

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Honorable Doyet A. Early, III, Circuit Court Judge

CA No. 05-CP-18-1368
Appellate Case No. 2014-000387

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S.C. Supreme Court

KENNETH SIMMONS, SK5066 *Petitioner,*

v.

STATE OF SOUTH CAROLINA *Respondent.*

**BRIEF OF THE ARC OF SOUTH CAROLINA, ABLE SC, SCAAIDD, PROTECTION
AND ADVOCACY FOR PEOPLE WITH DISABILITIES, INC., AND FAMILY
CONNECTION OF SOUTH CAROLINA AS *AMICI CURIAE*
IN SUPPORT OF PETITIONER**

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STATEMENT OF INTEREST

The *amici curiae* are organizations dedicated to serving individuals, like Kenneth Simmons, who have intellectual disabilities.¹

The Arc of South Carolina is the state headquarters of the Arc of the United States.² A non-profit corporation with four chapters across South Carolina, the Arc of South Carolina is dedicated to ensuring that people with intellectual and developmental disabilities “are entitled to the respect, dignity, equality, safety, and security accorded to other members of society, and are equal before the law.”³

ABLE SC advocates for “[e]qual opportunities and rights” for all people with disabilities and provides services across twenty-three counties in South Carolina to individuals with disabilities to help them live more independent lives.⁴

SCAAIDD is the South Carolina chapter of the American Association on Intellectual and Developmental Disabilities. It is devoted to promoting “progressive policies, sound research,

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1. Many of the cited materials use the phrase “mental retardation” instead of “intellectual disability.” *Amici* use the phrase “individuals with intellectual disabilities” throughout this brief, unless citing a primary source, as it is presently the preferred term among mental health professionals. See generally Robert L. Schalock et al., *The Renaming of Mental Retardation: Understanding the Change to the Term Intellectual Disability*, 45 INTELL. & DEVELOPMENTAL DISABILITIES 116 (2007) (explaining that the change in terminology involves no change in definition). “Individual with intellectual disabilities,” for the purposes of this brief, means an individual who meets the clinical definition set forth by the American Association on Intellectual and Developmental Disabilities (AAIDD) and the American Psychiatric Association. Under this definition, intellectual disability is characterized by “significant limitations in both intellectual functioning and in adaptive behavior” and “originates before the age of 18.” Aaidd.org, *Definition of Intellectual Disability*, <http://aaidd.org/intellectual-disability/definition#.VhQgF26Hggd> (last visited Nov. 17, 2015).
 2. TheArc.org, *Mission Statement*, <http://www.thearc.org/who-we-are/mission-and-values> (last visited Nov. 17, 2015).
 3. Arcsc.org, *Core Values*, <http://www.arcsc.org/index.php/about/> (last visited Nov. 17, 2015).
 4. Able-sc.org, *About*, <http://www.able-sc.org/about/> (last visited Nov. 17, 2015).

effective practices, and universal human rights for people with intellectual and developmental disabilities.”⁵

Protection and Advocacy for People with Disabilities, Inc. (“P&A”) is a statewide, non-profit advocacy organization whose purpose is to promote the legal, civil, and human rights of people with disabilities. P&A is designated by state and federal law to serve as the protection and advocacy system for individuals with intellectual disabilities in South Carolina.⁶

Family Connection of South Carolina is a non-profit South Carolina corporation that provides family-to-family support for families of children with special healthcare needs and disabilities to “educate, inspire and empower families and their children to live rich, fulfilling lives.”⁷

Amici respectfully submit this brief to give the Court necessary background information regarding criminal cases involving defendants with intellectual disabilities. As this Court considers whether to grant Mr. Simmons a new trial, it should be aware that this case bears the classic signs of a false confession by a defendant with intellectual disabilities. As set forth in the briefs submitted by Mr. Simmons and the Innocence Project, the only evidence presented at trial linking Mr. Simmons to the crime was his false confession and DNA evidence that is highly problematic at best and fraudulent at worst. While the DNA issue is more thoroughly covered in other briefs, this brief focuses on the challenges and vulnerabilities faced by people with

5. Aaidd.org, *Mission*, <http://aaidd.org/about-aaidd/mission#.VgmaFX2Hgqd> (last visited Nov. 17, 2015).

6. Pandasc.org, *About*, <http://www.pandasc.org/about/> (last visited Nov. 17, 2015); S.C. Code Ann. § 43-33-310 to -400 (2015); Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §§ 15001-15009 (2000).

