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**To: Jan Dauss, State's Attorney**

**From: Applicant**

**Date: February 21, 2023**

**Re: State v. Hughes: Oral Arguments in opposition to suppression of statement made by Defendant**

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**Preliminary Statement:**

The Defendant's counsel previously made a motion to exclude the statement made by Defendant based on failure to give Miranda warnings as required by Due Process. The court denied the motion. The Defendant now moves to exclude his statement as involuntary, on the basis of the Supreme Court's judgement in *Mincey v Arizona* (U.S. 1978), on the basis that the statement was not the result of rational intellect and free will. The State does not stipulate to the allegations surrounding the lucidity of Defendant, or the coercive nature of the questioning and oppose the motion as follows.

Pursuant to *Mincey v Arizona*, a statement is involuntary if it is not the product of a "rational intellect and free will". The Due Process clause requires examination of the question of whether the influences brought to bear upon the accused were such as to overbear the person's will to resist and resulted in confessions which were not freely self-determined. Relevant to this question is the circumstances surrounding the statement being made, including characteristics of the accused, his maturity, education, physical condition and mental health and acuity. Additionally, it examination of the details of the interrogation will be relevant, for example whether there is evidence of coercion based on length, location and continuity of the interrogation. There are other factors also to be considered, for example whether officers controlled the interrogation, allowed defendant to tell his story, asked follow up questions, their tone and actions.

In *State v Perdomo* (Supreme Court, 2007), the defendant sought to similarly show that statements made whilst in hospital recovering from injury were inadmissible as violations of his constitutional rights, but the court found against the defendant on examination of the evidence. Like *State v Perdomo*, we will show that the application of *Mincey v Arizona* is not relevant to the present case.

1. Surrounding Circumstances

In *Mincey v Arizona*, the court found the defendant's statements were not the product of his free and rational choice on the basis of the circumstances surrounding the statements - the defendant was weakened by pain and shock, isolated from family, friends and legal counsel, and barely conscious.

The defendant was interviewed in intensive care, whilst he had tube in his throat and was

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unable to respond orally. The interrogation lasted for several hours, with the Defendant repeatedly asking for assistance of counsel, complaining of unbearable pain, despite being under the influence of various drugs and painkillers. His responses showed that he was incoherent and unable to think clearly.

Here in the present case, the defendant was similarly in intensive care, but was interrogated 8 hours after being admitted, two hours after surgery, and the officers who conducted the interrogation called the hospital several times during the day to find out if he was well enough to speak. The officers asked the defendant if it was ok to tape an interview with him, which was being carried out as part of routine when someone passes away, and they are not present at the scene. The defendant confirmed it was ok. Although the defendant was on pain killers, his answers were lucid and coherent. He told the police clearly he was able to speak. The defendant was an educated man, he was college educated, and was well enough to want to stay awake to watch a game following the interview. Although he asked to speak to his mom, this was not in response to questioning but rather out of concern for her. The interview lasted for 30 minutes, with a break in the middle when Drs came to give treatment. The defendant didn't ask to stop the questioning at any point.

This can be distinguished from *Arizona v Mincey*, where the defendant repeatedly asked to stop questioning, was not lucid, asked to speak to a lawyer.

Like *State v Perdomo*, hospital personnel did not permit the officers to talk to the defendant until they determined he was well enough to speak. By this time, defendant had come round from surgery, and was able to speak coherently - able to recall information when questioned

## 2. Details of the Interrogation

Unlike in *Arizona v Minsey*, here the officer's posed their questions calmly and without threat. Their tone was not threatening, and they allowed the defendant to tell his story. The transcript is evidence of this. They also asked follow up questions, which defendant was able to answer and follow up

Like *Perdomo*: no coercive behaviour by officers, tone friendly, follow up questions, conversational, interview was short, there was a break in the middle, D didn't ask for break. nothing to suggest no free will

Conclusion: We ask the court to deny the motion to suppress the statement as involuntary, citing *State v Perdomo*. There is no suggestion of physical or psychological pressure by the officers to elicit statements from defendant, and absent indication of coercive behaviour that overcame D's free will, an admission cannot be deemed involuntary with the due process clause of the 14th amendment

Question #3 Final Word Count = 860

**END OF EXAM**