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

STATE OF IOWA,
Plaintiff-Appellee,

vs.

GOWUN PARK,
Defendant-Appellant.

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

AMENDED APPLICATION FOR FURTHER REVIEW

(Iowa Court of Appeals Decision: June 15, 2022)

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If the suspect's statements establish that police deception did not actually overbear the suspect's free will or compel the suspect to speak, does that police deception amount to a violation of due process and undermine the voluntariness of the suspect's otherwise valid waiver of *Miranda* rights?

Did these detectives make implied promises of leniency, even though they never identified a benefit to be gained from confessing? If so, which statement was the first one that crossed the line? And what effect does that have on Park's voluntary statements in later interviews?

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STATEMENT SUPPORTING FURTHER REVIEW

On June 15, 2022, the Iowa Court of Appeals affirmed the part of the district court's ruling that suppressed all of Park's statements during *Mirandized* interviews with police, based on the findings that (a) her *Miranda* waiver was knowing and intelligent, but not voluntary and (b) the officers made implied promises of leniency. *See State v. Park*, No. 21–0756, 2022 WL 2155199 (Iowa Ct. App. June 15, 2022).

Its primary reason for finding that Park's *Miranda* waiver was not voluntary was that the detectives told Park that doctors were still trying to save Nam's life, when he had already died. *See id.* at 9–13. It found this deception "amounted to a due process violation." *Id.* at 13. That holding is incompatible with Iowa precedent. *See State v. Jacoby*, 260 N.W.2d 828, 832–33 (Iowa 1977); *State v. Cooper*, 217 N.W.2d 589, 597 (Iowa 1974). The root of the problem with the panel opinion is that voluntariness is subjective. Objective facts still matter, and it is correct to examine what the officers did. But the panel opinion only asked how "a reasonable person in Park's shoes" would have reacted to that deception. *See Park*, at 11. It did not analyze the voluntariness of Park's statements or *Miranda* waiver by assessing the impact of the allegedly improper tactics *on Park*, whose will was not overborne.

The primary reason for the panel's holding that detectives made promises of leniency was that they "implied Park would be justified in harming her husband if he physically abused her." *See Park*, at 15–18. But those were only statements of empathy and understanding. There were no statements about legal justification, nor any statements that identified any specific benefit that Park could gain by confessing. The detectives urged Park to tell the truth, and they guessed at what it was. They highlighted known facts that were inconsistent with her denials. But none of that could amount to an implied promise of leniency. *See State v. Madsen*, 813 N.W.2d 714, 727 (Iowa 2012) (quoting *State v. Hodges*, 326 N.W.2d 345, 349 (Iowa 1982)) (explaining "[a]n officer can ordinarily tell a suspect that it is better to tell the truth"—which does not cross the line unless the officer "also tells the suspect what advantage is to be gained or is likely from making a confession").

The panel opinion's holding on both of those issues is in conflict with Iowa precedent. *See* Iowa R. App. P. 6.1103(1)(b)(1). Additionally, this case presents some important legal questions that this Court has not yet considered or answered. *See* Iowa R. App. P. 6.1103(1)(b)(2). This Court should grant further review.

STATEMENT OF THE CASE

Nature of the Case

Park is charged with first-degree murder for killing her husband, Sung Woo Nam. The State appealed from a ruling that granted Park's motion to suppress all statements that Park made at her apartment (after calling 911) and during four subsequent interviews. The Court of Appeals reversed in part, but still affirmed the suppression of all statements from all four interviews. The State seeks further review.

Statement of Facts

Park called 911 and reported that Nam, her husband, was unconscious and not breathing. Police and paramedics responded. Video footage shows almost everything after that. *See* State's Ex. 5. Park spoke with officers at her apartment. Two detectives arrived. They spoke with Park, then transported her to the station for an interview. One detective testified that he was notified that Nam had died, before that interview began. *See* MTS-Tr. 110:8–21; MTS-Tr. 119:16–120:12. But they told Park that they did not know whether Nam was dead, and that they were waiting on updates. *See* State's Ex. 5, at 9:04:50–9:05:15. After interviewing Park for 80 minutes, they told Park that Nam had died. *See* State's Ex. 5, at 10:27:25–10:27:40.

