IN THE SUPREME COURT OF IOWA
Supreme Court No. 21–0756

STATE OF IOWA,
Plaintiff-Appellant,

vs.

GOWUN PARK,
Defendant-Appellee.

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

APPELLANT'S REPLY BRIEF

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FINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

State Rule

STATEMENT OF THE ISSUES IN THE REPLY BRIEF

I. Park declines to defend the parts of the ruling that suppressed her earliest statements in her apartment. This effectively concedes error on the State's challenge in part I.A of its initial brief.

II. Park was not in custody during the later interactions in her apartment, either. Even when Park was not free to leave, that establishes detention—not custody.

Authorities

Berkemer v. McCarty, 468 U.S. 420 (1984)
Maryland v. Shatzer, 559 U.S. 98 (2010)
Oregon v. Elstad, 470 U.S. 298 (1985)
Orozco v. Texas, 394 U.S. 324 (1969)
United States v. Czichray, 378 F.3d 822 (8th Cir. 2004)
United States v. Parker, 993 F.3d 595 (8th Cir. 2021)
Orozco v. State, 428 S.W.2d 666 (Tex. Ct. Crim. App. 1967)
State v. Countryman, 572 N.W.2d 553 (Iowa 1997)
State v. Decanini-Hernandez, No. 19–2120, 2021 WL 610103 (Iowa Ct. App. Feb. 17, 2021)
State v. Miranda, 672 N.W.2d 753 (Iowa 2003)
State v. Schlitter, 881 N.W.2d 380 (Iowa 2016)
State v. Scott, 518 N.W.2d 347 (Iowa 1994)
State v. Smith, 546 N.W.2d 916 (Iowa 1996)
State v. Tyler, 867 N.W.2d 136 (Iowa 2005)
State v. Underwood, No. 12–2319, 2014 WL 467576 (Iowa Ct. App. Feb. 5, 2014)
Van Hoff v. State, 447 N.W.2d 665 (Iowa Ct. App. 1989)

III. This was not a *Siebert* two-step. Park has not tried to demonstrate that it was, nor could she succeed.

Authorities

Missouri v. Seibert, 542 U.S. 600 (2004)
Oregon v. Elstad, 470 U.S. 298 (1985)
Hyler v. Garner, 548 N.W.2d 864 (Iowa 1996)
State v. Koat, No. 21–1162, 2021 WL 5458053 (Iowa Ct. App. Nov. 23, 2021)
Iowa R. App. P. 6.903(2)(g)(3)

IV. Park understood her *Miranda* rights when they were explained to her, at the beginning of the first interview at the police station. Her subsequent implied waiver was knowing and voluntary.

Authorities

State v. Buenaventura, 660 N.W.2d 38 (Iowa 2003)

V. Park did not unambiguously invoke her right to remain silent. When she invoked her right to counsel at 2:05 a.m., the detectives stopped interviewing her.

Authorities

Berghuis v. Thompkins, 560 U.S. 370 (2010)
State v. Astello, 602 N.W.2d 190 (Iowa Ct. App. 1999)
State v. Grady, No. 10–1532, 2012 WL 1611964 (Iowa Ct. App. May 9, 2012)

VI. Park's statements were all made voluntarily.

Authorities

State v. Cooper, 217 N.W.2d 589 (Iowa 1974)
State v. Hall, 297 N.W.2d 80 (Iowa 1980)
State v. Itoh, No. 09–0811, 2010 WL 1578527 (Iowa Ct. App. Apr. 21, 2010)
State v. Jacoby, 260 N.W.2d 828 (Iowa 1977)

VII. Park's list of challenged statements does not contain any impermissible promises of leniency.

Authorities

Mablin v. State, No. 18–1612, 2019 WL 4297860 (Iowa Ct. App. Sept. 11, 2019)
People v. Hernandez, 2018 WL 3566861 (Cal. Ct. App. July 25, 2018)
State v. Crowley, 309 N.W.2d 523 (Iowa Ct. App. 1981)
State v. Dennis, No. 04–0614, 2006 WL 126794 (Iowa Ct. App. Jan. 19, 2006)
State v. Foy, No. 10–1549, 2011 WL 2695308 (Iowa Ct. App. July 13, 2011)
State v. Gutierrez, 258 P.3d 1024 (N.M. 2011)
State v. Hodges, 326 N.W.2d 345 (Iowa 1982)
State v. Jay, 89 N.W. 1070 (Iowa 1902)
State v. Jennett, 574 N.W.2d 361 (Iowa Ct. App. 1997)
State v. Koat, No. 21–1162, 2021 WL 5458053 (Iowa Ct. App. Nov. 23, 2021)
State v. McCoy, 692 N.W.2d 6 (Iowa 2006)

VIII. Park's statements in her later interviews were not tainted by any impermissible promises of leniency.

Authorities

State v. Chambers, 39 Iowa 179 (1874)

RESPONSE TO APPELLEE'S ARGUMENT

Park's brief emphasizes specific facts about her interactions with officers that she views as favorable. But she rarely disputes the State's descriptions of key facts that cut against her position. That is because the video footage is the best evidence of what occurred, and the State's initial brief accurately describes what that footage shows. Park's selective recitations do not undercut the State's arguments.

