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 RESISTANCE TO FURTHER REVIEW

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STATEMENT IN RESISTANCE TO FURTHER REVIEW

Four judges—the District Court and the unanimous Court of Appeals panel—have concluded that detectives made repeated and overlapping errors in their questioning of Gowun Park. These errors violated Ms. Park's constitutional rights and resulted in the suppression of Ms. Park's statements.

In its original appellate briefing, the State told the Court that the case "can be resolved through the appcliation of settled legal principles" and asked that the case be transferred to the Iowa Court of Appeals. (State Merits Br. at 12). Ms. Park agreed. (Def Merits Br. at 10). Having lost the appeal, the State now claims this case presents "some important legal questions that this Court has not yet considered or answered." (FR app. at 8). To the contrary, this case turns on a straight-forward, fact-bound application of Fifth Amendment law.

The issues of voluntariness presented by this appeal have been analyzed in umpteen on-point appellate cases. The State claims the decision is "incompatible with Iowa precedent," (FR app. at 7), but the Court of Appeals specifically considered both of the cases cited by the State and found them inapposite due to factual differences.

(COA Op. at 13–14). And the State's allegation that the Court of Appeals "did not analyze the voluntariness of Park's statements" is patently incorrect. (FR app. at 7). The Court of Appeals thoughtfully analyzed all of the factors impacting voluntariness and ultimately concluded that the detectives' promises of leniences, "together with the officers' deception about the death of Park's husband, Park's failure to sign the *Miranda* waiver form, and her reaction to the news of her husband's death, rendered the *Miranda* waiver involuntary." (COA Op. at 14 (emphasis added)). The Court of Appeals' holding was not, as the State would suggest, based solely on the detectives' inappropriate deception.

Regarding the promises of leniency, the State characterizes the detectives' representations as "only statements of empathy and understanding." (FR app. at 8). As both the District Court and Court of Appeals found, this characterization inaccurately minimizes what actually occurred. As summarized by the District Court:

> The officers interviewing Park *repeatedly* assured her they were there to help her and protect her. . . . They told her if she had reacted based on the abuse her husband inflicted on her "people would understand that." All of these statements, viewed in the context in which they were made, gave Park false hope that if she simply reacted to an abusive situation, she would not be in trouble.

(App. 178 (emphasis in original)). The Court of Appeals likewise concluded: "[T]he promises to help Park were tied to the detectives' repeated suggestion that physical abuse by Park's husband propelled and mitigated Park's conduct." (Op. at 17–18). Again, this is an issue involving the application of settled legal principles. The Court of Appeals considered the numerous opinions on promissory lenience and determined the detectives crossed the line set by those opinions.

Ms. Park's interest in a speedy trial also weighs against the grant of further review. Ms. Park's husband died nearly two and a half years ago. Her case has been stalled for over a year by this interlocutory appeal. If the Supreme Court were to accept further review, that would no doubt delay trial for another year. Ms. Park's liberty is curtailed while this case is pending; she is on a curfew and location monitoring. (3/23/20 Order; 6/15/22 Order). She must pay a third-party custodian to check-in with her weekly. (3/23/20 Order). She is unable to work in her profession, as an economics professor. Ms. Park is entitled to a timely trial so that she can move on with her life. *See Barker v. Wingo*, 92 S. Ct. 2182, 2193 (1972) (recognizing defendants should be tried expediently and should not

be left "living under a cloud of anxiety, suspicion, and often hostility").

Given the District Court's and Court of Appeals' correct resolution of the issues and the lack of any novel issues in this case, further review is not warranted.

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 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 Court of Appeals affirmed the District Court's ruling except as it applied to Ms. Park's first statement at her home. In all other respects, the the Court of Appeals found the District Court had correctly concluded the officers violated Ms. Park's constitutional rights.