The detectives continued to interview Park. Hours later, after a break, Park invoked her right to counsel to end the interview. *See* State's Ex. 5, at 2:01:30–2:05:13. She came back the next day, on her own initiative.

Additional key facts will be discussed when relevant.

ARGUMENT

I. Park's *Miranda* waiver was voluntary.

The panel opinion is correct that the State "largely focuse[d] on the knowing and intelligent prongs" in its briefing on appeal. *See Park*, at 8; State's Br. (12/15/21) at 40–48. That was the only basis for the district court's ruling that suppressed Park's statements that preceded every alleged promise of leniency. *See* MTS Ruling (5/4/21) at 11–14 (stating it was "unable to conclude Park had a full awareness of both the nature of her *Miranda* rights and the consequences of a decision to abandon them" because of "Park's apparent inability to understand the rights read to her"). There was no ruling on the voluntariness of that *Miranda* waiver.[1] In any event, the State addressed Park's claims that her statements or *Miranda* waiver were involuntary. *See* State's Br. (12/15/21) at 59–61; Reply Br. (12/15/21) at 27–30.

The panel opinion agreed with the State that Park's waiver was knowing and intelligent. But it affirmed suppression of all statements from that first interview, because it found that Park did not voluntarily waive her *Miranda* rights. *See Park*, at 8–13. That ruling is incorrect.

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[1] Park did urge this as an alternative basis for the ruling, below. *See* Brief in Support of MTS (10/22/20) at 17–19. She presented the same argument on appeal. *See* Def's Br. (12/29/21) at 37–38.

A. Deception does not violate due process and does not establish involuntariness unless it has a subjective effect on the defendant that overpowers their free will and compels waiver or compliance.

If improper police conduct has no real effect on the suspect, it cannot undermine voluntariness. In *State v. Cooper*, an interrogator told Cooper that he did not know whether the victim had died—when, in fact, he knew she had already died. *See Cooper*, 217 N.W.2d at 592. This Court explained that "deception standing alone does not render a waiver of constitutional rights involuntary as a matter of law unless the deceiving acts amount to a deprivation of due process." *See id.* at 597. And deception in interrogation does not violate due process if it does not "overbear a defendant's will to resist." *See id.* at 596. That means that deception does not violate due process unless it has some actual impact. There must be a causal relationship between deception and every allegedly involuntary statement. *See Colorado v. Connelly*, 479 U.S. 157, 164 (1986) ("Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law.").

A violation of due process only occurs if "[the suspect's] will has been overborne and his capacity for self-determination critically impaired." *See Schneckloth v. Bustamonte*, 412 U.S. 218, 225–26

(1973) (quoting *Culombe v. Connecticut*, 367 U.S., 568, 602 (1961)). To assess voluntariness, courts have typically "determined the factual circumstances surrounding the confession, assessed the psychological impact on the accused, and evaluated the legal significance of how the accused reacted." *See id.* at 226. This is always suspect-specific, and it requires an analysis of "the peculiar, individual set of facts" about the effect of the interrogation on the suspect, to make a determination of "whether [their] will has been overborne and broken." *See Culombe*, 367 U.S. at 620–25. The suspect's reaction to the interrogation tactic is critically important, because "the mental state of involuntariness upon which the due process question turns can never be affirmatively established other than circumstantially—that is, by inference." *See id.* at 605. If police make deceptive statements, but the subject does not change their tune, then that negates any inference that the deception broke the subject's will and rendered their statements involuntary.

The same principle applies in analyzing the effect of deception on voluntariness of a *Miranda* waiver. *See, e.g.*, *Connelly*, 479 U.S. at 169–70. Deception could not amount to a due process violation and could not render Park's waiver of *Miranda* rights involuntary unless it had some actual effect on Park that overpowered her will to resist.

B. This particular deception did not overpower Park's will to resist. If it had, Park would have told the detectives what really happened to Nam, to try to save his life. Instead, Park chose to give a false statement that minimized her role.

The detectives used deception when they said that they wanted to speak with Park so that they could "give the doctors and everybody some information." *See* State's Ex. 5, at 9:05:14–9:05:23. They also used deception when they told her that they wanted "to figure out if there's something we can tell the hospital that will help [Nam] out." *See* State's Ex. 5, at 9:06:40–9:07:05. Those are the most problematic statements. In theory, those two statements *could have* overpowered Park's free will and compelled her to speak under the false belief that telling doctors what really happened might save Nam's life.