I. Park declines to defend the parts of the ruling that suppressed her earliest statements in her apartment. This effectively concedes error on the State's challenge in part I.A of its initial brief.

Park's appellate brief does not argue that *all* of her statements should have been suppressed—Park only argues that it was correct to suppress statements she made before "minute 25:20 of the encounter as captured by Officer Sweeden's first body camera recording." *See* Def's Br. at 25. That corresponds to 7:08:53 p.m., as established by timestamps on that bodycam footage—the moment when Park and Sergeant McCarty were in the main room of her apartment, and Park asked if she could go to the hospital (after the paramedics had already taken Nam to the hospital, as part of attempts save his life). But Park appears to concede that statements that she made in her apartment before 7:08:53 p.m. should *not* be suppressed. *See* Def's Br. at 25.

The district court thought that Park was "contend[ing] all of her statements to police officers should be suppressed." *See* MTS Ruling (5/4/21) at 1; App. 162. And it ordered that all of Park's statements at her apartment must be suppressed—based, in large part, upon things that officers did "[i]mmediately upon their arrival." *See* MTS Ruling (5/4/21) at 9–11; App. 170–72. Park argues that the State is incorrect to describe this as a ruling that she was effectively in custody from the moment that officers arrived. *See* Def's Br. at 25 (quoting State's Br. at 23). But it orders suppression of *all* of Park's statements, without identifying any basis for suppressing her statements in the apartment other than un-*Mirandized* custodial interrogation. The court noted that Park's statements in response to questioning at her apartment were only inadmissible "[i]f Park was 'in custody' at the time." *See* MTS Ruling (5/4/21) at 9–10; App. 170–71, Then, the court suppressed *all* of Park's statements—and that meant that it determined that Park made *all* of those statements while she was in custody. *Accord id.* at 1; App. 162 (stating that officers were "interviewing Park from the time of their arrival shortly before 7:00 p.m. until . . . they transported her to the police department"); *id.* at 18–19; App. 179–80 (concluding that "the initial interview" was "a custodial interrogation").

Park swipes at the State's advocacy below. *See* Def's Br. at 25 ("The District Court did not address the exact moment when [she] was subjected to custody—no doubt because the State did not raise this as an issue."). But Park's initial motion and briefing never specified a time when the interaction became custodial, either. *See* MTS (10/22/20) at 1; App. 162 (arguing that Park "was interviewed. . . [a]t her home after calling 911" and that "[a]ll of [her] statements must be suppressed"); MTS Brief (10/22/20) at 33; App. 38 ("All of her statements must be suppressed."). The State responded to that broad claim: it argued that Park was never in police custody during *any* of the interactions at her apartment. *See* Resistance (1/29/21) at 7–9; App. 46–49. In a reply that Park filed on the day before the hearing on her motion to suppress, Park qualified her advocacy and identified a time when the interaction allegedly escalated to custody (which is the same moment that she has identified in her brief on appeal). *See* Reply (3/1/21) at 3; App. 63; *accord* MTS-Tr. 177:24–178:9. But the district court's ruling described the advocacy in Park's original motion/briefing; it rejected the State's argument that this interaction in Park's apartment did not amount to custody at *any* point; and it gave Park exactly what she had asked for in her initial filings: suppression of every last one of her statements.

See MTS Ruling (5/4/21) at 1, 9–11, 18–19; App. 162–180. The State has repeatedly and consistently argued that Park was never in custody *at any point* during the interactions in her apartment—so to the extent that Park is implying an error-preservation concern, she is wrong.

In resisting the State's application for interlocutory appeal, Park seemed to acknowledge that the district court's ruling had suppressed "all of [her] statements"—and she defended that as entirely correct. *See* Resistance (6/11/21) at 1–5; App. 208–12. But now that this Court has granted interlocutory review, Park disclaims any interest in defending suppression of any statements that she made before minute 25:20 on Officer Sweeden's first body-cam recording (or 7:08:53 p.m.). *See* Def's Br. at 25. By doing so, Park has effectively confessed error. She offers no response to the State's arguments in part I.A of its brief, nor does she defend suppression of those statements on alternative grounds. So, no matter what else happens, this Court should reverse the part of the district court's ruling that suppressed Park's earliest statements.

Note that Park still uses facts about those earlier interactions to support her claim that *subsequent* interactions amounted to custody. *See, e.g.*, Def's Br. at 30 (citing body-cam footage from before 25:20). Of course, this is permissible. A totality-of-the-circumstances analysis

must necessarily consider context. But it also means that Park cannot sidestep facts that tend to establish the non-custodial character of this entire interaction by trimming down her claim to suppression. All of the facts about the initial response to Park's 911 call are relevant, and they undercut Park's claim that a reasonable person in that situation would have believed that they were effectively in custody, at any point. *See* State's Br. at 15–28; State's Ex. 5, at 6:52:41–7:05:00.

II. Park was not in custody during the later interactions in her apartment, either. Even when Park was not free to leave, that establishes detention—not custody.

