:05). Ms. Park told the officers she had already told them everything she knew. Det. Hatcher asked her if she understood her rights and she responded, "I'm not so sure."

(App. 75-76 at 8:15-8:21). The detectives did not further clarify her rights.

Ms. Park did not sign the *Miranda* waiver. Det. Morgan told her "If you don't want to sign it, that's fine. That's your choice, but we would still like to talk to you . . . So I'll probably ask you to start." (App. 76 at 9:10-9:22). Ms. Park told the detectives "I can't do this." (App. 76 at 9:40). Nevertheless, the detectives then dove into establishing a timeline of the day, beginning what would be a three-and-a-half-hour interrogation.

About halfway through the interrogation, the detectives informed Ms. Park that Sung was dead. (App. 109 at 1:26:00-1:26:30). Ms. Park reacted emotionally: screaming, sobbing, and falling to the floor. (App. 109-115 at 1:26:00-1:40-00). Although Ms. Park was distraught, Det. Morgan urged her to continue the interrogation, stating "We still have to be able to talk to you to try to figure out what happened, ok?" (App. 111 at 1:31:15-1:31:20).

Det. Hatcher began to suggest to Ms. Park that her husband was jealous and had abused her, thus making any involvement she had with his death reasonable. Det. Hatcher told Ms. Park that he were "gonna help you dear" as he held and patted her hand. (App.

113 at 1:36:17–27). The detectives told Ms. Park "we know that he has physically abused you dear" and asked whether Sung was beating Ms. Park today. (App. 115-116 at 1:41:45-1:42:10). They told her she had to keep talking. (App. 116 at 1:43:25-1:43:30). They told her they thought she was a battered woman, and that Sung's death was an accident. (*See, e.g.,* App. 117 at 1:47:30-1:47:33; 1:47:00-1:47:50; Hatcher Body Cam 3 at 5:39).

After about three hours, the detectives began to tell Ms. Park they believed she caused Sung's death. They repeated their theory that she was a battered woman and couldn't take any more abuse. (Hatcher Body Cam 3, 1:18:27-1:22:08). They told her they believed it was an accident. (*Id.* at 1:12:42-1:13:09). In response, Ms. Park asked if she could go home. (*Id.* at 1:22:36-1:22:39). She asked about her right to remain silent. (*Id.* at 1:22:44-1:22:48). She stated she felt like the detectives were "push[ing] [her] to answer" and they already knew what the answers were. (*Id.* at 1:26:36-1:26:50). They told her she couldn't leave or go home because they were still searching her house. (*Id.* at 1:27:40-1:27:45).

The detectives ceased interrogating Ms. Park around 10:21 p.m., at which point they went to her apartment building and

attended to other parts of the investigation. During the break, Ms. Park went to the bathroom. She was not allowed to go to the bathroom by herself and was accompanied by officers. (Supp. Trans. at 120:19–21).

Detectives Morgan and Hatcher returned to resume the interrogation around midnight. They did not ask if she understood her rights or wanted to continue with the interrogation. Ms. Park asked if they could "talk later," and Det. Hatcher said "No, we can't." (Hatcher Body Cam 2, App. 156, 1:09:46-1:09:50). The detectives launched into another round of questions despite Ms. Park stating, "I don't want to talk about it today." (App. 157 at 1:13:39:41).

The detectives asked more questions. Ms. Park questioned the officers, "You told me I can remain silent." (App. 159 at 1:18:36-1:18:40). She stated again, "I want to talk to you tomorrow or [unintelligible]." (App. 159 at 1:18:43-1:18:46). Det. Morgan told her, "You have that option," but he immediately continued questioning her. App. 159. Ms. Park stated: "I don't feel comfortable talking to you anymore." (App. 159 at 1:20:22-1:20-1:32). Det. Morgan continued with questions. Ms. Park asked, "can I talk to a lawyer?" (App. 160 at 1:21:30-1:21:32). Det. Hatcher continued with questions

about her cell phone until the interview ceased, five minutes later. Throughout the course of the investigation, the detectives never advised Ms. Park of her consular rights under the Vienna Convention. She was released in the early morning hours of February 16, 2020. (Supp. Trans. 89:8–12).

Ms. Park was interviewed three more times—on February 16, 18, and 19, 2020. Later in the morning on February 16, Ms. Park came to the police station and spoke with Det. Morgan and Det. Hatcher. (Supp. Tran. 91:13–16). The detectives read her *Miranda* rights to her and Ms. Park signed the waiver on that occasion. (*Id.* at 91:17–92:2). On February 18, Det. Morgan and Det. Hatcher went to Ms. Park's home. (*Id.* at 96:2–13).

On February 19, Ms. Park came to the station and was interviewed again in the same interview room as on February 15, 2020. (Hatcher Body Cam 1 Feb. 19, 2020). She was not given *Miranda* warnings before she made statements on February 19. (Supp. Trans. at 101:24–102:2). About six minutes into the conversation, Detective Hatcher began to ask questions and doubt her explanations. (*Id.* at 9:00-11:00). He questioned various aspects of Ms. Park and Sung's relationship throughout the interview. He

drilled down on Sung's abuse of Ms. Park. (*Id.* at 31:00-33:00). Ms. Park asked what was going to happen next, and Det. Hatcher lied, stating that they were still waiting on the cause of death. (*Id.* at 47:00-49:00). The cause of death and autopsy report had been sent to law enforcement the previous day. (Autopsy of Sung Nam at 3). Det. Morgan eventually joined the interrogation, and about one hour in, the detectives informed Ms. Park that she was under arrest for murder in the first degree and kidnapping in the first degree. (*Id.* at 1:00:00-1:03:00). Det. Hatcher finally advised Ms. Park of her *Miranda* rights as they were putting handcuffs on her. (*Id.* at 1:03:00-1:04:00).

ARGUMENT

The officers involved in this case made repeated and overlapping errors in their questioning of Ms. Park—errors that violated her constitutional rights. These errors resulted in the District Court's suppression of all of Ms. Park's statements. The District Court's ruling was correct and should be affirmed in its entirety.

I. Preservation and standard of review.

Error was preserved by Ms. Park's suppression motion and the State's resistance to that motion. Review is de novo. *State v. Sewell*,

960 N.W.2d 640, 642 (Iowa 2021). The District Court's factual findings are given deference. *See State v. Struve*, 956 N.W.2d 90, 95 (Iowa 2021) ("We give deference to the factual findings of the trial court but we are not bound by them."); *accord State v. Evans*, 495 N.W.2d 760, 762 (Iowa 1993).