And yet, they did not. Park continued to state that she did not tie Nam up, at any point during that afternoon or evening. She said she tied him up on a prior occasion, to explain a mark on his wrist. *See* State's Ex. 5, at 9:59:09–10:12:29. But Park adamantly denied tying him up on that particular occasion—she said that she woke up and found him that way. *See id.* at 9:34:40–9:42:15; *id.* at 9:50:30–9:53:30. Park did not admit that she had tied Nam to that chair until her second interview, the next day—after she knew Nam had died.

See State's Ex. 5 (footage from Feb. 16). The record also contains a video that Park had recorded at 5:06 p.m., which she tried to delete from her phone at 6:44 p.m.—only two minutes before she called 911. *See* MTS-Tr. 102:9–106:20. That video shows Nam tied to a chair, at Park's mercy. *See* State's Ex. 6. If Park had been compelled to speak by a false hope that providing more information to detectives might help doctors save Nam's life, then she would have told them the truth about Nam's injuries (or something close to the truth). But she did not. Even if deception caused Park to believe that Nam was still alive and that telling detectives what really happened to him could save his life, Park would still be left with a record that establishes that such a belief did not affect her in a way that overpowered her will, broke her spirit, or compelled her to waive her *Miranda* rights (or do anything else).

Sometimes, courts state that voluntariness is "a question to be answered with complete disregard of whether or not petitioner in fact spoke the truth." *See Rogers v. Richmond*, 365 U.S. 534, 544 (1961). But *Rogers* does not prohibit the inference that neuters Park's claim of involuntariness. Rather, that excerpt from *Rogers* describes a rule against using the fact that a confession turned out to be true as proof that it was voluntary. *See, e.g.*, *Jackson v. Denno*, 378 U.S. 368, 384–85

(1964) ("[P]roof that a defendant committed the act . . . to which he has confessed is not to be considered when deciding whether [his] will has been overborne."). Courts generally hold that *Rogers* does not bar consideration of the contents of a suspect's statements—especially false self-exonerating statements—to prove that they retained their will to resist an allegedly overpowering external pressure, and that they were still making voluntary decisions about what to say. *See, e.g.*, *Gilreath v. Mitchell*, 705 F.2d 109, 110 (4th Cir. 1983) ("This is not the reliance upon truth of a confession that is condemned by Justice Frankfurter in *Rogers*, but is a proper inquiry . . . in deciding if a statement is voluntary or is the result of improper interrogation which puts words into the mouth of the accused and overrides his free will."); *Cooper v. Bergeron*, No. 09–10743–GAO, 2013 WL 1403487, at *15 (D. Mass. 2013) (explaining that it did not violate *Rogers* for court to consider "the fact that his statement was self-exonerating in determining that his statement was voluntary"), *aff'd*, 778 F.3d 294, 307–08 (1st Cir. 2015); *United States v. Soria*, No. 08–cr–105–bbc–02, 2009 WL 362275, at *5 (W.D. Wis Feb. 11, 2009) ("Most importantly, Pineda Soria clearly demonstrated his ability to exercise his free will by lying to the agents during both interviews."). This Court is no exception.

In *State v. Buenaventura*, this Court rejected a challenge from a Phillipine national who alleged that his statements were involuntary because he believed that police would beat him if he did not confess. It explained that "[d]espite the defendant's alleged apprehension that the police would beat him if he did not confess, he persisted in denying he was responsible." *See State v. Buenaventura*, 660 N.W.2d 38, 47 (Iowa 2003). In other words, the fact that the defendant *did* resist the perceived threat was clear proof that he *could* resist it—so it must not have overcome his ability to resist or his freedom of choice. And so, the court did not need to determine whether any reasonable person would have believed what Buenevantura said he believed, based on lived experience as a Phillipine national. Nor did it need to determine whether such a belief may have undermined the voluntariness of that reasonable person's statements. That did not matter. What mattered was that Buenaventura still retained the ability to resist and to decide what to say and what to do. The pressure from the allegedly perceived threat did not dominate his free will, so it could not have rendered his statements involuntary. This illustrates that a voluntariness challenge like Park's must fail when the record establishes that the claimant *did*, in fact, resist the allegedly improper pressure—as Park did, here.