7. Familyconnectionsc.org, *About Family Connection*, www.familyconnectionsc.org/about-family-connection.html (last visited Nov. 19, 2015).

intellectual disabilities like Mr. Simmons, including the vulnerability to falsely confess to a crime while under police interrogation.

INTRODUCTION

Because individuals with intellectual disabilities “face a special risk of wrongful execution,” the United States Supreme Court held in *Atkins v. Virginia* that the Constitution prohibits the application of the death penalty to this uniquely vulnerable population.⁸ This special risk is due to several factors that tend to cause people with intellectual disabilities to “unwittingly” confess to crimes they did not commit.⁹ According to the Court, these factors include “diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.”¹⁰ Scientific research confirms that, because of these factors, individuals with intellectual disabilities are much more likely than typically developed individuals to falsely confess to a crime in response to police interrogation.¹¹

Since *Atkins*, several studies have further demonstrated that individuals with intellectual disabilities are at special risk of being wrongfully convicted, often because they give false confessions.¹² The list of cases in which confessions given by people with intellectual disabilities have been proven to be false is unfortunately long and shocking. Due in part to the

8. *Atkins v. Virginia*, 536 U.S. 304, 321 (2002).

9. *Id.* at 305, 320 n.25.

10. *Id.* at 318.

11. See Samuel R. Gross et al., *Exonerations in the United States 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 545 (2005); Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 970-71 (2004) (describing the “unique vulnerability” of individuals with intellectual disabilities to psychological interrogation techniques).

12. See Isabel C.H. Clare & Gisli H. Gudjonsson, *The Vulnerability of Suspects With Intellectual Disabilities During Police Interviews: A Review and Experimental Study of Decision-Making*, 8 MENTAL HANDICAP RES. 110 (1995); Drizin & Leo, *supra* note 11, at 971-73; Gross et al., *supra* note 11, at 545.

emergence of modern DNA evidence analysis, that list is also constantly growing. As just a few examples:

- In 1983, Earl Washington, a twenty-two year old man with an IQ of 69, confessed to the rape and murder of a nineteen-year-old woman. Washington gave four separate statements, each of which contained multiple inconsistencies with the facts of the crime—he did not know the location of the murder, the race of the victim, or that she had been stabbed more than thirty times. Washington was pardoned in 2001 after DNA evidence cleared him of the crime, and the true perpetrator pled guilty to the murder in 2007.¹³
- In 1987, Barry Laughman, a man with an IQ of 70, confessed to the rape and murder of an elderly woman after police interrogators told Laughman that his fingerprints matched a print found at the crime scene.¹⁴ The police claimed that Laughman knew information that could have been “known only to the killer,” but police interview notes suggest that Laughman was asked questions during the interrogation that may have introduced this information.¹⁵ In 2003, Laughman was released from prison after DNA evidence excluded him as the killer.¹⁶

13. See Innocenceproject.org, *Earl Washington*, <http://www.innocenceproject.org/cases-false-imprisonment/earl-washington> (last visited Nov. 17, 2015); Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & HUM. BEHAV. 3, 20-21 (2010). See also Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1064-65, 1076 (2010) (explaining that Washington had intellectual disabilities, readily confessed to the crime, and was later exonerated by DNA evidence).

14. Pete Shellem, *Who Killed Edna Laughman?*, The Patriot-News (June 1, 2003), available at <http://www.pennlive.com/news/laughman/stories/laughman02.html>.

15. *Id.*

16. Pete Shellem, *A Life Regained*, The Patriot-News (Nov. 22, 2003), available at <http://truthinjustice.org/Laughman-freed.html>.

- In 2000, a twelve-year-old named J’Nai Glasker was raped and murdered in her home in Detroit. Police subsequently obtained several confessions from Michael Gayles, an eighteen-year-old with intellectual disabilities and an IQ of 71. Gayles’ first confession was “nearly incomprehensible.” Police interrogators subsequently wrote three separate statements confessing to the crime, each of which Gayles signed. Gayles was almost immediately cleared of the crime by DNA evidence, which eventually identified a serial rapist as the culprit.¹⁷
- In 2010, Anthony Caravella was released from prison for a 1983 murder he did not commit. Caravella, who has an IQ of 67, gave four different statements confessing to the murder of a 58-year-old woman who had been stabbed twenty-nine times. The statements all contained inaccuracies—Caravella did not know how many people were present at the crime scene, the age of the victim, the height of the victim, or how she was killed. Caravella was cleared by DNA evidence in 2009 and released from prison shortly thereafter.¹⁸

Many of these cases are strikingly similar to this case: Mr. Simmons has an average IQ of 69, he gave multiple inconsistent “confessions,” his “confessions” did not match the facts and circumstances of the crime, and his “confessions” included bizarre and clearly fanciful elements.