Park's argument hinges on the fact that, during later portions of the interaction in her apartment, she was not free to leave. *See* Def's Br. at 30–31; *see also* Def's Br. at 26 (arguing that she was never told that she was free to leave). Park's brief ignores the State's explanation that "the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody." *See* State's Br. at 37 (quoting *State v. Decanini-Hernandez*, No. 19–2120, 2021 WL 610103, at *8 (Iowa Ct. App. Feb. 17, 2021) (quoting *Maryland v. Shatzer*, 559 U.S. 98, 112 (2010))). Park's brief does not address the legal authorities that the State used to explain that principle, nor the case-specific facts that the State highlighted in applying it here. *See* State's Br. at 36–39.

Park acknowledges that she called 911, and that she was in her own home. She cites *Orozco v. Texas* as "finding suspect in custody even though in his home." *See* Def's Br. at 29 (citing *Orozco v. Texas*, 394 U.S. 324, 324 (1969)). In *Orozco*, the defendant "was under arrest . . . when he was questioned in his bedroom,"—so there was no need to assess whether circumstances amounted to *de facto* arrest/custody. *See Orozco*, 394 U.S. at 327. Park also cites *State v. Miranda*, but she does not respond to the State's argument that distinguished *Miranda*. *See* Def's Br. at 29 (quoting *State v. Miranda*, 672 N.W.2d 753, 759–60 (Iowa 2003)); State's Br. at 25–26 ("Unlike the defendant in *Miranda*, Park was not suddenly awoken from sleep, extracted from her bedroom, and put in handcuffs."); *accord* State's Br. at 32–33. Park also declines to address any of the State's authority that found in-home questioning did not amount to custody, in a wide range of relevant circumstances. *E.g.*, *United States v. Parker*, 993 F.3d 595, 600–03 (8th Cir. 2021) (defendant called 911 and was prime suspect in ensuing investigation into victim's death); *Decanini-Hernandez*, 2021 WL 610103, at *7–8 (defendant was detained on his own property during an investigation); *State v. Underwood*, No. 12–2319, 2014 WL 467576, at *4–6 (Iowa Ct. App. Feb. 5, 2014) (distinguishing *Miranda* on lack of handcuffs).

Park cross-applies her argument about South Korean culture to the "manner of summoning" prong of the custody analysis. *See* Def's Br. at 26–27. That is unpersuasive for two reasons. First, her claim about South Korean culture is obviously inaccurate, as applied to Park. By her own admission, all of her initial statements to police about the circumstances surrounding Nam's death were lies. Park cannot claim that she was deprived of freedom to act by cultural forces that require "[d]eference to authority." Her decision to lie to police, over and over, is proof that Park was fully capable of making voluntary choices, even when that meant defying and subverting authority. Second, even if it were true that any person who is steeped in South Korean culture is "more inclined to comply with requests from law enforcement," that could not help establish custody. It could only establish a subjective, self-imposed restraint—not an objective restraint on freedom to act that could affect the analysis. *See State v. Countryman*, 572 N.W.2d 553, 557–58 (Iowa 1997) ("The custody determination depends on the objective circumstances of the interrogation, not on subjective views harbored either by the officer or the person being questioned."). This argument about South Korean culture is based on a misapprehension of the custody analysis, and it is clearly inapplicable to Park anyway.

On the purpose of questioning, Park argues: "Medical personnel responded to [her] apartment to care for [Nam]. But the police were there to investigate." *See* Def's Br. at 28. That is obviously false, as to officers who arrived at 6:52 p.m.—Sergeant McCarty helped set up the stretcher for Nam, and Officer Sweeden and Officer Hinrichsen were helping paramedics gather information and control the scene. But it is true that, by the time Detective Morgan arrived there at 7:29 p.m., this had become an investigation. What Park's argument misses is that such an investigative purpose—"to ascertain what happened" and "to gather information"—weighs *against* restraint amounting to custody. *See State v. Tyler*, 867 N.W.2d 136, 174 (Iowa 2005); *accord Decanini-Hernandez*, 2021 WL 610103, at *7 (noting this factor weighed against custody when the purpose of questioning to investigate—to determine the facts surrounding [the incident]—not to confront"). Officers can even investigate suspected criminal activity by detaining a suspect for brief, non-custodial questioning. Neither that temporary restraint on a suspect's freedom to leave nor that investigative purpose are enough to transform such questioning into a custodial interrogation that would require a *Miranda* advisory. *See, e.g.*, *State v. Scott*, 518 N.W.2d 347, 350 (Iowa 1994); *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984).

The manner of questioning was calm and non-confrontational, and Park was not confronted with evidence of her guilt in a way that would weigh in favor of custody. Park does not defend the analysis in the district court's ruling, which assigned weight to Detective Morgan's two comments that "something weird" was going on. *Compare* MTS Ruling (5/4/21) at 11; App. 172, *with* Def's Br. at 30. Park quotes from *Schlitter* to argue that "verbal pressure" during questioning "supports a finding that she was in custody." *See* Def's Br. at 28–29 (first excerpt quoting *State v. Schlitter*, 881 N.W.2d 380, 396 (Iowa 2016)). That is a useful phrase, but *Schlitter* was describing something very different:

> [T]he officers applied forceful verbal pressure on Schlitter as the questioning progressed. The pressure included a strong and graphic description of the injuries inflicted on [the victim]. The officer implied Schlitter inflicted the injury and confronted Schlitter with the inconsistency between his denial of any responsibility and his declaration that Parmer was a good mother and never violent. The type and amount of pressure used by the officers tended to make the atmosphere coercive. The pressure was not just for Schlitter to implicate Parmer but also for him to confess in the alternative. Schlitter thought the aggressive pressure was unfair and asked the officer several times to stop.