The panel decision did not consider the actual effect of this deception on Park's decision to waive her *Miranda* rights. Instead, it only remarked on the probable effect of that kind of deception on "a reasonable person in Park's shoes." *See Park*, at 11. But it does not matter what effect that deception may have had on anyone else—that cannot help Park establish that *her* waiver was involuntary, nor help Park show an actual violation of *her* due process. All that matters is the effect that it *did* have on Park, specifically, during that interview. And it is clear from the content of Park's responses that she was not overcome by a compulsion to give information that could have been useful to doctors who were trying to save Nam's life. She retained her ability to choose what to reveal, what to conceal, and whether to speak. So Park's implied waiver of her *Miranda* rights was still "an essentially free and unconstrained choice, made by the defendant at a time when [her] will was not overborne nor [her] capacity for self-determination critically impaired." *See State v. Vincik*, 398 N.W.2d 788, 790 (Iowa 1987) (quoting *Hodges*, 326 N.W.2d at 347). The likely effect of this deception on a reasonable person is irrelevant. This record establishes that deception did not actually undermine the voluntariness of Park's choices, including her implied *Miranda* waiver.

C. Other facts established that this deception did not affect Park in a way that undermined the actual voluntariness of her statements or her waiver.

Even without considering the falsity of Park's statements about what happened to Nam, it is still impossible to conclude that Park was affected by deception about Nam's condition in a way that undermined the voluntariness of her *Miranda* waiver or her various statements. If Park believed that her statements could help doctors save Nam's life, then it would have been important to hurry. But Park took her time. She also provided a great deal of background information that could not possibly help any doctor who would have been treating Nam. *See* State's Ex. 5, at 9:11:00–9:31:55. Even when Park finally got around to describing what happened to Nam, it would have been clear to her that the detectives were not relaying her statements to anyone else—so whatever was happening at the hospital, it would be unaffected by her statements to these detectives (or her decision to stop speaking).

Moreover, if Park had felt compelled to continue this interview out of fear that Nam might die if she refused, then she would not have even considered waiting for a lawyer. But she did consider that:

> **PARK**: Should I — should I wait for the lawyer? Because—
> **DETECTIVE MORGAN**: That's up to you.
> **PARK**: —this is based on what I remember.

> **DETECTIVE MORGAN**: Well, that's — all we're asking is what you remember. It's just you and him in there, so I don't know anything beyond what you tell us.
>
> **PARK**: Okay, so it was . . . [drawing and explaining].

See State's Ex. 5, at 9:35:06–9:35:57. Park would not ask that question if she believed that she was racing against time to provide an insight that could help to save Nam's life. And the detectives did not respond by raising concerns about Nam, nor mention any effort to save his life. Instead, they said it was "up to [Park]" whether to wait for a lawyer. Park was clearly still capable of deciding whether to continue—and she made that decision without reference to Nam's condition.

Of course, Park had firsthand knowledge of Nam's condition before paramedics arrived and his condition as he was taken to the hospital. She knew that he was already "cold" before she called 911. *See* State's Ex. 5, at 9:04:30–9:04:51. While paramedics were still at her apartment, an officer told her that Nam was still not breathing—which meant that he had not taken a breath for more than 15 minutes. *See* State's Ex. 5, at 7:02:46–7:03:06. And she watched as paramedics took Nam to the hospital on a stretcher, under a LUCAS machine. *See* MTS-Tr. 48:14–21; *cf.* MTS-Tr. 61:10–62:6. By then, Park knew that Nam was "gravely wounded, if not dead." *See Jacoby*, 260 N.W.2d at 832–33. The panel opinion distinguished *Jacoby* because it found

that *Jacoby* involved "the absence of deceit." *See Park*, at 13 (citing *Jacoby*, 260 N.W.2d at 832–33). But there was deceit in *Jacoby*—the officer told the suspect that he "thought she was responsible for her husband's death," before he received any confirmation of that death. *See Jacoby*, 260 N.W.2d at 832. Even so, *Jacoby* held that there was "no substantial deceit relating to the gravity of [his] condition." *See id.* at 833. That was because the defendant "must have known" the approximate gravity of her husband's injuries, from her opportunity to make firsthand observations about his condition. *See id.* at 832. Here, Park had similar firsthand knowledge of Nam's condition and the gravity of his injuries. And the detectives never made statements that implied that Nam had recovered—there was nothing resembling "promises that [Park] would be allowed to visit [Nam] at the hospital if she cooperated with them at the station," *See id.* at 833; *accord State v. Bonds*, 450 P.3d 120, 132 (Utah Ct. App. 2019) (finding deception about the victim's condition did not undermine voluntariness of the defendant's statement because "their falsehood was that they did not know Victim's condition; they made no affirmative misrepresentation that, for instance, Victim was fine and would fully recover").