II. Ms. Park's statements at her apartment must be suppressed because she was in custody and was not given *Miranda* warnings.

The Fifth Amendment to the U.S. Constitution provides that "No person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V. The Iowa Constitution does not contain an equivalent provision against self-incrimination, but the Iowa Supreme Court has "held such a right to be implicit in the due process of law guaranteed by Article I, section 9." *State v. Iowa Dist. Court for Webster Cty.*, 801 N.W.2d 513, 518 n.2 (Iowa 2011). To safeguard the right against self-incrimination, "the prosecution may not use statements . . . stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure th[at] privilege" *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Interrogation "refers not only to express questioning, but also to any words or action on the part of the police

(other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Id.* at 761 (citation omitted). "Law enforcement officers are required to give *Miranda* warnings when a suspect is in custody and subjected to interrogation." *State v. Schlitter*, 881 N.W.2d 380, 395 (Iowa 2016).

There is no dispute that Ms. Park was not given *Miranda* warnings at her apartment. All statements she made while she was in custody at her apartment therefore must be suppressed. Custody occurs "upon formal arrest or under *any other circumstances* where the suspect is deprived of his or her freedom of action in *any* significant way." *State v. Ortiz*, 766 N.W.2d 244, 251 (Iowa 2009) (emphasis in original); *accord Schlitter*, 881 N.W.2d at 395. "This standard seeks to apply the *Miranda* requirements to coercive atmospheres, not just coercive places." *Schlitter*, 881 N.W.2d at 395. Courts consider the totality of the circumstances to determine whether a suspect is in custody. *State v. Miranda*, 672 N.W.2d 753, 759 (Iowa 2003). Courts consider four factors:

(1) The language used to summon the individual;

(2) The purpose, place, and manner of the interrogation;

(3) The extent to which the defendant is confronted with evidence of guilt; and

(4) Whether the defendant is free to leave the place of questioning.

Id.

The State claims the District Court "found Park was in custody, from the moment that officers arrived at her apartment and asked her what happened to Nam." (State Br. at 23). This is not accurate. The District Court did not address the exact moment when Ms. Park was subjected to custody—no doubt because the State did not raise this as an issue. The State made a blanket argument to the District Court that Ms. Park was never deprived of her freedom of action at her apartment, and the District Court correctly rejected that argument.

Ms. Park, however, asked the District Court to find that she was subjected to custody at minute 25:20 of the encounter as captured by Officer Sweeden's first body camera recording. (App. 61). Because Ms. Park's freedom was significantly restricted from that time on, law enforcement was required to advise her of her *Miranda* rights. No one ever read Ms. Park her rights during the questioning at her

apartment. Consequently, all of her statements after minute 25:20 must be suppressed.

A. The language used to summon Ms. Park.

"The most obvious and effective means of demonstrating that a suspect has not been taken into custody or otherwise deprived of freedom of action is for the police to inform the suspect that an arrest is not being made and that the suspect may terminate the interview at will.'" *Miranda*, 672 N.W.2d at 760 (quoting *United States v. Griffin*, 922 F.2d 1343, 1349 (8th Cir. 1990)). "By the same token, the absence of police advisement that the suspect is not under formal arrest, or that the suspect is at liberty to decline to answer questions, has been identified as an important indicium of the existence of a custodial setting." *Griffin*, 922 F.2d at 1350.

Though Ms. Park's call to 911 triggered the officers' arrival at her apartment and Ofcs. Sweeden and Hinrichsen did not speak to her aggressively, noticeably lacking was an advisal that Ms. Park was free to leave. None of the officers at Ms. Park's apartment ever told that she was free.

Given Ms. Park's background, the officers' failure to advise her that she was free to leave rendered the encounter custodial. As the

United States Supreme Court has recognized, requests or instructions from officers "'may easily carry an implication of obligation.'" *Dunaway v. New York*, 99 S. Ct. 2248, 2254 (1979). This dynamic was particularly pronounced due to Ms. Park's cultural upbringing. Ms. Park was raised in South Korea, a patriarchal society where filial piety is expected. (Supp. Trans. at 145:9-146:3). Deference to authority is a key aspect of South Korean culture. (Supp. Trans. at 147:20-24). It would be considered disrespectful to question a person in authority or an elder. (Supp. Trans. at 147:25-148:6). It would be considered disrespectful to argue or refuse to comply with a person in a position of authority. (Supp. Trans. 15:9-13). Due to this culture, a person raised in South Korea likely would be more inclined to comply with requests from law enforcement than would a person raised in the United States. (Supp. Trans. 150:1-8).

Instead of being told she *could* leave, Ms. Park was told by officers all the things she *could not* do. She could not go to the hospital. She could not have her phone. She could not leave her bedroom. She could not put on clothes. She could not see Sung. She complied with each of these commands. The South Korean cultural deference is evident in Ms. Park's interaction with the officers. Ms.

Park never challenged the officers' instructions or attempted to assert her rights. The only things the officers allowed her to do were answer questions and wait. The officers' commands made clear that Ms. Park's freedom of action was significantly curtailed. This factor supports a finding that *Miranda* warnings were required.

B. The purpose, place, and manner of the interrogation.

Medical personnel responded to Ms. Park's apartment to care for Sung. But the police were there to investigate. There were a minimum of two officers in Ms. Park's apartment at all times. At least one officer stayed by Ms. Park's side the entire time, guarding her, as others pursued the investigation. This sets her case apart from others where individuals had free access to leave. *See Schlitter*, 881 N.W.2d at 397 (defendant not in custody when he "had free access to the door").

The officers questioning Ms. Park were not doing so in order to help Sung. It was immediately apparent that Sung was deceased. The officers were questioning her in order to develop evidence of a crime. *See, e.g., id.* at 396 (second factor supports custody where the defendant was the focus of the investigation).

The manner of the interrogation further supports a finding that she was in custody. Ms. Park could not even get dressed, strongly indicating that she was not in control of her situation—the police were. She was wearing her pajamas and did not have a bra or socks on. Officers Sweeden and Hinrichsen were polite to Ms. Park, but they were also persistent. They did not allow Ms. Park to sit in silence; they continually asked her questions soliciting information for their investigation. As time went on, with the arrival of Sgt. McCarty and Det. Morgan, the "verbal pressure" on Ms. Park increased. *See id.*

Simply because Ms. Park was initially questioned in her home does not mean that she was not in custody. *See Orozco v. Texas*, 394 U.S. 324 (1969) (finding suspect in custody even though in his home). The case the State cites for the "general rule" that "in-home interrogations are not custodial for purposes of *Miranda*" illustrates that the rule is subject to exceptions. (State's Br. at 23 (citing *Miranda*, 672 N.W.2d at 759–60). In *Miranda*, the Iowa Supreme Court held the subject was in custody when questioned in his home because "the usual comforts of home were taken away." 672 N.W.2d at 760. The operative issue is whether the defendant was "'deprived

of his freedom of action in any significant way.'" *Orozco*, 394 U.S. at 327; *accord Miranda*, 672 N.W.2d t 759–60.