Schlitter, 881 N.W.2d at 396–97. The interaction in Park's apartment was nothing like the "verbal pressure" applied in *Schlitter*. The officers asked Park for more information, but they did not confront her with proof of her guilt, and the manner of questioning was not coercive.

Park's argument begins and ends with restraint on movement and action. She gives a laundry list of things that officers prevented her from doing, once it became clear that they needed to investigate what happened to Nam in that apartment (with nobody else present, other than Park and Nam). *See* Def's Br. at 27, 30–31. Those things are relevant, but they are not determinative—especially when Park's movements and activities within her apartment were only restricted in ways that enabled officers to preserve as-yet-unexamined evidence. *See, e.g.*, *Van Hoff v. State*, 447 N.W.2d 665, 672 (Iowa Ct. App. 1989) (holding apprehension and physical restraint outside his home did not mean that Van Hoff was in custody, in part because "the officers had an interest in preventing anyone, including Van Hoff, from entering the crime scene and risking the possible destruction of evidence"). Indeed, officers *explained* how those restrictions were related to the investigation, in real time. *See, e.g.*, State's Ex. 5, at 7:11:11–7:11:43 (explaining to Park that she could return to the main room "as soon as [Officer Hinrichsen]'s done taking pictures" of the scene); State's Ex. 5, at 7:19:05–7:25:07; ("[W]e can't let you have the phone right now, since it's in [the office]."); State's Ex. 5, at 8:09:00–8:10:15 ("[E]verything in here is potentially evidence, so everything's gotta stay the way it is.").

That would have enabled Park (or any reasonable person in that role) to understand that these limitations were part of "the ongoing nature of the investigation and the ongoing search for more evidence"—not a minimally restrictive *de facto* arrest. *See Schlitter*, 881 N.W.2d at 398.

Park never addresses the fact that she was not handcuffed. Her brief only identifies two cases where a court found that questioning in a person's own home was custodial: *Orozco* and *Miranda*. But the defendant in *Orozco* was arrested at the beginning of the encounter, as soon as he provided his name. *See Orozco*, 394 U.S. at 325; *accord Orozco v. State*, 428 S.W.2d 666, 672 (Tex. Ct. Crim. App. 1967), *rev'd* (clarifying that "the statements [Orozco] were made contemporaneous with his arrest" and that officers arrested him upon hearing his name, which was the first thing he said). And in *Miranda*, the defendant was hauled out of bed and handcuffed before questioning. *See Miranda*, 672 N.W.2d at 759–60. Neither Park nor the district court have ever identified *any* case where in-home questioning did not involve arrest or handcuffs, but still somehow amounted to custodial interrogation.[1]

[1] Note that *Oregon v. Elstad* does not count. The prosecution "conceded the issue of custody" during the in-home questioning. *See Oregon v. Elstad*, 470 U.S. 298, 316 (1985). The Court did not linger on the conceded issue, but it did remark that the in-home questioning "had none of the earmarks of coercion," *See id.* at 316.

"The ultimate inquiry must always be whether the defendant was restrained as though [s]he were under formal arrest," and "[t]he debatable marginal presence of certain judicially-created factors . . . cannot create the functional equivalent of formal arrest where the most important circumstances show its absence." *See United States v. Czichray*, 378 F.3d 822, 828 (8th Cir. 2004). Park was not handcuffed, nor was she deprived of freedom of action or movement in ways that a reasonable person would view as tantamount to arrest or custody. Even when she was detained with reasonable suspicion to investigate her involvement in what happened to Nam, and even when officers had to limit some of Park's actions to preserve important evidence, Park was still was walking around and gesturing with her hands as she interacted with officers—she was not *physically* restrained. *See State v. Smith*, 546 N.W.2d 916, 925 (Iowa 1996) (finding juveniles were not in custody when they "were subjected to no physical restraint of any kind," and supervision that prevented them from collaborating on a fabrication was "a minimal restriction on their actions merited by the dangers inherent in the circumstances"). Nothing that happened in Park's own apartment was functionally equivalent to custodial arrest, and none of Park's statements in her apartment should be suppressed.

III. This was not a *Seibert* two-step. Park has not tried to demonstrate that it was, nor could she succeed.

Park argues that her statements at the police station were "tainted by the illegal questioning at her apartment," under *Seibert*. *See* Def's Br. at 32–33 (citing *Missouri v. Seibert*, 542 U.S. 600, 604 (2004) (plurality opinion)). An argument under *Seibert* requires an analysis of "relevant facts that bear on whether Miranda warnings delivered midstream could be effective," including:

> the completeness and detail of the questions and answers in the first round of interrogation, the overlapping content of the two statements, the timing and setting of the first and the second, the continuity of police personnel, and the degree to which the interrogator's questions treated the second round as continuous with the first.