Even if this counted as "substantial deceit," it would still need to subvert Park's ability to resist and deprive her of free will—otherwise, there is no due process violation and no voluntariness problem. *See Cooper*, 217 N.W.2d at 597. The panel opinion wrote that a detective said that he waited to tell Park that Nam had died "[b]ecause we still weren't getting any information from her." *See Park*, at 11. But that was actually the detective's explanation for their decision *to tell her* that Nam had died—not to delay telling her. *See* MTS-Tr. 121:9–22. So that testimony actually helps show that their deception did not have an effect that overcame Park's free will or her ability to resist. And when the detectives told her that Nam had died, Park did not respond by invoking her *Miranda* rights—so her participation was obviously not contingent on any belief that Nam was still alive.

Park did not waive her *Miranda* rights to provide a frantic burst of facts that could have helped a doctor save Nam's life. The record of that interview undermines any claim that this deception had an effect on Park that eroded her free will and undermined the voluntariness of her decision to waive her *Miranda* rights. The panel opinion erred in applying an approach that enabled a finding of involuntariness in the face of evidence that this deception had no real effect on Park's waiver.

D. The record establishes that none of the other facts discussed in the panel opinion had an effect that undermined Park's ability to choose what to say or whether to waive her *Miranda* rights.

The panel opinion wrote "[t]he detectives' misrepresentations also masked Park's right to be warned that anything she said could be used against her." *See Park*, at 11–12. But Park *was* warned that what she said to them "can and will be used against [her] in a court of law." *See* State's Ex. 5, at 9:05:16–9:06:40. And unlike the two cases cited in the panel opinion, the detectives did not contradict that warning with statements that Park would not be prosecuted. *See Park*, at 11–12 (citing *Hart v. Att'y Gen. of State of Fla.*, 323 F.3d 884, 894 (11th Cir. 2003) and *United States v. Beale*, 921 F.2d 1412, 1435 (11th Cir. 1991)).

Park also retained the ability to choose not to sign a waiver form. The panel opinion treated the absence of an express waiver as a mark against voluntariness and as a way to distinguish *Jacoby*. *See Park*, at 13. But it actually cuts against Park's specific claim of involuntariness. It is another fact showing that Park was making choices to accede to some requests, and to deny or stonewall others. Of course, a signed *Miranda* waiver is preferable—it is often proof of knowing, voluntary waiver. But it is neither indispensably necessary nor independently sufficient. *See State v. Davis*, 304 N.W.2d 432, 434–45 (Iowa 1981);

North Carolina v. Butler, 441 U.S. 369, 373 (1979). And her refusal to sign the form is incompatible with the view that she was in thrall to the detectives and effectively compelled to do whatever they asked, in order to save Nam's life (or because of cultural deference to authority, or for any other reason). Similarly, note that Park pretended not to know the passcode to her phone, both before and after learning that Nam had died. *See* State's Ex. 5, at 10:09:24–10:09:41; State's Ex. 5, at 12:24:07–12:25:23.[2] This further illustrates that Park was capable of choosing not to cooperate—her free will was not overborne.

The panel opinion also noted that "when one of the detectives belatedly informed Park of [Nam]'s death, she broke down, slid off her chair and lay on the floor for an extended period of time." *See Park*, at 13. But that distress could not taint her *Miranda* waiver at the start of the interview, *before* she was given that distressing news. Moreover, experiencing emotional distress—much like deception—does not automatically undermine voluntariness of a *Miranda* waiver (or of particular statements) unless it is "so great in light of the totality of circumstances as to impair her capacity for self-determination." *See*

[2] She provided that passcode, at the beginning of her interview on the following day. *See* State's Ex. 5 (Feb. 16 footage) at 10:56:22.