FACTS

On February 15, 2020, Ms. Park called 911 around 6:47pm to report that her husband was not breathing. Officers interviewed Ms. Park in her home. (Sweeden Body Cam 1, 25:00-28:00).[1] Ms. Park was extremely emotional and concerned about her husband's condition. At least eight times, Ms. Park asked to leave her home to go to the hospital to be with her husband and was refused by the officers. (*Id.* at 25:20, 26:25, 29:04, 30:25, 30:45, 31:05, 35:30, 49:44; Sweeden 2 at 13:20, 33:00-34:00). During this time, Sung was pronounced dead at the hospital. (Supp. Trans. at 57:5–14, 64:17–21). Ms. Park was interviewed just over an hour in her apartment before officers transported her to the police station for further

[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.

questioning. (Sweeden Body Cam 1 from approximately 30:00 to the end, Sweeden Body Cam 2 from 00:00 to 34:00).

Ms. Park was then interviewed by Detectives Morgan and Hatcher at the police station around 9:00p.m.. (*See* Hatcher Body Cam 4 :30–40).[2] Ms. Park was 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). Ms. Park expressed confusion about the form and did not sign it. Ms. Park asked about her husband's conditition and expressed her desire to see him. The detectives told her they did not know his condition and represented that they needed to talk to her in order to obtain information that might help save him. (App. 74 at 5:10-5:35).

The detectives proceeded to interview Ms. Park. 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). She wept uncontrollably for twenty-five

[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.

minutes. (App. 109 at 1.26.04 to end; Hatcher Body Camera 3, App. 71 00:00 to 1:00). 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).

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. The detectives repeatedly assured Ms. Park that they were there to help her. (*See*, *e.g.*, App. 113 at 1:36:17–27).

The detectives paused their interrogation around 10:21 p.m., leaving Ms. Park captive in the interview room. They 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). Finally, Ms. Park stated she didn't feel comfortable speaking anymore and asked if she could speak with a lawyer. (App. 159 at 1:20:22-

1:20-1:32, App. 160 at 1:21:30-1:21:32). The interview ended shortly after and Ms. Park 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). That day, consistent with the officers suggestions to her in the interrogation at the police station, Ms. Park told the officers that she was a battered woman and confessed she had tied up her husband, which led to his death. On February 18, Det. Morgan and Det. Hatcher went to Ms. Park's home, where she repeated the same confession and gave additional detail. (*Id.* at 96:2–13). On February 19, Ms. Park came to the station and was interviewed again. (Hatcher Body Cam 1 Feb. 19, 2020). The detective arrested her during that interview. (Supp. Trans. at 1:00:00-1:03:00).

ARGUMENT

I. The Court of Appeals correctly suppressed Ms. Park's statements at the station on February 15 as involuntary.

"In order to execute a valid waiver of one's *Miranda* rights, the waiver must be made 'knowingly, intelligently, and voluntarily.'"[3] *State v. Tyler*, 867 N.W.2d 136, 174 (Iowa 2015). "[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). Other factors weighing on voluntariness include the length of time the defendant was detained and interrogated, as well as the defendant's physical and emotional reaction to interrogation. *Tyler*, 867 N.W.2d at 175.

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. The Court of Appeals recognized the deception was "not isolated." (COA Op. at 10). The detectives reiterated their deception when responding to Ms. Park's objections to being interviewed.When the detectives read her the *Miranda* warning, Ms.

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[3] The Court of Appeals concluded Ms. Park's waiver was knowing and intelligent, but not voluntary. If the Supreme Court accepts this case for further review, the Court should consider all aspects of whether her *Miranda* waiver was valid, including the knowing and intelligent requirements, since they are intertwined.

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 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. 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).

The Court of Appeals rightly emphasized that "[t]he detectives wove their false assertions about the condition of Park's husband into their reading of Park's *Miranda* rights" and that, by doing so, they "masked Park's right to be warned that anything she said could be used against her." (COA Op. at 11, 13). The State's assertion that "panel decision did not consider the actual effect of the deception on

Park's decision to waive her *Miranda* rights," (FR App. at 18), thus is simply false.