Ms. Park was deprived both of her freedom of action and the usual comforts of home. She was trapped in a bedroom, denied access to her (she believed) dying husband. It was clear she did not want to be in the bedroom or the apartment, more generally. She asked multiple times to leave the bedroom room to check on Sung, to go to the hospital, and to retrieve her phone. The officers controlled Ms. Park's movements.

C. The extent to which the defendant is confronted with evidence of guilt.

Later in the encounter, Det. Morgan told Ms. Park very directly that she could not have her phone so she could go to the hospital, saying "this is very weird." (Sweeden 1 at 44:40; *see also* Sweeden 2 at 1:25 (again stating something weird has happened)). This factor is neutral.

D. Whether the defendant is free to leave the place of questioning.

In evaluating whether an individual's freedom of action is restricted in any significant way, the most relevant factor is whether officers prevented the individual from leaving. Beginning at minute

25:20, officers refused to let Ms. Park leave her apartment. By this time, officers had directed Ms. Park into her bedroom and shut the door. (Sweeden 1 at 19:16). Ms. Park moved to the door and Officer Sweeden told her that she would be able to go to the hospital, but they needed to ask her additional questions. (Sweeden 1 at 19:25). After the questions, *then* Ms. Park could find a ride to the hospital. *Id.* Over and over again, Ms. Park asked to leave and was told no. Ms. Park proceeded to ask to leave her apartment no less than eight times.

From the time officers first refused Ms. Park's request to go to the hospital at 25:20, she was not free to leave. Ms. Park was not in control of her location. She was repeatedly denied permission to leave. This factor heavily favors a finding that Ms. Park was deprived of her freedom in a significant way, such that a reasonable person would believe herself to be in custody.

Especially in light of Ms. Park's extremely heightened emotions, this was a highly coercive atmosphere. *Schlitter*, 881 N.W.2d at 395. Viewing the circumstances as a whole, a reasonable person in Ms. Park's position would have felt she was in custody. The officers' failure to provide her with *Miranda* warnings thus requires

suppression of her statements beginning at 25:20. The District Court carefully considered each of the factors relating to custody and correctly concluded Ms. Park was "in custody" at the time she was questioned. This Court should affirm that ruling.

III. Ms. Park's statements at the station on February 15 must be suppressed.

The State does not dispute that Ms. Park was in custody when she was questioned at the police station on February 15 into the early morning of February 16. (App. 172; State Br. at 31). At the station, the detectives presented Ms. Park with her *Miranda* rights, but the State cannot prove she knowingly, intelligently, and voluntarily waive those rights. Nor could the presentation of her rights at the station overcome the taint of the unwarned questioning at her apartment. Ms. Park's statements at the station therefore also must be suppressed.

A. Ms. Park's statements were tainted by unwarned questioning at her apartment.

Ms. Park's statements after she was taken to the police station must be suppressed because they were tainted by the illegal questioning at her apartment. Where a suspect makes unwarned

statements and then, in a subsequent interview with proper[3] *Miranda* warnings, makes further voluntary statements, the later statements must also be suppressed. *Missouri v. Seibert*, 542 U.S. 600, 604 (2004). In *Seibert*, law enforcement questioned the defendant without *Miranda* warnings and obtained a confession from the defendant. *Id.* at 604–06. The officers then read the defendant *Miranda* warnings, obtained a waiver, and had the defendant repeat the inculpatory information. *Id.* The Court held this impermissibly undercut the defendant's constitutional rights.

The situation here is no different. Multiple officers questioned Ms. Park at her apartment to elicit incriminating information without the benefit of a *Miranda* warning. Det. Morgan was one of those officers, and he personally participated in the follow-up interview of Ms. Park at the police station. The detectives' *Miranda* warning at the station thus was ineffectual under *Seibert*.

B. Ms. Park's statements at the station must be suppressed because she did not validly waive her *Miranda* rights.

[3] Ms. Park maintains that she did not validly waive her *Miranda* rights at the station in the interview that began on February 15th.

The Iowa Supreme Court has explained that, "[i]n order to execute a valid waiver of one's *Miranda* rights, the waiver must be made 'knowingly, intelligently, and voluntarily.'" *State v. Tyler*, 867 N.W.2d 136, 174 (Iowa 2015). "[F]or a suspect to knowingly and intelligently waive his Miranda rights, the State must prove by a preponderance of the evidence that the waiver was made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *State v. Palmer*, 791 N.W.2d 840, 845 (Iowa 2010). "[F]or a waiver to be made voluntarily, the State must prove by a preponderance of the evidence that the relinquishment of the right was the product of a free and deliberate choice rather than intimidation, coercion, or deception." *Id.* (cleaned up). Courts determine voluntariness under the totality of the circumstances, considering:

> Defendant's age; whether defendant had prior experience in the criminal justice system; whether defendant was under the influence of drugs; whether defendant was mentally "subnormal"; whether deception was used; whether defendant showed an ability to understand the questions and respond; the length of time defendant was detained and interrogated; defendant's physical and emotional reaction to interrogation; whether physical punishment, including deprivation of food and sleep, was used.

Tyler, 867 N.W.2d at 175 (cleaned up).

The State cannot carry its burden to prove Ms. Park had "a full awareness" of her rights or the consequences of abandoning her right. Nor can the State prove that her waiver was a product of a free and deliberate choice, rather than coercion and deception.

To begin, Ms. Park speaks English as a second language; her comprehension of conversational English is limited. (Supp. Trans. 35:12-13, 43:7-44:1). She is an immigrant from South Korea. (Supp. Trans. 18:7). When Det. Morgan asked her if she felt she understood English enough to communicate in English, or if she would like a Korean translator, Ms. Park responded, "I'm not so sure my condition." (Hatcher Body Cam 4, App. 76 8:40–:50). The detectives ignored this and abandoned their offer to get her a Korean translator, instead proceeding to begin the interrogation.