17. Drizin & Leo, *supra* note 11, at 971-73.

18. See Innocenceproject.org, *Anthony Caravella*, <http://www.innocenceproject.org/cases-false-imprisonment/anthony-caravella> (last visited Nov. 17, 2015).

ARGUMENT

I. INDIVIDUALS WITH INTELLECTUAL DISABILITIES ARE ESPECIALLY VULNERABLE TO WRONGFUL CONVICTION FOLLOWING FALSE CONFESSIONS.

The strong connection between intellectual disability and false confessions has long been known. For example, the Report of the Task Force on Law of The President's Panel on Mental Retardation commissioned by President John F. Kennedy in 1963 ("President Kennedy's Task Force") noted:

A retarded person, even when not coerced in the usual sense, may be unable to understand police procedures and their consequences, and therefore be unable to make a genuine decision in relation to them. He is more likely than the average person to be unaware of his constitutional right to refuse to answer incriminating police questions, and of his right to consult with an attorney; even where the interrogator advises him of these rights, he may be unable to appreciate their significance The retarded are particularly vulnerable to an atmosphere of threats and coercion; as well as to one of friendliness designed to induce confidence and cooperation.¹⁹

More than 50 years later, we still see a high number of false confessions based on the same problems described by President Kennedy's Task Force.

Recent empirical studies have expanded on the research and show that individuals with intellectual disabilities are dramatically more susceptible to falsely confessing than typically developed people when confronted with interrogation. Behavioral experts explain that this is due to two factors: *first*, people with intellectual disabilities frequently possess certain personality characteristics that cause them to be suggestible, submissive, and unaware of the irreversible implications of offering a confession—conditions which cause them to be especially willing to comply with interrogators; and *second*, accusatory police interrogation is designed to exploit

19. The President's Panel on Mental Retardation, *Report of the Task Force on Law*, at Section VI (1963), available at <http://mn.gov/mnddc/parallels2/pdf/60s/63/63-ROT-PPMR.pdf>.

weaknesses possessed by people of average intelligence—thus, police interrogation tactics are especially powerful when used during interrogation of people with intellectual disabilities.

a. Empirical Studies Demonstrate that Targets of Interrogation with Intellectual Disabilities Falsely Confess at a Higher Rate than Individuals of Average Intelligence.

Recent empirical studies examining wrongful convictions conclude that people with intellectual disabilities are especially vulnerable to wrongful conviction. Although adults with intellectual disabilities make up only 0.5% of the United States population,²⁰ they make up slightly more than 4% of the nation's prison population.²¹ People with intellectual disabilities are even more disproportionately represented in wrongful conviction cases that included a false confession—studies indicate that at least 20% of all false confession cases where the suspect was later exonerated by DNA evidence involve adults with intellectual disabilities.²²

A 2005 survey of all exonerations in the United States between 1989 and 2003 showed similarly striking results.²³ Of the 340 cases examined, sixteen of the exonerees had intellectual disabilities—69% of these sixteen falsely confessed.²⁴ Meanwhile, among all other exonerees with no known intellectual disability, the false confession rate was only 8%.²⁵ From this over-

20. Matthew W. Brault, U.S. Census Bureau, *Current Population Reports, Americans with Disabilities: 2010* (2012), available at <https://www.census.gov/prod/2012pubs/p70-131.pdf>.

21. Michael J. O'Connell et al., *Miranda Comprehension in Adults with Mental Retardation and the Effects of Feedback Style on Suggestibility*, 29 L. & HUM. BEHAV. 359, 359 (2005) (noting that individuals with intellectual disabilities represent 4.2% of the prison population, which may be due to "the increased likelihood of arrest and conviction of those with [intellectual disabilities]").

22. See Drizin & Leo, *supra* note 11, at 971-73 (2004) (explaining that intellectual disability was present in 22.4% of DNA exoneration cases involving false confessions); Gross et al., *supra* note 11, at 544-46 (showing that twelve of fifty-one false confession cases, or 23.5%, involved intellectual disability).