Jacoby, 260 N.W.2d at 833. Here, Park eventually composed herself. Then, for the rest of the first interview, she continued to adhere to the same narrative that she gave *before* she was told that Nam had died. *See, e.g.*, State's Ex. 5, at 11:00:10 ("I told you everything I know."). So Park's decision not to invoke her *Miranda* rights and her decision to give the detectives that version of events (which she later disclaimed) were neither compelled by a belief that she could save Nam's life nor attributable to emotional instability from learning that Nam had died. Park kept her capacity for self-determination across both conditions—neither the deception nor the truth prevented Park from making her own voluntary decisions about whether to speak and what to say. The panel's finding of involuntariness is incompatible with this record.

II. There were no impermissible promises of leniency.

The panel held "[t]he detectives' use of physical abuse by [Nam] to obtain a confession and their related offers to help and protect Park amounted to impermissible promises of leniency." *See Park*, at 15–18. This is incorrect, because none of the alleged promises identified any concrete extrinsic benefit to be gained. All offers of understanding and empathy are permissible. So are references to the intrinsic benefits of telling the truth. In any event, none of it helped "obtain a confession."

A. Non-specific offers to "help" are permissible. So are statements on the intrinsic benefits of truth.

An implied promise of leniency is a group of statements that "indicates leniency in exchange for defendant's confession" without an express quid pro quo. *See State v. McCoy*, 692 N.W.2d 6, 41 (Iowa 2005). But there still must be some statement that actually puts some extrinsic benefit on the table, for an implied quid pro quo. Otherwise, officers could not "tell a suspect that it is better to tell the truth." *See Hodges*, 326 N.W.2d at 349. The *sine qua non* of a promise of leniency is a statement that "tells the suspect what advantage is to be gained or is likely from making a confession." *See id.* at 349. The panel opinion could not identify such a statement. That should have been dispositive.

One detective explained to Park: "I don't want people to think you [killed Nam], if you didn't. Ok, that's why we want the truth." *See* State's Ex. 5, at 11:33:40–11:33:55. This is not an offer of a benefit in exchange for an admission, creating a risk of an unreliable confession. This highlights an intrinsic benefit of telling the truth. If a defendant asks *why* it is better to tell the truth, officers are not required to shrug. Indeed, explaining this concept helps *prevent* false admissions.

A promise of leniency only exists where "the language used amounts to an inducement which is likely to cause the subject to

make a false confession." *See Mullin*, 85 N.W.2d at 602. Non-specific offers to "help" are not promises of leniency. *E.g.*, *Doornink v. State*, No. 18–0429, 2019 WL 1933991, at *4 (Iowa Ct. App. May 1, 2019) (collecting cases); *Mablin v. State*, No. 18–1612, 2019 WL 4297860, at *11–12 (Iowa Ct. App. Sept. 11, 2019); *Wilson*, 2017 WL 936125, at *1–3.

The panel opinion acknowledged that principle, then stated that it did not apply here because "the promises to help Park were tied to the detectives' repeated suggestion that physical abuse by her husband propelled and mitigated Park's conduct." *See Park*, at 17–18. But that still does not identify any external benefit that Park was offered, as an implied exchange for admissions. That critical ingredient was missing. The panel erred by holding otherwise.

B. These expressions of empathy and understanding were permissible. They were not promises of leniency.

The panel opinion quoted a long statement where a detective expressed conditional empathy and understanding, which "implied Park would be justified in harming [Nam] if he physically abused her." *See Park*, at 15–18. But there still was no specified extrinsic benefit that could induce a false confession. Neither detective implied that a particular set of facts would establish legal justification or that Park might be entitled to anything beyond understanding and empathy.

Empathy and understanding are not enough. *See State v. Jennett*, 574 N.W.2d 361, 366 (Iowa Ct. App. 1997) ("[E]mpathy or understanding for the suspect does not amount to improper inducement or coercion"). And even this empathy and understanding was made contingent on the *truth* of hypothesized facts—not on admissions. *See* State's Ex. 5, at 12:10:30–12:11:37 (describing a theory, and then concluding with "if that's the case, tell us that because people would understand that").

