

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PENNSYLVANIA

FILED
JUN 20 2025
PCRA Unit
CP Criminal Listings

COMMONWEALTH OF PENNSYLVANIA,)

)

Respondent)

)

vs.)

Phila. County Docket No.

)

CP-51-CR-1100411-1994

)

DAMIEN PHILLIPS,)

)

Petitioner.)

**PROPOSED AMICUS CURIAE BRIEF OF
PROFESSOR MARTIN HAROLD TANKLEFF
IN SUPPORT OF DEFENDANT DAMIEN
PHILLIPS**

Prof. Martin H. Tankleff, Esq.
Barket Epstein Kearon Aldea & LoTurco, LLP
666 Old Country Road, Suite 700
Garden City, NY 11530
(516) 745-1500
Mtankleff@barketepstein.com

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	3
INTEREST OF AMICUS CURIAE	4
PRELIMINARY STATEMENT.....	5
STATEMENT OF RELEVANT FACTS.....	6
ARGUMENT	6
I. FALSE CONFESSIONS ARE A DOCUMENTED PHENOMENON THAT FREQUENTLY LEAD TO WRONGFUL INCARCERATION.	6
II. CONFESSIONS MUST BE INDEPENDENTLY CORROBORATED TO BE RELIABLE. 10	
CONCLUSION AND PRAYER.....	12

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Arizona v. Fulminante</i> , 499 U.S. 279, 296 (1991)	6
<i>Commonwealth of Pennsylvania v. Phillips</i> , CP-51-CR-1100411-1994.....	7, 11
Other Authorities	
Blandón-Gitlin et al., <u>Jurors Believe Interrogation Tactics Are Not Likely to Elicit False Confessions: Will Expert Witness Testimony Inform Them Otherwise?</u> , 17 Psych. Crime & L. 239 (2011)	6
Casey et al., <u>Making the Sentencing Case: Psychological and Neuroscientific Evidence for Expanding the Age of Youthful Offenders</u> , 5 Ann. Rev. Criminology 321 (2021)	13
Cauffman & Steinberg, <u>(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults</u> , 18 Behav. Sci. & L. 741 (2000).....	9
Chojnacki et al., <u>An Empirical Basis for the Admission of Expert Testimony on False Confessions</u> , 40 Ariz. St. L.J. 1 (2008)	6
Drizin & Leo, <u>The Problem of False Confessions in the Post-DNA World</u> , 82 N.C. L. Rev. 891 (2004).....	8
Gur, <u>Development of Brain Behavior Integration Systems Related to Criminal Culpability From Childhood to Young Adulthood: Does It Stop At 18 Years?</u> , 7 J. Pediatric Neuropsychology 55, 57 (2021).....	9
Henkel et al., <u>A Survey of People’s Attitudes and Beliefs About False Confessions</u> , 26 Behav. Sci. & L. 555 (2008)	6
Kassin, S. M., Cleary, H., Gudjonsson, G. H., Leo, R. A., Meissner, C. A., Redlich, A. D. & Scherr, K. C. <u>Police-Induced Confessions, 2.0: Risk Factors and Recommendations</u> , APA Law and Human Behavior, 2025, Vol. 49, No. 1, https://doi.org/10.1037/lhb0000593	6, 8
Leo et al., <u>Promoting Accuracy in the Use of Confession Evidence: An Argument for Pretrial Reliability Assessments to Prevent Wrongful Convictions</u> , 85 Temple L. Rev. 759 – 838 (2013)	10
Fred Inbau et al., <u>Criminal Interrogation And Confessions</u> (5th ed. 2013)	10
Redlich, et al., <u>Pragmatic Implication in the Interrogation Room: A Comparison of Juveniles and Adults</u> , 16 J. of Experimental Crim. 555 2020	6, 8, 9

Professor Martin H. Tankleff, Esq. respectfully submits this proposed *amicus curiae* brief in support of the Petitioner's PCRA petition claim for after-discovered new evidence and the corresponding request for post-conviction relief.