The State emphasizes that Ms. Park taught Economics in English and lived in the United States for twenty years. As the District Court correctly found, "While she clearly understands most spoken English, her fluency is limited." (App. 173). A review of any of her interviews reveals that the State's claim that Ms. Park speaks "fluent English," (State Br. at 43), is grossly overstated. The video shows Ms.

Park was out of her element, incredibly distraught, dealing with the criminal justice system for the first time and a new set of vocabulary.

Notably, the detectives did not inform Ms. Park of her consular rights under the Vienna Convention. Article 36 of the treaty provides:

> 1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
>
> * * *
>
> (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph . . . .

Vienna Convention on Consular Relations, April 24, 1963, art. 36, 21 U.S.T. 77, 100-01. While the exclusionary rule does not apply to a violation of the Vienna Convention, the lack of an advisal in this case is a factor to consider in determining whether Ms. Park's participation in this interview was knowing, intelligent, and voluntary. *See State v. Buenaventura*, 660 N.W.2d 38, 45–48 (Iowa

2003) (considering whether violation of Vienna Convention rights impacted voluntariness of statement).

At the outset of the interview, Ms. Park repeatedly asked the detectives for information about her husband's condition and they repeatedly lied to her. She asked if Sung was okay and Det. Hatcher told her,

> We're waiting to find out. There's an officer down there . . . in the emergency room waiting for the doctor to come out and tell us how he's doing and stuff like that. So we do not know how he is right now, but the moment I get a text message or call, I will tell you, okay?

(Hatcher Body Cam 4, App. 72 2:40–3:05).

When the detectives read her the *Miranda* warning, Ms. Park asked if they could talk after she found out about her husband. The detectives said no, "we need to be able to talk to you at the same time because maybe you know something that helps him." (Hatcher Body Cam 4, App. 74 5:11-5:14). Ms. Park further asked if she could talk to a doctor after she talked to the detectives and the detectives told her no because the doctors were helping her husband "right now." (App. 74 at 5:30–4:48). The detectives purposefully misled Ms. Park to believe that Sung was still alive and that the answers she provided might help save him. (App. 71 at 0:36, App. 72 3:20–3:40, App. 74

5:10–45). They knew that Sung had already been pronounced dead. (Supp. Trans. at 110:8–17). But the detectives questioned Ms. Park for an hour and a half before they revealed the truth. (*Id.* at 1:26:00).

"Deception of any nature by representatives of the state cannot be condoned." *State v. Cooper*, 217 N.W.2d 589, 597 (Iowa 1974). Ms. Park was desperate to know her husband was okay, and the detectives capitalized on this by telling her she needed to answer their questions in order to provide information to the doctors who were trying to help him. *Cf. State v. Jacoby*, 260 N.W.2d 828, 833 (Iowa 1977) (finding deception regarding death of suspect's husband did not render confession involuntary when suspect's "emotional distress [did not] appear to have been so great"). The deception—playing on Ms. Park's desire to help save her husband—rendered Ms. Park's subsequent statement involuntary.

When the detectives read Ms. Park her rights from a written form and asked her to sign the form, she did not sign the form and stated she was "not so sure" she understood her rights. The detectives did not ask her what she didn't understand, nor did they further explain her rights. Det. Morgan told her, "You can tell me you don't want to talk to me, but we're still going to stay here at the

station until we figure out what's going on, okay?" This indicated to Ms. Park that she did not have an option. The detectives told her she didn't have to sign the *Miranda* form, "but we would still like to talk to you . . . so I'll probably ask you to start." (*See, e.g.*, Hatcher Body Cam 4, 9:10-9:22). This indicated to her that the detectives could interview her regardless of whether she asserted her rights. After this, she began answering questions. Because the State cannot prove she understood that she could remain silent and that her words would be used against her, she did not knowingly, intelligently, and voluntarily waive her *Miranda* rights.

The length of the detention and interrogation, and Ms. Park's emotional and physical reaction to it, also support a finding that her statements were not voluntary. Ms. Park was in an extremely heightened emotional state. She had found her husband unresponsive and was very concerned with his wellbeing. Ms. Park was detained in the same small room for all three-plus hours of the interrogation, as well as a lengthy break in the interrogation where detectives returned to her home. She was not allowed to leave, despite requests to go see her husband, to go to the hospital, and to go home. When she briefly left the interview room, she was accompanied by

officers. Ms. Park was extremely emotional during the interview, particularly when she learned her husband was dead. She cried, screamed, wailed, and whimpered. (Hatcher Body Cam App. 109 1:26:00– to end). She became so upset that she could not support herself and fell to the floor. (App. 109 *Id.* at 1:26:10–20). She struggled to breath. It was after Ms. Park collapsed that the detectives doubled-down on the interrogation and began confronting her with evidence of her guilt.

The tactics used by the officers are reminiscent of those used in *State v. Itoh*, 784 N.W.2d 202, 2010 WL 1578527 (Iowa Ct. App. 2010). In that case, officers were questioning a Japanese doctor regarding an alleged sexual assault. The officers interviewed the doctor without a translator present. It was the first time the doctor had ever spoken to a police officer and he believed the interview was related to his employment. *Id.* Mid-way through the interview, the doctor said, "So probably I need some representative for me." The officers nevertheless continued with the interrogation.

The district court suppressed the doctor's statements after the doctor had asked for a representative and found that the doctor "statements were not the result of a knowing, voluntary, and

intelligent waiver of his Fifth and Sixth Amendment rights." *Id.* This was due to the tactics used by the officers in the interrogation:

> His body language and gestures showed his reluctance to talk. His statements that he did not want to talk did not result in an end to questioning. His request for an attorney did not result in an end to the questioning. If the officers had listened to him more carefully, they would have understood he was requesting an attorney and refusing, at times, to answer questions.
>
> The officers used many standard interrogation techniques including the common practices of lying to the defendant about the facts, pretending to know more than they did, ... using the good cop/bad cop alternating questioning technique, manipulating the defendant's ego and reputation, appealing to his conscience, trying to get him to answer questions with a yes or no, and denying him the chance to make explanations. They confronted defendant with the evidence against him referring to the victim's side of the story and the fictitious medical report of her condition. Their impatience with the defendant prevented his making complete statements and the defendant showed his frustration with this. The cumulative effect of these techniques was to overbear defendant's will and render his statements involuntary.

Id. When the doctor attempted to ask the officers questions, they repeatedly interrupted him. *Id.*

The same is true in Ms. Park's case. Like the Japanese doctor, she was unfamiliar with the legal system and criminal investigations. While the doctor was led to believe the questioning related to an employment matter, Ms. Park was led to believe she needed to answer

questions to help save her husband. Like the doctor, Ms. Park asked for clarification about her "rights" and was interrupted by the officers, who then avoided answering her questions or giving any further explanation. Ms. Park's body language showed she did not want to talk and yet the officers persisted. At multiple points throughout the interview, she had her head down on the desk and did not respond to the detectives' questions.