Seibert, 542 U.S. at 615. Park offers none of the necessary analysis, so her *Seibert* challenge should be deemed waived. *See Hyler v. Garner*, 548 N.W.2d 864, 876 (Iowa 1996); Iowa R. App. P. 6.903(2)(g)(3). To the extent that this Court considers Park's claim, this case is more like *Elstad* than *Seibert*. Park's attacks on this "living room conversation" would—at worst—establish "a good-faith *Miranda* mistake, not only open to correction by careful warnings before systematic questioning in [Park's] case, but posing no threat to warn-first practice generally." *See Seibert*, 542 U.S. at 614–15 (citing *Elstad*, 470 U.S. at 311–16). And

Seibert is readily distinguishable. Park could not show that she was led "through a systematic interrogation" in her apartment, nor could her *Mirandized* interview at the station be viewed as "a mere continuation of the earlier questions and responses." *See id.* at 616–17; *accord State v. Koat*, No. 21–1162, 2021 WL 5458053, at *4–5 & n.8 (Iowa Ct. App. Nov. 23, 2021) (declining to suppress later statements where officers "miscalculated the custodial nature of the living-room interview" but "provided appropriate *Miranda* warnings once they transported [Koat] to the station," and where "Koat did not confess to the murder in any of the three interviews" so "[t]he cat was not out of the bag"). As such, even if Park's brief had not waived this argument, it would still fail.

IV. Park understood her *Miranda* rights when they were explained to her, at the beginning of the first interview at the police station. Her subsequent implied waiver was knowing and voluntary.

On this issue, too, the video footage will show what it shows. This record contains hours upon hours of footage of conversations between Park and others, all in English. Park clearly understands what is being said to her, because she responds in kind. She speaks with an accent, but she talks at a reasonably rapid pace and uses a wide-ranging vocabulary, with few mid-sentence breaks. Now, Park argues it is "grossly overstated" to describe her as fluent in English.

See Def's Br. at 35; *but see* Bond Ex. 2 (3/13/20) at 4 (Park describing herself as "fluent" in English, on her CV from 2017). In any event, even the district court acknowledged that Park "clearly understands most spoken English." *See* MTS Ruling (5/4/21) at 12; App. 173. So semantic discussions about the meaning of "fluency" do not matter—all that matters is whether Park understood her *Miranda* rights when they were explained to her, so that she could voluntarily waive them by answering the detectives' questions that followed that explanation.

Park is advancing two incompatible claims. On one hand, Park argues that she never understood her *Miranda* rights. On the other, she argues that she unambiguously invoked those *Miranda* rights at multiple points during that first interview. *See* Def's Br. at 43–45. Every fact that she cites in that second argument refutes the first one. Park must have known that she had a right to remain silent, because she referred to that right at various points. She must have known that she had a right to counsel, because she invoked that right. The State has already pointed this out. *See* State's Br. at 46–48. Park does not address any of that. Instead, Park spends most of Part III.B arguing that her statements were involuntary for *other* reasons, unrelated to whether she understood her *Miranda* rights. *See* Def's Br. at 33–43.

For example, Park complains that the detectives did not advise her of her rights under the Vienna Convention. *See* Def's Br. at 35–36 (citing *State v. Buenaventura*, 660 N.W.2d 38, 45–48 (Iowa 2003)). That has no effect on whether Park understood the *Miranda* advisory and voluntarily waived her *Miranda* rights. That can potentially help to show that statements were not "voluntary in fact," but it could not help prove a violation of *Miranda* rights, nor does it help Park show that she did not understand the *Miranda* advisory that *was* given. *Cf. Buenaventura*, 660 N.W.2d at 46–47. And *Buenaventura* holds that Iowa courts still examine "the totality of the circumstances" to assess voluntariness of statements, in light of the actual effect of any failure to give a Vienna Convention advisory in each individual case. *See id.* Park identifies no such effects, nor do any appear from the record.

Park has no real response to the State's arguments about how the video footage establishes that she understood her *Miranda* rights, referred to those rights during the interview, invoked them to end it, and subsequently waived them *again* on the next morning (without asking for any clarification or voicing any confusion). *See* State's Br. at 44–48. That is because all of that is true. The district court erred in ruling otherwise, and this Court should reverse that ruling.

V. Park did not unambiguously invoke her right to remain silent. When she invoked her right to counsel at 2:05 a.m., the detectives stopped interviewing her.

Park argues that it was correct to suppress at least some of her statements during that interview because she unambiguously invoked her *Miranda* rights, at multiple points during the interview. *See* Def's Br. at 43–45. She is wrong. None of the statements that she identifies in her brief are unambiguous invocations of her right to remain silent. *See generally Berghuis v. Thompkins*, 560 U.S. 370, 381–82 (2010). Neither *State v. Astello* and *State v. Grady* are analogous—in both of those cases, the defendant's statement "demonstrate[d] a clear desire to end all questioning," rather than "a desire to stop discussing a topic the defendant believed was exhausted or to express the defendant had nothing to say due to lack of knowledge." *See State v. Grady*, No. 10–1532, 2012 WL 1611964, at *4–5 (Iowa Ct. App. May 9, 2012); *accord State v. Astello*, 602 N.W.2d 190, 194 (Iowa Ct. App. 1999). Park has identified some statements that referred to her right to remain silent or expressed doubts about whether she wanted to continue talking, but none are unambiguous invocations of her right to remain silent.