INTEREST OF AMICUS CURIAE

Amicus is a person who was alleged to have falsely confessed or made false incriminating statements to law enforcement after being interrogated. Based on these statements, *Amicus*, like Petitioner, was charged with or convicted of perpetrating violent crimes. Before they were exonerated, *Amicus* spent 17.5 years in prison for the crimes they had falsely confessed to. *Amicus* is living proof that the tactics used by police and psychological vulnerabilities can persuade an innocent person to confess to violent crimes. Since being exonerated and freed in 2007, *Amicus*, has gone on to become an attorney and teach a course at Georgetown University and Georgetown Law Center that has led to the freedom of 12 people.¹

This case implicates issues as to which *Amicus*' background regarding false confessions is relevant. The Commonwealth contends that the confession in the signed statement of Petitioner is sufficient to conclude that the outcome of the case would have been no different if the suppressed evidence being considered in the current PCRA petition was presented to the defense team at trial. Petitioner has maintained that this statement was involuntary, fabricated, and false since 1994. Inconsistencies within the confession have been revealed since Petitioner's trial, further lending support to the falseness and unreliability of the confession.

¹ The Making an Exoneree program was taught at Princeton University, New York University and University of California at Santa Cruz, in addition to Georgetown and Georgetown Law Center. Prior to teaching at Georgetown, undersigned counsel also taught at Touro Law Center in Central Islip, New York. (See e.g., www.makinganexoneree.org [last checked 06-15-2025])

In this context, *Amicus* submits this brief to assist the Court by providing relevant scientific and legal context concerning the phenomenon of false confessions. The statement signed by Petitioner was central to his conviction and implicates concerns about the reliability of the confession and those who testified to its validity. Supported by decades of peer-reviewed research, empirical data, and documented exonerations, *Amicus* seeks to inform the Court of the established understanding that false confessions are a known and preventable cause of wrongful convictions, not rare anomalies. With the documented potential for confession evidence to be false, the weight that the confession evidence had in this case, along with no other corroboration than the officer who interrogated Petitioner, *Amicus* respectfully submits this brief to assist the Court in evaluating the reliability of the confession in this case.

PRELIMINARY STATEMENT

The conviction of Petitioner rests in substantial part on a confession obtained under circumstances that raise serious questions about its accuracy and reliability. The jury determination of the credibility of Petitioner's statement at his original trial, was decided without the research on false confessions that is now available. Vast amounts of research have occurred over the past three decades, mostly after the time of Petitioner's trial, and has shown that false confessions occur with alarming frequency, often in response to coercive interrogation techniques and psychological vulnerabilities. Studies indicating the high risk of false confessions by young people, like Petitioner at the time of the confession, are crucial to understand when making determinations about the reliability of a confession. The relevant body of social science demonstrates that confessions, particularly when uncorroborated by independent physical evidence, must be scrutinized for indicia of coercion, contamination, and factual inaccuracy.

Amicus respectfully submits that, in evaluating the weight of the confession within the materiality determination of the suppressed evidence, the Court should consider the research and findings provided in this brief, which has shown that confessions should not be accepted as unquestioned fact. There is a need for independent corroboration of confessions. The submitted brief outlines the empirical foundation for understanding false confessions, the conditions under which they are most likely to occur, and why independent corroboration is essential in evaluating their reliability. It is submitted with the goal of aiding the Court in its critical gatekeeping role.

STATEMENT OF RELEVANT FACTS

Amicus adopts the facts stated in Petitioner's PCRA brief.

ARGUMENT

I. FALSE CONFESSIONS ARE A DOCUMENTED PHENOMENON THAT FREQUENTLY LEAD TO WRONGFUL INCARCERATION.

Confessions are often considered “the most probative and damaging evidence that can be admitted”² against a defendant as many judges and jurors believe that “innocent individuals do not falsely confess.”³ On the contrary, the National Registry of Exonerations has cataloged hundreds of cases in which individuals confessed to crimes they did not commit and were later exonerated by undeniable evidence.⁴ 23 percent of those exonerated in a homicide case were based on false

² *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991).

³ Blandón-Gitlin et al., *Jurors Believe Interrogation Tactics Are Not Likely to Elicit False Confessions: Will Expert Witness Testimony Inform Them Otherwise?*, 17 Psych. Crime & L. 239, 256 (2011); see also Chojnacki et al., *An Empirical Basis for the Admission of Expert Testimony on False Confessions*, 40 Ariz. St. L.J. 1, 32 tbl. 4 (2008); Henkel et al., *A Survey of People's Attitudes and Beliefs About False Confessions*, 26 Behav. Sci. & L. 555, 578 (2008).