Det. Hatcher physically pulled Ms. Park off of the floor—where she had collapsed, sobbing— and deposited her in her chair so that the detectives could continue to pepper her with questions. (Hatcher Body Camera 4 App. 114 at 1:38:45–1:40:25). She wept uncontrollably for twenty-five minutes. (App. 109 at 1.26.04 to end; Hatcher Body Camera 3, App. 71 00:00 to 1:00). Throughout that entire period, the detectives demanded that she calm down and tell them what happened. In order to get her to resume answering questions, the detectives repeatedly told her that they were there to help her. Ms. Park finally began to speak to them again after remarking, "Not gonna let me go, are you?" (Hatcher Body Camera 3, App. 120 4:50).

Taken as a whole, the State cannot carry its burden to prove Ms. Park understood her rights and made an uncoerced choice to waive those rights. *See Moran v. Burbine*, 106 S. Ct. 1135, 1141 (1986) ("Only if the 'totality of the circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived."). Under the circumstances, any supposed waiver of her *Miranda* rights was not made knowingly, intelligently, or voluntarily. Her statements therefore must be suppressed.

IV. Ms. Park's statements on February 15, 2020 must be suppressed because her invocation of her right to remain silent was not honored.

"If the individual indicates *in any manner*, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." *Miranda*, 384 U.S. at 473-74 (emphasis added). "[A] suspect's right to cut off questioning must be 'scrupulously honored.'" *State v. Kasel*, 488 N.W.2d 706, 709 (Iowa 1992). Iowa Courts have consistently honored a defendant's invocation of the right to remain silent however it is expressed. *See, e.g., id.* (defendant invoked right to remain silent by leaving the room).

Ms. Park invoked her right to remain silent by attempting to end the interview several times, but law enforcement evaded her attempts and told her she needed to keep talking. To begin with, she didn't want to go to the police station with them. Then, in the interview room, she asked if she could talk to the detectives after she found out about her husband's condition. (Hatcher Body Cam 4, App. 73-74 5:01-5:05). The detectives did not give her a straight answer. (App. 74 at 5:05-5:35). She asked if she could talk to a doctor. (App. 74 at 5:35-5:37). Again, no straight answer. (App. 74 at 5:37-5:50). She asked if she could talk to the detectives later if she was not willing to talk to them then. (App. 75 at 6:45-6:50). Again, no straight answer. (App. 75 at 6:50-7:10). She then stated she had answered everything she knew. (App. 75 7:30-7:34). Immediately after the discussion regarding her *Miranda* rights, Ms. Park told the detectives "I can't do this."[4] *Cf. State v. Erdahl*, No. 01-0830, 2002 WL 31529174, at *4 (Iowa Ct. App. Nov. 15, 2002) (declining to suppress statements when

[4] The transcript of this interview represents that Ms. Park stated, "I can do this." The State adopts this in its brief. (State Br. at 43). A review of the recording reveals Ms. Park actually stated, "I can't do this" and shortly thereafter stated, "This is too much." (Hatcher Body Cam 4, App. 77 9:41-9:55).

"alleged invocation did not come directly after the *Miranda* warnings"). The detectives proceeded with the interview anyway.

Ms. Park's requests to remain silent and end the questioning were repeated at various points throughout the interrogation. Later, she asked, "Can you talk later?" and was told no. (Body Cam 2, App. 156-157 at 1:09:46-1:09:50). She said, "I don't want to talk about it today," but the interrogation continued. (App. 157 at 1:13:39:41). Det. Hatcher told her "We can't let you go home until we figure out what's going on." *Id.* She said "You told me I can remain silent. . . . I want to talk to you tomorrow." (App. 159 at 1:18:36-1:18:40). Det. Morgan nevertheless persisted in his questioning. Even after she asked, "Can I talk to a lawyer?," both detectives continued with their questioning. (App. 160 at 1:21:30-1:21:32).

These requests required the detectives to cease questioning her. The detectives did not scrupulously honor Ms. Park's right to remain silent. Quite the opposite, they ignored and rejected her requests to end the interrogation. Ms. Park's statements to the detective mirror those of the defendant in *State v. Astello*, 602 N.W.2d 190, 196 (Iowa Ct. App. 1999). In *Astello*, the Court found the defendant made an

"unambiguous" request to remain silent and end questioning when he simply stated, "I'm done. You're just repeating the same questions." Likewise, in *State v. Grady*, 817 N.W.2d 495 (Iowa Ct. App. 2012), the Court found the defendant's request to remain silent was "unambiguous" and "unequivocal" when he stated, "that's all I can tell you, I ain't got nothing to say, like just take me to Polk County." The result must be the same here. Ms. Park's statements must be excluded.

V. Ms. Park's statements must be suppressed because they were induced by promises of leniency.

In *State v. Mullin*, the Iowa Supreme Court held that when a defendant's statement is "induced by force, threats, promises, or other improper inducements," the statement must be suppressed. 85 N.W.2d 598, 602–03 (Iowa 1957). This is because "confession induced by hope, or extorted by fear, are of all kinds of evidence the weakest in testimonial reliability." *Id.* at 601. This rule is strictly applied:

> a confession can never be received in evidence where the prisoner has been influenced by any threat or promise, for the law cannot measure the force of influence used, or decide upon its effect upon the mind of the prisoner, and therefore excludes the declaration of *any degree* of

> influence by force *or other inducement has admittedly been exerted* upon him.

Id. at 600 (cleaned up; emphasis in original). A constitutional "totality-of-the-circumstances" test for voluntariness is *not* used to evaluate promise-of-leniency claims. Instead, an evidentiary standard applies whereby a statement is excluded "'if *any degree* of influence by force *or other inducement* has admittedly been exerted upon'" the defendant. *State v. Madsen*, 813 N.W.2d 714, 726 (Iowa 2012) (emphasis in original).[5]

Officers are allowed to advise suspects that it would be wise to tell the truth, or to talk to them. But "when the officer or officers go further and explain just how it will be better or wise for the accused to speak, these statements may suddenly become more than an admonishment or assume the character of an assurance or promise of special treatment[,] which may well destroy the voluntary nature of the confession." *Mullin*, 85 N.W.2d at 601–02. "However slight the

[5] In *Madsen*, the Iowa Supreme Court explicitly "decline[d] the State's invitation to abandon the evidentiary test in favor of the totality-of-the-circumstances test." 813 N.W.2d at 726; *see also State v. McCoy*, 692 N.W.2d 6, 28 (Iowa 2005) (explaining that Iowa courts decide implied-promise issues on an evidentiary basis, not a *constitutional basis).*

threat or small the inducement thus held out, the statement will be excluded as not voluntary." *State v. Thomas*, 188 N.W. 689, 694 (Iowa 1922).