Offering a chance for the truth to be known and understood is another intrinsic benefit of telling the truth—it is clearly permissible. The panel criticized the detectives for telling Park that it would be sad if Nam's parents were told "that their son killed themselves if that was not the case," and saying "they deserve to know what really happened." *See* State's Ex. 5, at 11:13:57–11:14:35. The panel opinion said this was "[e]xploitation of relative connections" and a promise of leniency. *See Park* at 18–19. That is incorrect. Unlike the cases that the panel cited, this does not leverage any extrinsic threat of punishment or publicity that might be avoided by confessing. It would be sad if Nam's parents were given *any* false information about how he died. This is another statement that simply urged Park to tell the truth. It could not induce a false confession and cannot qualify as an implied promise of leniency.

C. If promises of leniency were made, Iowa's *per se* evidentiary rule still would not bar the State from using Park's statements as evidence that she lied.

The panel opinion did not address the State's arguments that Iowa's *per se* evidentiary rule, if triggered, would only bar admission of Park's statements on theories of relevance that implicated reliability (like "X is true because Park said X"). This Court should hold that, if voluntarily made, Park's statements may be introduced as relevant to show that Park "lied to the police" because she knew that she needed to conceal the truth. *See State v. Leutfaimany*, 585 N.W.2d 200, 206–07 (Iowa 1998); *accord State v. Crowley*, 309 N.W.2d 523, 524 (Iowa Ct. App. 1981) (explaining "consciousness of guilt may be inferred from . . . palpable falsehood, or suppression of true facts").

D. If promises of leniency were made, they did not render Park's statements involuntary. And they were effectively dispelled at the end of the night. None of the later interviews were tainted.

The panel opinion found Park's later interviews were all tainted, even when she voluntarily returned on her own initiative to re-initiate conversation with the detectives. *See Park*, at 21–23. But its holding is impossible to square with the factual record. There was no longer any deception about Nam's condition, nor did the prior deception have any discernible impact on Park's subsequent acts or statements. Park

chose when to initiate the second interview. Days passed between that and the third interview, which occurred in Park's apartment. There is no way to characterize any of Park's later interviews as involuntary.

The panel opinion said the taint arose when "promises rendered her statements during the first interrogation involuntary." *See Park*, at 21–22. But, again, that cannot be true, because Park could (and did) choose not to revise her story in that first interview to obtain leniency. So even if promises of leniency were made, her statements in that first interview were still voluntary, and *Elstad* does not require suppression of her subsequent statements as "tainted" by those earlier statements. *See id.* at 21 (citing *Oregon v. Elstad*, 470 U.S. 298, 305 (1985)).

Finally, the panel opinion held that all of Park's later statements were induced by promises of leniency during that first interview, and "[t]he State cites no intervening events that might have disrupted the effect of the initial promises of leniency." *See Park*, at 22. But at the end of the first interview, the detectives changed tack—they told Park that they were convinced she was lying, and that their investigation would continue until they found out the truth. *See* State's Ex. 5, at 2:06:03–2:06:30; *accord* State's Br. (12/15/21) at 67–69. The panel had dismissed that, earlier on, as an incomplete disclaimer. *See Park*,

at 19. But the State never compared that to a disclaimer. Rather, it was an intervening event that would dispel the effect of any implied offer of leniency. When the detectives accused Park of lying, declared that they would uncover the truth before the next time she saw them, and terminated the interview (without offering their contact information), neither Park nor any reasonable person in Park's position would have believed that any implied offer of leniency was still on the table.

When Park reinitiated contact, she made it clear that she knew that she could be arrested, even *after* giving her new version of events. She admitted to tying Nam up, and then said: "I did it so if you guys think you have to arrest me, just arrest me." *See* State's Ex. 5 (Feb. 16), at 11:40:03–11:41:05; *accord id.* at 12:31:19–12:32:06. She said that her reason for re-initiating contact with the detectives was that she could not "be alone in [her] apartment." *See id.* at 11:40:53. She never expressed any belief that she might receive any immunity or leniency. Any improper promises of leniency in the first interview would have no "causal connection" to Park's statements in later interviews, so the panel erred in holding that those statements were "tainted." *See Park*, at 22 (quoting *State v. Hamilton*, 335 N.W.2d 154, 158 (Iowa 1983)).

CONCLUSION

The State respectfully requests this Court grant further review, vacate the panel opinion, reverse the district court's original ruling in its entirety, and remand for further proceedings.

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CERTIFICATE OF COMPLIANCE

This application complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.1103(4) because:

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