⁴ Kassin, S. M., Cleary, H., Gudjonsson, G. H., Leo, R. A., Meissner, C. A., Redlich, A. D. & Scherr, K. C. *Police-Induced Confessions, 2.0: Risk Factors and Recommendations*, APA Law and Human Behavior, 2025, Vol. 49, No. 1, 7-53, <https://doi.org/10.1037/lhb0000593>.

confessions.⁵ This phenomenon seems counterintuitive but false confessions have been studied for decades and revealed several key findings including; (i) false confessions occur frequently and (ii) there are a variety of documented causes and risk factors that increase the likelihood of a false confession. Often, confessions, like the Petitioner's, appear to be credible on their face and provide some accurate and specific details of the crime, not because the confessor is guilty, but because the confession was contaminated by law enforcement through the interrogation process and psychological vulnerabilities that increase the risk of false confessions.

Petitioner has consistently maintained that the signed statement was involuntary and fabricated. On the day the signed statement was made, Petitioner was interrogated for robberies unrelated to the homicides he later allegedly confessed to and there was no video or audio recording. Petitioner was left in the room for hours. The interrogating officer, Detective McDermott reported that the Petitioner provided a detailed confession within minutes of the interrogation's commencement, but he also reported that Petitioner was brought in at 3:45 PM, the interrogation began at 4:15pm and ended at 6:40 PM.⁶ At trial, Detective McDermott testified that the interrogation was suspended "around pg. 5" and resumed at some unspecified time.⁷ The interruption is not recorded in the statement and "pg. 5" referred to by Detective McDermott reads through as if there was no interruption.

The testimony of Detective McDermott, who interrogated Petitioner states that "during the course of the statement, it was a general conversation other than everything that appears,"

⁵ *Id.*

⁶ *Commonwealth of Pennsylvania v. Phillips*, CP-51-CR-1100411-1994 N.T. 7/19/1995, pg. 182-190.

⁷ *Commonwealth of Pennsylvania v. Phillips*, CP-51-CR-1100411-1994 N.T. 7/24/1995, pg. 49-50.

indicating that there was more to the interrogation than what was recorded.⁸ Petitioner has consistently stated that the interrogating detectives told him that “if he signed the statement he could go home.” Despite these words not being recorded in the signed statement, Detective McDermott’s testimony indicates that the signed statement did not include the entire conversation between him and Petitioner. Based on the research done by the American Psychological Association and the American Psychology-Law Society, this is an example of a compliant false confession, one of the common types of confessions that an innocent person will make.⁹ A compliant false confession occurs when “the suspect acquiesces to the demand for a confession despite self-perceived and actual innocence in order to escape a stressful situation, avoid harsh punishment, or gain a promised or implied reward.”¹⁰ The suspect believes that the short-term reward of confession, such as being allowed to sleep or in the Petitioner’s case go home, outweighs the long-term costs of denying the crime being alleged.¹¹ In the case of a compliant false confession, the “desire to bring the interview to an end and avoid additional confinement may be particularly pressing for people who are young, alone, socially dependent, or fearful of detention”.¹²

Young people are far more likely to falsely confess than older individuals for many reasons. In a study of 125 false confessors, more than 50% of them were under 25, indicating that the

⁸ *Commonwealth of Pennsylvania v. Phillips*, CP-51-CR-1100411-1994 N.T. 10/27/1994, pg. 38.