Park declines to mention that, at 9:35 pm., she asked whether she should wait for an attorney, and she was told "that's up to you."

See State's Ex. 5, at 9:35:06–9:35:57. She also does not mention that, at 12:14 a.m., she remarked that the *Miranda* advisory form had said that she had a right to remain silent. A detective replied: "Yes, you do." Then, they waited for a moment, but Park did not say that she wanted to invoke that right—instead, she started talking about how she could not believe that Nam was dead. *See* State's Ex. 5, at 12:14:40–12:16:00. These are important for two reasons. First, they show that Park *knew* that she had those *Miranda* rights, and they demolish any claim that Park did not understand them and could not voluntarily waive them. Second, they show that officers did not imply that Park did *not* have those rights, nor plow through any actual attempt to invoke them.

Park gets closest to a valid challenge in her arguments about the statements she made just after 1:52 a.m. *See* Def's Br. at 44–45. Those were still not unambiguous invocations of her right to remain silent. But if they were, then it would only be correct to suppress statements that she made after that point—and she made none. *See* State's Ex. 5, at 1:53:16–2:05:10. Then, after she invoked her right to counsel, the detectives stopped the interview—all that was left was to execute the search warrant, and to tell Park that their investigation was ongoing. *See* State's Ex. 5, at 2:05:05–2:08:53. So there is nothing to suppress.

VI. Park's statements were all made voluntarily.

Most of Park's argument in Part III.B is not about *Miranda*—she mostly argues her statements were involuntary for other reasons. *See* Def's Br. at 33–43. She is wrong. Her statements were voluntary; she said what she chose to say, and stopped when she chose to stop.

Park argues that her statements were involuntary because the detectives were concealing their knowledge that Nam had died, until partway through the interview. *See* Def's Br. at 36–38. She does not address the State's arguments on this specific point, which explained how the cases that Park cites—*State v. Cooper* and *State v. Jacoby*—actually foreclose her argument that this deception could render her statements (or her *Miranda* waiver) involuntary. *See* State's Br. at 59–60. She does not identify how this deception could "amount to a deprivation of due process," in light of Iowa precedent that explains why it generally does not. *See State v. Hall*, 297 N.W.2d 80, 89 (Iowa 1980) (quoting *State v. Cooper*, 217 N.W.2d 589, 597 (Iowa 1974)). Park claims that her emotional distress makes *Jacoby* distinguishable. *See* Def's Br. at 37–38 (citing *State v. Jacoby*, 260 N.W.2d 828, 833 (Iowa 1977)). She is wrong to imply that a lack of emotional distress was a *reason* for *Jacoby*'s holding that the officer's deception about

the victim's condition—declining to reveal that he had died, when the defendant knew he was at least "gravely wounded"—did not render the defendant's statements involuntary. *Jacoby* handled those separately: it held that there was "no substantial deceit relating to the gravity of [the victim's] condition," without referencing emotional distress at all. Subsequently, in a new paragraph, it said: "Neither does defendant's emotional distress appear to have been so great in light of the totality of circumstances as to impair her capacity for self-determination or make her statements involuntary." *See Jacoby*, 260 N.W.2d at 832–33. That separate inquiry was unaffected by the claim of deception.

Note that Park dwells on her emotional reaction "when she learned [Nam] was dead." *See* Def's Br. at 39–40. If Park's reaction could undermine the voluntariness of her statements, that would be all the more reason to get Park's statements *before* revealing that fact that might leave her unable to cooperate any further. Moreover, and more importantly, once Park knew that police would never be able to ask Nam about what happened, an important potential constraint on her ability to fabricate a false version of events would disappear. So it was important to hear the version of events that Park would give when she was not yet certain that Nam would not survive to give his own.

Park compares this case to *State v. Itoh*. *See* Def's Br. at 40–41 (citing *State v. Itoh*, No. 09–0811, 2010 WL 1578527 (Iowa Ct. App. Apr. 21, 2010)). But in *Itoh*, it was clear that "the defendant did not understand what was going on." *See Itoh*, 2010 WL 1578527, at *2; *accord Itoh*, 2010 WL 1578527, at *8 (emphasizing "the defendant clearly did not understand the criminal nature of the interrogation"). Park understood what was happening—and she crafted her answers accordingly, to avoid describing her role in tying Nam up. Moreover, in *Itoh*, the officers constantly interrupted the defendant's answers, "denying him the chance to make explanations" and talking over his attempts to invoke his *Miranda* rights. *See id.* at *2–3. But here, the detectives let Park talk, at length. The detectives generally responded to Park's references to her *Miranda* rights by repeating that it was up to her, whether to invoke them. *See* State's Ex. 5, at 9:35:06–9:35:57; *id.* at 12:14:40–12:16:00. And when Park invoked her right to counsel, questioning ended. This, alone, makes *Itoh* distinguishable—*Itoh* only held that statements that Itoh made *after* his request for counsel were involuntarily made (and that his act of making those statements was not a valid waiver of the *Miranda* right that he had just asserted). *See Itoh*, 2010 WL 1578527, at *7–9. All of Itoh's statements *before* that—