The Court of Appeals correctly held Ms. Park's statements were made involuntarily because of the detectives' deception. (COA Op. at 11–12). "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 statements involuntary. *State v. Oliver*, 341 N.W.2d 25, 29 (Iowa 1983) (analyzing two cases, *State v. Franks,* 239 N.W.2d 588 (Iowa 1976) and *State v. Cullison*, 227 N.W.2d 121 (Iowa 1975) where deception rendered statements involuntary).

The Court of Appeals also properly determined that the length of the detention and interrogation, and Ms. Park's emotional and

physical reaction to it, supported the conclusion that her statements were not voluntary. Ms. Park was detained in the same small room for all three-plus hours of the interrogation, as well as the two-hour break in the middle of the interrogation. Ms. Park was extremely emotional before and during the interview. She cried, screamed, wailed, and whimpered. (Hatcher Body Cam App. 109 1:26:00– to end). When she learned her husband had died, 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. At multiple points throughout the interview, she had her head down on the desk and did not respond to the detectives' questions. 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.

The Court of Appeals rightly considered all of the circumstances—the deceit, the lack of a written waiver form, Ms. Park's confusion regarding the form, her emotional reaction, and the

promissory lenience (discussed below)—in determining her statements were involuntary. *See State v. Itoh*, 784 N.W.2d 202, 2010 WL 1578527 (Iowa Ct. App. 2010) (finding statements by Japanese doctor involuntary when officers misrepresented that questioning was related to employment matter). Though the State maintains that these circumstances had no causal impact on Ms. Park's decision to speak with the officers, the District Court and the Court of Appeals concluded otherwise after careful consideration of the facts.

II. The Court of Appeals correctly suppressed Ms. Park's statements because they were induced by promises of leniency.

When a defendant's statement is "induced by force, threats, promises, or other improper inducements," the statement must be suppressed. *State v. Mullin*, 85 N.W.2d 598, 602–03 (Iowa 1957). 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); *accord 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. *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 have done the same thing in her shoes. 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. For instance, in *State v. Dennis*, a detective repeatedly told the defendant he was "trying to help" him. No. 04-1614, 2006 WL 126794, at *3 (Iowa Ct. App. Jan. 19, 2006) 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. *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 located. The Court recognized that such statements "flattered the hope of the defendant" and therefore were inadmissible. *Id.*

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.

III. The Court of Appeals correctly suppressed Ms. Park's subsequent interviews because they were tainted by the first interview.

Ms. Park spoke with the detectives three more times after the first interview where the detectives made implied promises of leniency. As the Court of Appeals recognized, "the detectives did not revoke their promises of leniency" and there were "no intervening events that might have disrupted the effect of the initial promises of leniency." (Op. at 19, 22). As a result, 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 and those statements were correctly suppressed.

A defendant's statements must be suppressed 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).

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). Courts therefore presume subsequent statements are the product of improper influence. *See People v. Sanchez*, 451 P.2d 74, 82 (Cal. 1969); *Boudreaux v. State*, 168 So. 621, 622 (Miss. 1936); *State v. Driver*, 183 A.2d 655, 671 (N.J. 1962); *Edwards v. State*, 71 A.2d 487, 493 (Md. 1950); *State v. Gibson*, 5 S.E.2d 717, 718 (N.C. 1939); *Cavazos v. State*, 160 S.W.2d 260, 261 (Tex. Crim. App. 1942).

The State did not 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.

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 were properly 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. The Court of Appeals correctly suppressed her statements and further review is not warranted.

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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 5,600 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 5,519 words.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P.6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in font size 14, Bookman Old Style.

I hereby certify that on July 18, 2022, I did serve Defendant-Appellee's Final Brief on Appellant by e-mailing one copy to:

Gowun Park

Defendant-Appellee

___/S/ *Gina Messamer*_____

Dated: July 18, 2022

Gina Messamer