In her first interview on February 15, the detectives led Ms. Park to believe that they would protect her if she told them she was abused by her husband and admitted her involvement in his death. These statements were an implied promise and require exclusion of her statements. The detectives told her:

- "We get it if he's hurting you. We don't want him to hurt you." (Hatcher Body Cam 4, App. 105 1:17:50–1:17:54).
- "So if I'm real upset, tie me up until I calm down because I don't want to hurt you, right, so we just want to make sure, you know if something happened today and then somehow he got hurt, **that's okay**. If you didn't mean for him to get hurt. **If it was his idea to get tied up and something happened, that's fine**. **We just need to know**." (App. 105 1:17:58–1:18:19).
- "If he was physically beating you, tell us, tell us dear. Tell us what happened. Ok, take some drink of water. We are here to help you. Hey, hey, shhh, you gotta open your eyes. Ok, **we're gonna help you dear**." (App. 13 at 1:36:44-1:37:26).
- "Ok, we know that you're upset dear. **We want to help you**." (App. 114 at 1:38:18–1:38:22).
- "If this was an accident or something. You need to tell us that." (App. 116 at 1:42:21-1:42:24).
- "**We want to help you dear**. Tell us what happened." (App. 116 at 1:43:04–1:43:12).

- "We're gonna be with you through out this. We're going to be with you through out this. We're, hey, **we're here to help you**, but tell us what happened. Tell us what happened." (App. 116 at 1:43:34-1:43:47).

- "You are so, **you have to protect yourself**, what happened? What did he do to you to cause this." (App. 116 at 1:44:12-1:44:18).

- "Can I be honest with you? Can I tell you what I'm thinking right now? . . . Are you a battered woman? If you're, tell us, your marriage was not perfect. Your marriage was not perfect and if you were doing this to protect yourself, then tell us." (App. 117 at 1:47:19-1:47:46).

- "Tell us what happened. I think he beat you. . . . He was jealous of you." (App. 118 at 1:49:02-1:49:53).

- "And nobody deserves that. **It's not your fault**, you know, you didn't deserve for him to treat you that way. So what happened today? We're just trying to, we're just trying to put this all together. Tell us what happened that lead to him being in the position he was. I mean, shit, it looks like to me you cut him down. You tried to give him CPR. He's an asshole for what he did to you. What he's done to you over your marriage, your relation of over 10 years." (Hatcher Body Cam 3, App. 119 at 3:22-3:50).

- **"If he tells you today, 'tie me up because I'm going to beat the shit out of you' and you tied him up to prevent you from getting beaten, awesome, because you didn't get beaten. I'm so happy.** But if something happened once he was tied up or he fell over and ended up strangling himself, or the rope got tight when he fell over, tell us. **We're trying to help you here** cause we're having doctors, we're having apartment -- the neighbors in the apartment tell us they have had heard fighting over and over and over." (App. 142 at 1:10:15-1:10:51).

- "**We're trying to help you. Protect you, if you will**." (App. 145 at 1:18:23-1:18:26).

- "And **people understand when a woman gets hurt.** When she gets beat. When she gets choked until she's going to pass out then eventually, you know, just like if I take this bowl of water and I keep pouring more water in it. It can only hold so much water. At some point it's going to overflow. Alright, same thing, a woman that's getting abused she can take a little bit here, a little bit there. A little bit there it just adds up. It builds up. Eventually it's going to overflow. Something is gonna happen. Something has got to change. **So it's reasonable for people to understand.** I'm sure you've seen lifetime movies. There's tons of lifetime movies out there. A woman gets beaten, she's getting abused by her husband, something happens, she takes it into her own hands. She poisons him. She does something to make it stop. To make it go away and **people get that**. **They related to it. They understand. Now if I was getting treated like that, I would do something, too. I would do something to make it stop. So if that's the case, tell us that because people would understand that.**" (App. 145 at 1:18:26-1:19:20).

- "**We're trying to help you doctor**." (Body Cam 2, App. 155 1:07:28-1:07:30).

- "Could you at least look at us, please? **We're trying to help you here.** What did you cut first the zip ties or the rope tonight." (App. 156 at 1:08:15-1:08:29).

The detectives made many additional statements to Ms. Park telling her that they believed she was a battered woman and volunteering reasons why she would have been justified in harming her husband. (*See generally* Hatcher Body Cam 4 at 1:17:33 to 3:27:30).

The detectives blatantly communicated to Ms. Park that if she stated her husband had abused her, her involvement with his death would be excused. If she did this because she was abused, it would

be ok, and she wouldn't be in trouble. *See McCoy*, 692 N.W.2d at 28–29 (suppressing defendant's statements when detective told him "If you didn't pull the trigger, you won't be in any trouble."); *People v. Flores*, 192 Cal. Rptr. 772, 778 (Ct. App. 1983) (suppressing statement when "[i]mplicit in [the officer's statement] is a promise that if appellant can give a story supporting self-defense, he might stand a chance of being free until trial"). The detectives would help her because her actions were understandable. They would have done the same thing in her shoes. People would understand. The detectives would protect her, so long as she told them that her husband had abused her. *See Ramirez v. State*, 15 So. 3d 852, 856 (Fla. Dist. Ct. App. 2009) (holding "the trial court should have excluded the interview from evidence, at least after the point when the detective began to offer 'help'"); *Dorsciak v. Gladden*, 425 P.2d 177, 179 (Or. 1967) (finding defendant's statement involuntary when "[t]he interrogators repeatedly told the defendant they were trying to help him but they could not do so unless he told them what happened").

The detectives' statements are as bad, or worse, as the promises of leniency Iowa appellate courts have decried in other cases. The case of *State v. Dennis*, No. 04-1614, 2006 WL 126794, at *3 (Iowa

Ct. App. Jan. 19, 2006) is particularly analogous.[6] In *Dennis*, a detective repeatedly told the defendant he was "trying to help" him. The detective made further statements implying that the defendant's actions were nothing to worry about because the defendant was not the person who had stabbed the victim. These statements are similar to the detectives statements to Ms. Park that she had to protect herself, it wasn't her fault, and people would understand if she just admitted to harming her husband because he beat her. *See also State v. Howard*, 825 N.W.2d 32, 41 (Iowa 2012) (detective repeatedly stated he was there to help the defendant, giving false impression an admission would result in a stint at a treatment facility); *State v. Polk*, 812 N.W.2d 670, 676 (Iowa 2012) (suppressing confession when "the officer meant to communicate that if Polk confessed, he would spend less time away from his children").