⁹ Kassin, S. M., Cleary, H., Gudjonsson, G. H., Leo, R. A., Meissner, C. A., Redlich, A. D. & Scherr, K. C. *Police-Induced Confessions, 2.0: Risk Factors and Recommendations*, APA Law and Human Behavior, 2025, Vol. 49, No. 1, 7-53, <https://doi.org/10.1037/lhb0000593>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

“suspect’s age is strongly correlated with the likelihood of eliciting a false confession.”¹³ At the time the statement was signed, Petitioner was only 19 years old. Although legally an adult, the same concerns regarding a confession by a juvenile are relevant here. A 19-year-old brain is still developing the tactics that an older individual may use to resist the urge and pressure to falsely confess. Research has shown that “strategic behaviors and decision-making under demanding conditions ... show steady improvements beyond 18 years into the early twenties.”¹⁴ Although the Petitioner was of legal age, brain development research demonstrates that 17-year-old brains “are equally or indistinguishably immature” from those “in the 18- through 20- year-old population.”¹⁵ The Petitioner was far more likely to believe an officer telling him that he could go home if he signed the statement than someone who was several years older.

Young people are also more vulnerable to outside pressures due to the lack of judgment that comes with greater maturity and their tendency to discount long-term consequences and focus on immediate rewards.¹⁶ They are also less likely to recognize police pressure during interrogation as they likely view the police as fairer in comparison to how an older individual may.¹⁷ This further increases the likelihood of a false confession by a young person. The Petitioner was under demanding conditions, hours of interrogation, and signed the statement after the detectives told

¹³ Drizin & Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 945 (2004)

¹⁴ Casey et al., *Making the Sentencing Case: Psychological and Neuroscientific Evidence for Expanding the Age of Youthful Offenders*, 5 Ann. Rev. Criminology 321, 327 (2021).

¹⁵ Gur, *Development of Brain Behavior Integration Systems Related to Criminal Culpability From Childhood to Young Adulthood: Does It Stop At 18 Years?*, 7 J. Pediatric Neuropsychology 55, 57 (2021).

¹⁶ See Cauffman & Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, 18 Behav. Sci. & L. 741, 748, 754 & tbl. 4 (2000).

¹⁷ Redlich, et al., *Pragmatic Implication in the Interrogation Room: A Comparison of Juveniles and Adults*, 16 J. of Experimental Crim. 555, 562 (2020).

him he could go home. These circumstances are common reasons for young people to provide a compliant false confession based on the belief that it will end the stressful situation.

II. CONFESSIONS MUST BE INDEPENDENTLY CORROBORATED TO BE RELIABLE.

With the extensive amount of research that highlights the frequency of false confessions, one cannot assume that a confession is always accurate and reliable, even when the confession evidence seems to be facially true. Independent corroborating evidence is needed to establish the validity and accuracy of an alleged confession. Law enforcement officials themselves emphasize the importance of corroborating confessions, even noting it in police interrogation training manuals.¹⁸ The value and reliability of a purported confession depends on the corroborating evidence that can be provided. Corroborating factors that should be considered to determine the value of the confession include:

- (1) Whether the statement led to the discovery of new evidence previously unknown to the police.
- (2) Whether the statement includes an accurate description of the held-back and/or mundane details of the crime that are not easily guessed, have not been reported publicly, and can be independently corroborated.
- (3) Whether the suspect's postadmission narrative "fits" with the crime facts and existing objective evidence.
- (4) In the case of multiple defendants, whether the codefendants' statements are consistent with one another.¹⁹

¹⁸ See, e.g., Leo et al., 85 Temple L. Rev. at 792; Fred Inbau et al., *Criminal Interrogation And Confessions*, 354, 358 (5th ed. 2013).

¹⁹ Ofshe & Leo, 74 Denv. U. L. Rev. at 990-97.

From the known facts, Petitioner's statement did not lead to the discovery of new evidence. For example, the Petitioner's statement includes information on where the gun was disposed of, yet it did not lead to the recovery of the gun allegedly used in the murders. The statement also did not provide an accurate description of the details of the crime that could be corroborated by physical evidence. For example, Petitioner's statement alleges that the third victim was sitting on a milk crate, but a review of the crime scene photos does not show a milk crate in the restaurant. Additionally, Petitioner's codefendant, Antonio Hudson, provided a statement that is not consistent with the Petitioner's statement. For example, Hudson indicated that the third victim was mopping the floors, which was corroborated by Officer Stanley Zakrzewski, who testified that upon arriving to the scene, that there was a mop bucket with a splattering of blood nearby.²⁰ The third victim could not be seated on the milk crate and mopping the floor. Based on these factors, the reliability of the Petitioner's statement is brought into question.