even in light of everything else that the district court mentioned in the ruling that Park is quoting—were found to be voluntary and admissible (and the appellate court did not disturb or criticize that finding). *See id.* at *2–3, *7–9 & n.4. To be sure, *Itoh* is factually distinguishable—these detectives did not use similarly overbearing tactics, and Park knew they were law enforcement, investigating Nam's death. *See, e.g.*, State's Ex. 5, at 11:33:40–11:33:55 (Park asking: "You think I killed my husband?"); *accord* State's Ex. 5, Feb. 16, at 11:40:03–11:41:05 and 12:31:19–12:32:06 (Park indicating that she believed they might arrest her for version of facts about Nam's death that she admitted). But even on similar facts, *Itoh* would not entitle Park to suppression of any statements made before she invoked her right to counsel. And because that was at the *end* of this interview, all of the statements that Park made *during* the interview would still be admissible.

Park's statements were voluntarily made. She said what she chose to say, and stopped when she chose to stop. This Court should reject Park's assorted arguments that it should hold otherwise.

VII. Park's list of challenged statements does not contain any impermissible promises of leniency.

Park provides a long list of statements that she describes as promises of leniency. *See* Def's Br. at 47–50. But in order to make her

argument, she needs to add in things that the detectives did not say—things like "her involvement with his death would be excused," or that "she wouldn't be in trouble" if she killed Nam, "so long as she told them that [Nam] abused her." *See* Def's Br. at 50–51. None of that appears in their actual statements. The detectives never said those things. That is important because officers may offer empathy, understanding, and non-specific "help"—as long as those statements are "not combined with any advantage to be gained." *See Mablin v. State*, No. 18–1612, 2019 WL 4297860, at *11–12 (Iowa Ct. App. Sept. 11, 2019); *accord State v. Jennett*, 574 N.W.2d 361, 366 (Iowa Ct. App. 1997); *People v. Hernandez*, 2018 WL 3566861, at *7 (Cal. Ct. App. July 25, 2018).

The detectives said they were trying to help and protect Park by encouraging her to stop insisting on a version of events that did not fit the known facts. That is all permissible. *See State v. Foy*, No. 10–1549, 2011 WL 2695308 at *3 (Iowa Ct. App. July 13, 2011); *accord State v. Hodges*, 326 N.W.2d 345, 349 (Iowa 1982); *Koat*, 2021 WL 5458053, at *5 & n.9; *State v. Gutierrez*, 258 P.3d 1024, 1036–37 (N.M. 2011). Park tries to distinguish *Foy* by pointing to the "volume and detail" of the challenged statements in this case. *See* Def's Br. at 52–53. Park's argument about "volume" is misguided because Park misreads *Foy*—

those were not "the only two statements" challenged in *Foy*. Rather, the *Foy* opinion only included some "excerpts" that were "instructive." *See Foy*, 2011 WL 2695308, at *2–3. Park's argument about "detail" admits the weakness of her challenge—she says this case is different because the detectives said "it was 'awesome' if she defended herself and they were there to 'protect' her." *See* Def's Br. at 53. But the most frequently bolded phrase in Park's list is: "We're trying to help you." *See* Def's Br. at 48–50. The statements in *Foy* match that phrase (and other phrases that Park highlights) *in substance*: they are non-specific offers of "help" that accompany pleas for the truth. *See Foy*, 2011 WL 2695308, at *2–3 ("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."). And just like in *Foy*, nothing on Park's list crosses the line because the detectives never specified or implied "what advantage is to be gained or is likely to be gained" from confessing. *See id.* at *2 (citing *Hodges*, 326 N.W.2d at 349); *accord Koat*, 2021 WL 5458053, at *5 & n.9.

Here is a critical distinction. The detectives never identified a benefit to be gained from *confessing*, but they *did* identify a reason why Park should *tell the truth*: provable lies would raise an inference that she killed Nam, then lied to conceal that unfavorable truth. *See*

State's Br. at 54 (quoting State's Ex. 5, at 11:33:40–11:33:55). This is not like *State v. Dennis*, which involved "clear assurances that Dennis would not be prosecuted for murder" if she admitted to specific facts about her participation in the armed robbery that led to the murder. *See State v. Dennis*, No. 04–0614, 2006 WL 126794, at *1–2 (Iowa Ct. App. Jan. 19, 2006). The problem in *Dennis* was that officers identified a specific charging benefit to be gained from admitting a specific fact. As a result, when Dennis admitted that fact, there was no way to know if she admitted it because it was true, or if she made a false admission to avoid murder charges. *See id.* at *1, *3 (citing *State v. McCoy*, 692 N.W.2d 6, 27–28 (Iowa 2006)). But when officers tell a suspect that *any false statement* tends to raise inferences of guilt, that is different: it encourages true statements and discourages false statements. When a suspect responds with a new admission, there is no inherent problem with that statement's reliability—if anything, it is *more* reliable. This is even true when officers explain *why* they do not believe specific things that the suspect already said. Even when that happens, the "benefit" of avoiding damaging inferences is still *only* available to suspects whose statements turn out to be true, and not to suspects who say things that turn out to be false (no matter what the interviewing officers thought).