Likewise, in *State v. Jay*, 89 N.W. 1070, 1071 (Iowa 1902), the Iowa Supreme Court suppressed a defendant's inculpatory statements when the officer told him that "it would be better for him" and "would be easier for him" if he told where a stolen horse was

[6] The State does not bother to address *Dennis* in its brief.

located. The Court recognized that such statements "flattered the hope of the defendant" and therefore were inadmissible. *Id.* [7]

The detectives' repeated assurances to Ms. Park that they were there to help her and that things would be okay if she was a battered woman are a far cry from the statements made in *State v. Foy*, 803 N.W.2d 673, 2011 WL 2695308 (Iowa Ct. App. 2011). In *Foy*, the only two statements challenged as problematic were:

> 1) "We're not going to be any bit of any help to you if you want to continue to sit there and tell us things that are not true."
>
> 2) "We're just here simply for your benefit. For your benefit."

Id. at 2. This is in sharp contrast to the volume and detail of the statements the detectives made to Ms. Park, telling her it was "awesome" if she defended herself and they were there to "protect" her.

The detectives' statements to Ms. Park were clear assurances that it would "be better or wiser for [her] to speak." *Mullin*, 85 N.W.2d at 601. Also significant is Ms. Park's lack of familiarity with the United States justice system. Given her naivete in these matters, the

[7] The State also neglects to address *Jay*.

detectives' implied promises to her carried extra weight. These statements certainly gave Ms. Park a false hope. *See id.* (recognizing "confession induced by hope" is involuntary). The detectives thus crossed the line and all of Ms. Park's statements after 1:17:58 must be suppressed. *See id.*; *Madsen*, 813 N.W.2d at 727 (suppressing defendant's statements when detective suggested the investigation would be wrapped up quickly so defendant could go on with his life, if the defendant came clean).

The State's assertion that Ms. Park's wrongfully-induced statements should not be suppressed because she did not admit to killing Sung does not hold water. (State Br. at 57). To begin, the State cites no case employing such an analysis. Second, the State would not be arguing *against* suppression if the statements elicited by the implied promises of leniency were not helpful to the prosecution. Ms. Park responded to the detectives' overtures with information about her relationship with Sung and their activities that day. This information is key to the State's case. The fact that Ms. Park did not explicitly admit to killing Sung does not give the State carte blanche to use her wrongfully-induced statements against her at trial.

VI. Ms. Park's subsequent interviews were tainted by the first interview and must be suppressed.

Ms. Park spoke with the detectives three more times after the first interview where the detectives made implied promises of leniency. There was no unringing that bell. The improper influence of the detectives' statements had not dissipated at the time Ms. Park spoke with them again on February 16, 18, and 19. As a result, her statements during the subsequent interviews must be suppressed.

Iowa Supreme Court has directed district courts to suppress a defendant's statements when those statements were in any way influenced by an implied promise. *Polk*, 812 N.W.2d at 674; *McCoy*, 692 N.W.2d at 27. "Where such second confession is offered in evidence, it must clearly appear that the influences under which the first was made have ceased to operate." *State v. Chambers*, 39 Iowa 179, 183 (1874). In *Chambers*, the Iowa Supreme Court excluded a confession made a full ten months after the first, illegal confession because there was "nothing to show" the illegal assurances and promises "were not still operating upon, and influencing his mind." *Id.*; *see also State v. Archer*, 58 N.W.2d 44, 52 (Iowa 1953) ("The defendant having once been 'broken,' the second confession and

whatever admissions he made . . . followed logically and as a result of the same improper influence. . . . [H]e was under the same pressures, and he was still without advice of counsel.").

When an individual has given an involuntary statement, a subsequent statement is also considered involuntary unless it can be "separated from the circumstances surrounding" the earlier statement by a "break in the stream of events," between the first statement to the second, "sufficient to insulate the statement from the effect of all that went before." *Clewis v. Texas*, 386 U.S. 707, 710 (1967). At bottom, the Court must determine whether a subsequent statement is in any way influenced by the implied promise of the earlier interview. *Cf. Oregon v. Elstad*, 105 S. Ct. 1285, 1298 (1985) (holding that "[t]he relevant inquiry is whether, in fact, the second statement was also voluntarily made")[8].

[8] Notably, *Elstad* was considering a situation where *Miranda* warnings were not given in first interview but were given in later interview. *Elstad* distinguished that situation—"a procedural *Miranda* violation—from one where officers had used "coercion or improper tactics." *Id.* at 1293. The detectives' use of implied promises in this case was an improper tactic that sets this case apart from *Elstad*.

In making this determination, the Court must be mindful that improperly induced confessions beget improperly induced confessions:

> [A]fter an accused has once let the cat out of the bag by confessing, no matter what the inducement, he is never thereafter free of the psychological and practical disadvantages of having confessed. He can never get the cat back in the bag. The secret is out for good. In such a sense, a later confession always may be looked upon as fruit of the first.

United States v. Bayer, 67 S. Ct. 1394, 1398 (1947); *see also People v. Jones*, 150 P.2d 801, 805 (Cal. 1944) ("[T]he inquiry is whether, considering the age and intelligence of the defendant, the nature and degree of the influence, and the time intervening between the confessions, it can be said that defendant was not induced to confess by reason of the pressure which motivated him to make the first statement, *or was not influenced so to do by reason of the prior confession itself*." (emphasis added)).