There was not a video or audio recording of the interrogation to determine the reliability of the signed statement. Instead, the reliability of the statement came from the testimony of the interrogating detectives. The alleged confession of the Petitioner includes a thorough discussion about previous robberies that the Petitioner was involved in. In Detective McDermott's testimony he states that he asked the Petitioner "[d]o you understand that you are now under arrest for three robberies that occurred in 1993 and 1994, specifically the Roy Rogers Restaurant at 401 Adams Avenue, on 8-19-93; a man on the highway at Tabor Road and Mayfair Streets; and a Rite Aid store at 728 Adams Avenue."²¹ This indicated that the interrogation was going to be about these

²⁰ *Commonwealth of Pennsylvania v. Phillips*, CP-51-CR-1100411-1994, N.T. 7/20/95 Hudson's Confession, #1 pg. 3-4.

²¹ *Commonwealth of Pennsylvania v. Phillips*, CP-51-CR-1100411-1994, N.T. 10/27/1994 Detective McDermott Testimony, pg. 12.

robberies and there was no mention of the homicide case that Petitioner allegedly confessed to later in the statement. Additionally, the robberies that occurred on Tabor Road and Mayfair Streets and the Rite Aid store were later determined to not involve the Petitioner after the victims stated that the Petitioner was not the individual who robbed them.²² The inaccurate facts provided in the signed statement highlight how unreliable the narrative of the confession is.

Based on the decades of research on false confessions and the hundreds of individuals exonerated based on false confessions, significant questions can be raised about the reliability and accuracy of the confession that the Commonwealth argues is sufficient to determine that the suppressed evidence is not material. The American legal system has long recognized that confessions must be corroborated by independent evidence to ensure their reliability. Despite Detective McDermott's testimony, which had inconsistencies within it, the other indicators of reliability for a confession are lacking. When further considering the confession in light of the Petitioner's age and the high risk of young adults falsely confessing, an even higher standard of corroboration is needed to confirm the reliability of a purported confession. In the absence of additional physical evidence linking Petitioner to the crime, and in light of the concerns surrounding the confession, serious consideration should be given to the possibility that the confession was false.

CONCLUSION AND PRAYER

For the foregoing reasons, Amicus respectfully urges the Court to examine with the utmost scrutiny the confession attributed to Petitioner, and to consider its unreliability in light of the well-

²² *Commonwealth of Pennsylvania v. Phillips*, CP-51-CR-1100411-1994, N.T. 2/24/25 pg. 60.

established scientific and legal principles outlined above and the presence of many of these issues in Petitioner's case.

Respectfully submitted,



Prof. Martin H. Tankleff, Esq.²³
Barket Epstein Kearon Aldea & LoTurco, LLP
666 Old Country Road, Suite 700
Garden City, NY 11530
(516) 745-1500
Mtankleff@barketepstein.com

²³ Undersigned counsel is not admitted to practice in the State of Pennsylvania. He is admitted to practice in New York State, the 2nd Circuit Court of Appeals, the D.C. Circuit Court of Appeals, the Eastern District of New York, the Southern District of New York, and the District Court of Washington, D.C.. If admission for *pro hac vice* is necessary for acceptance of this *amicus* brief is required, undersigned counsel will file all necessary paperwork upon notification from the Court. Additionally, counsel would like to acknowledge and thank M.R, a former Georgetown Law student who is now an attorney in New York City with her assistance in this brief.

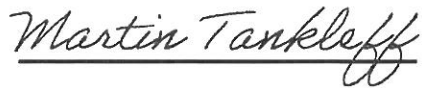
CERTIFICATE OF SERVICE

The undersigned counsel, hereby certifies pursuant to the Pennsylvania Rules of Criminal Procedure that a true and correct copy of the attached Amicus Curiae Brief has been mailed first class, postage prepaid on this 17th day of June 2025 upon the following:

Philadelphia Court of Common Pleas
1301 Filbert Street
Room 206, Motions Unit
Philadelphia, PA

Philadelphia District Attorney's Office
3 South Penn Sq.
Philadelphia, PA 19107

Damien Phillips CU9892
SCI Mahanoy
301 Morea Rd
Frackville, PA 17932



Martin H. Tankleff, Esq.