That is still markedly different from the the classic promise-of-leniency fact pattern, where officers say (or imply) that specific admissions will secure some extrinsic benefit.[2] That critical difference is precisely why Iowa courts have always said "[a]n officer can ordinarily tell a suspect that it is better to tell the truth." *See Hodges*, 326 N.W.2d at 349.

Another effect of this sort of explanation is that it elevates the probative value of *false* statements. Park says: "the State would not be arguing *against* suppression if the statements elicited by the implied promises of leniency were not helpful to the prosecution." *See* Def's Br. at 54. Of course, her false denials of involvement in tying Nam up *are* probative and helpful—but not because they are true. Rather, they are relevant "on the theory that consciousness of guilt may be inferred from . . . palpable falsehood, or suppression of true facts." *See State v. Crowley*, 309 N.W.2d 523, 524 (Iowa Ct. App. 1981). Moreover, it is absurd for Park to claim that her false statements were "elicited" by telling her that any provable lies would raise the inference that she killed Nam. She *chose* to lie, even after the detectives urged her not to.

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[2] This also distinguishes *State v. Jay*, where the suspect was told "it would be much easier for [him] before a court or jury" if he revealed the location of the stolen horse, which meant confessing to stealing it. *See State v. Jay*, 89 N.W. 1070, 1071 (Iowa 1902); Def's Br. at 52 & n.7.

Finally, note that the first statement that Park challenges as a promise of leniency occurs at 1:17:50 on Hatcher's body-cam, file #4—which is 10:19 p.m. *See* Def's Br. at 48. That is long after the exchange described in Part III.B of the State's brief. *See* State's Br. at 55–57. Park effectively concedes that, if the detectives made impermissible promises of leniency, that still would not require suppression of any statements that she made before 10:19 p.m. (at the earliest).

VIII. Park's statements in her later interviews were not tainted by any impermissible promises of leniency.

Park asserts the State has "nothing to show" that her statements during subsequent interviews were not induced by implied promises of immunity during the first interview. *See* Def's Br. at 62 (quoting *State v. Chambers*, 39 Iowa 179, 183 (1874)).[3] Park does not address any of the facts that the State has identified in its brief—not even the video footage from Park's second interview that established that she expected that she might be arrested, *after* giving her new statement. *See* State's Br. at 67–69 (quoting State's Ex. 5, footage from Feb. 16,

[3] *Chambers* is inapposite. The defendant's first confession was extracted when he was "in the hands of a mob, and stimulated by the presence of a rope." *See Chambers*, 39 Iowa at 180. His last confession was induced through assurances that the interrogator would "stand by and protect him," and also "by mention of a pardon." *See id.* at 183.

at 11:40:03–11:41:05 and 12:31:19–12:32:06). None of her arguments in this section can overcome the video footage that definitively shows that she did *not* believe "that she would not be in trouble for [Nam]'s death if she stated [that] he had abused her." *See* Def's Br. at 58–63.

This also means that when Park argues that nothing changed between the first interview and the second one, she is undermining her own argument on promises of leniency. In that second interview, Park understood that she was a suspect, and she was well aware that she might face arrest—even if she admitted to tying Nam up, and even if she claimed that she did it as a response to his physical abuse. *See* State's Ex. 5 (Feb. 16), at 11:40:03–11:41:05. So, if nothing changed between Park's first interview and that second interview, then Park must have understood that, all along—which undermines her claim that detectives made promises of leniency during her *first* interview.

Finally, Park does not argue that her express *Miranda* waiver before the second interview was involuntary or invalid, nor does she respond to the State's argument that her express *Miranda* waiver—made readily, with no questions—makes it impossible to believe her claim that she was not able to understand that same *Miranda* advisory when it was given before the *first* interview. *See* Def's Br. at 54–63.

CONCLUSION

Park was not in custody at any point during the interaction in her apartment. She understood her *Miranda* rights from the advisory given before the first interview at the police station. She referred back to them during the interview, but did not unambiguously invoke them until she requested counsel (which ended the interview). Detectives did not make any impermissible promises of leniency—instead, they offered empathy and understanding, and they urged Park to take that opportunity to help herself by telling the truth about what happened. Park's express *Miranda* waiver before the following interview (which she initiated, of her own accord) neuters any claim that she could not understand a *Miranda* advisory, and her statements recognizing that she might be arrested make it clear that Park did not misunderstand anything that those detectives had said as a promise of leniency. And through it all, Park said what she chose to say, and she stopped talking when she chose to stop. All of her statements were voluntarily made—even if deliberate fabrications *could* be involuntary, Park's were not.

Therefore, the State reiterates: the district court erred in ruling that all evidence of any of Park's statements must be suppressed, and this Court should reverse that ruling in its entirety.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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