Courts therefore presume subsequent statements are the product of improper influence. *See People v. Sanchez*, 451 P.2d 74, 82 (Cal. 1969) ("The law presumes the subsequent confession to have been made and influenced by the same hopes and fears as the first, and this presumption continues until it is affirmatively established

by the prosecution that the influences under which the Original confession was made had ceased to operate before the subsequent confession was made."); *Boudreaux v. State*, 168 So. 621, 622 (Miss. 1936) ("[W]here a subsequent confession is made shortly after one that was coerced, the inference of the coercion is presumed to continue unless and until it is clearly shown to have been removed."); *State v. Driver*, 183 A.2d 655, 671 (N.J. 1962) ("[W]hen, as here, one confession is declared to be involuntary and thus inadmissible, a presumption arises that any subsequent confession was the product of the same influence, and such presumption must be overcome by the State[.]"); *Edwards v. State*, 71 A.2d 487, 493 (Md. 1950) ("The improper influence which produced the first confession is presumed to be still in effect until a cessation of that influence is definitely shown, and the evidence to overcome and rebut such a presumption must be clear, strong, and satisfactory, and any doubt on this point is resolved in favor of the accused."); *State v. Gibson*, 5 S.E.2d 717, 718 (N.C. 1939) ("[A] presumption arises which imputes the same prior influence to any subsequent confession of the same or similar facts[.]"); *Cavazos v. State*, 160 S.W.2d 260, 261 (Tex. Crim. App. 1942) ("[T]he burden rested upon the State to show that the

subsequent confession was not made while the accused was laboring under the same influence which prompted him to make the first one.").

The State cannot overcome this presumption and carry its burden to show that Ms. Park's later interviews were not influenced by the implied promises in her February 15th/16th interview—namely, that she would not be in trouble for her husband's death if she stated he had abused her. Two of the three subsequent interviews took place at the police station. *See United States v. Pindell*, No. 2:11CR310 DAK, 2012 WL 530089, at *8 (D. Utah Feb. 17, 2012) (suppressing subsequent interview, noting it was given at the same place as the first). Her later interviews all occurred the same week as original interview and there were no intervening circumstances to dispel the taint of the first interview. *See Clewis*, 386 U.S. at 710–12 (holding third confession suspect gave, nine days after being arrested, was involuntary because there was "no break in the stream of events" between first coerced confession and later confessions); *State v. Chulpayev*, 770 S.E.2d 808, 817 (Ga. 2015) (suppressing subsequent statements when there were no intervening circumstances).

The fact that Ms. Park returned to the station to provide further information is a strong indication that she believed she was not in trouble because Sung had abused her. She felt safe returning to the station to make further inculpatory statements because the officers had told her: "You're safe with us. You are safe in here." "We're here to help you." "It's not your fault." "We're trying to help you. Protect you, if you will." "Now if I was getting treated like that, I would do something, too. I would do something to make it stop. So if that's the case, tell us that because people would understand that." Etc.

The detectives themselves did not remove the taint of their earlier statements. When Ms. Park spoke with the detectives on February 16, 18, and 19, they did not clarify that she was suspected of murder and that her status as an abused woman would not get her out of trouble. *See United States v. Lopez*, 437 F.3d 1059, 1066–67 (10th Cir. 2006) (suppressing statements from subsequent interview because "there [was] no indication that Agent Hopper or any other police officer made any statements to Lopez that might have dissipated the coercive effect of Agent Hopper's promises of leniency"); *Pindell*, 2012 WL 530089, at *8 (suppressing subsequent statements when "neither agent made any effort to clarify" prior

inaccurate statements regarding the law). The fact that Ms. Park waived her *Miranda* rights in the subsequent interviews does not remove the taint of the detectives' implied promises. *Cf. Chulpayev*, 770 S.E.2d at 818 ("[C]ompliance with *Miranda* and avoidance of other conduct that would itself render a suspect's statements involuntary is not sufficient to eliminate the taint from an improper arrest made a mere two hours earlier.").

Ms. Park did not speak with anyone between her first interview and the subsequent interviews. Detectives had her phone, her husband's phone, and their computers. She had no way to communicate with anyone and, even if she did, Ms. Park has no family in the United States. *See Lopez*, 437 F.3d at 1066–67 (suppressing subsequent statement when defendant "had not spoken to an attorney or family member during the twenty-four hours since" implied promises of leniency were made to him). Ms. Park's lack of familiarity with the American justice system also cuts against a finding that any improper influence dissipated between the first interview and the following three. She did not understand what was happening and she had no close friends or family to explain it to her, either.

The statements Ms. Park made in her subsequent interviews corroborated and further developed the inculpatory statements she made in her first interview. *Com. v. Meehan*, 387 N.E.2d 527, 537 (Mass. 1979) (suppressing subsequent interview when "it was corroborative of the confession"). Specifically, she discussed the prior abuse in her relationship and admitted to tying up her husband the night of his death. Her statements in her subsequent interviews were consistent with the detectives' suggested narrative: if she could show she was abused, things would be okay even if she was responsible for her husband's death.

Like *Chambers*, the State has "nothing to show" the illegal assurances and promises "were not still operating upon, and influencing [Ms. Park's] mind." 39 Iowa at 183. The State thus cannot prove that the false hope given by the detectives in the first interview did not induce Ms. Park's subsequent interviews. *See People v. Medina*, 25 P.3d 1216, 1227 (Colo. 2001) (suppressing subsequent interview when "[t]he reason Defendant returned to the police station . . . was precisely because of the threats of the officer given on the prior occasion and the officer's implied promise to help Defendant"). Ms. Park's subsequent interviews must be suppressed

because they were influenced by the detectives' initial improper statements. *See Lopez*, 437 F.3d at 1066–67 (holding, where defendants made improper promise of leniency, that "although Lopez's second confession came after a night's sleep and a meal, and almost twelve hours elapsed between confessions, the coercion producing the first confession had not been dissipated"); *Chulpayev*, 770 S.E.2d at 817–18 ("And while the official misconduct here was not especially flagrant, . . . assuring Chulpayev that he would be protected . . . then exploiting the information that Chulpayev provided in response to them can hardly be condoned."); *cf. Dorsciak*, 425 P.2d at 182 (setting aside guilty plea when state did not carry burden to show it was not tainted by an involuntary confession).

CONCLUSION

Ms. Park was subjected to custodial interrogation. She was entitled to receive the *Miranda* warnings, and police were not to proceed with interrogating her unless she understood and waived her *Miranda* rights. She did not understand her rights and, as a result of the detectives' interrogation style and repeated denials of her right to end the interrogation, she was denied her right to remain silent. The detectives then induced her to make inculpatory statements by

representing that everything would be okay if her husband had abused her. This misconduct tainted all of the interrogations leading up to Ms. Park's arrest. All of her statements must be suppressed.

ORAL ARGUMENT NOTICE

Counsel requests oral argument.

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CERTIFICATE OF COMPLIANCE AND SERVICE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 14,000 words); excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates. This brief contains 11,815 words.

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I hereby certify that on December 29, 2021, I did serve Defendant-Appellee's Final Brief on Appellant by e-mailing one copy to:

Gowun Park

Defendant-Appellee

___/S/ *Gina Messamer*_____

Dated: December 29, 2021

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