23. See Gross et al., *supra* note 11, at 545.

24. *Id.* at 545.

25. *Id.*

representation of individuals with intellectual disabilities in false confession cases, it is clear that “[f]alse confessions are heavily concentrated among the most vulnerable groups of innocent defendants.”²⁶

The fact that individuals with intellectual disabilities tend to confess falsely at higher rates is especially troubling because of the drastically increased likelihood that the confessor will be wrongfully convicted. “[T]he introduction of a confession makes the other aspects of a trial in court superfluous, and the real trial, for all practical purposes, occurs when the confession is obtained.”²⁷ One study of false confession cases determined that 81% of false confessors who took their case to trial were wrongfully convicted, suggesting that “confession evidence is inherently prejudicial and highly damaging to a defendant, even if it is the product of a coercive interrogation, even if it is supported by no other evidence, and even if it is ultimately proven false beyond any reasonable doubt.”²⁸

Put simply, “it is easier to elicit a confession from a person with mental retardation than from an individual without mental retardation,” regardless of whether they are innocent.²⁹

26. *Id.*

27. *Colorado v. Connelly*, 479 U.S. 157, 182 (1986) (Brennan, J., dissenting) (“No other class of evidence is so profoundly prejudicial. . . . Because the admission of a confession so strongly tips the balance against the defendant in the adversarial process, we must be especially careful about a confession’s reliability.”).

28. Drizin & Leo, *supra* note 11, at 948-49 (2004). Another study indicated that false confessors are also highly likely to plead guilty. See Redlich et al., *Comparing True and False Confessions Among Persons with Serious Mental Illness*, 17 PSYCHOL. PUBL. POL’Y & L. 394, 411-13 (2011) (describing a survey of 35 mentally ill and disabled self-identified false confessors, where 80% of participants pleaded guilty to the crimes to which they confessed); Saul M. Kassin, *The Social Psychology of False Confessions*, 9 SOC. ISSUES & POL’Y REV. 25, 37-38 (2015).

29. Caroline Everington & Solomon Fulero, *Competence to Confess: Measuring Understanding and Suggestibility of Defendants with Mental Retardation*, 37 MENTAL RETARDATION 212, 213 (1999).

b. Individuals with Intellectual Disabilities Frequently Possess Personality Traits that Make Them Especially Vulnerable to the Inherently Coercive Tactics of Police Interrogation.

A growing body of research has explored why false confessions occur at dramatically higher rates among people with intellectual disabilities and how personality traits exhibited by individuals with intellectual disabilities cause them to be more inclined to confess to crimes they did not commit.

In 1963, President Kennedy’s Task Force recognized that people with intellectual disabilities are “less able than the average person to withstand normal police pressures.”³⁰ The Task Force’s report went on to attribute this phenomenon to “a desire to please authority” and further explained:

[I]f a confession will please, it may be gladly given [A]llowing others to place blame on him so that they will not be angry with him [] is a common pattern among the submissive retarded. It is unlikely that a retarded person will see the implications or consequences of his statements in the way a person of normal intelligence will.³¹

Since then, numerous studies have repeatedly drawn the same conclusion—because of certain inherent personality characteristics, there is a greater likelihood that people with intellectual disabilities “will respond to coercion and pressure compared to an individual of average intelligence.”³² Broadly, these qualities include the tendencies “to rely on authority figures for

30. The President’s Panel on Mental Retardation, *Report of the Task Force on Law*, at Section VI (1963), available at <http://mn.gov/mnddc/parallels2/pdf/60s/63/63-ROT-PPMR.pdf>.

31. *Id.*

32. See, e.g., Everington & Fulero, *supra* note 29, 212-13 (internal citations omitted). Often, intellectual disability is listed as a risk-factor for false confession, in part, because law enforcement officers are simply unaware that individuals may have intellectual disabilities. See Daniel W. Close & Hill M. Walker, *Navigating the Criminal Justice System for Youth and Adults With Developmental Disabilities: Role of the Forensic Special Educator*, 2 THE J. OF BEHAV. ANALYSIS OF OFFENDER & VICTIM TREATMENT & PREVENTION 74, 78 (2010) (“Experts in developmental disabilities often lament the lack of available knowledge and expertise that typically exists in the criminal justice system and which often accounts for abuse of persons with developmental disabilities with it.”). Studies indicate that this lack of awareness may further contribute to a disabled suspect’s vulnerability to falsely confessing. See generally Susan Young et al., *The Effectiveness of Police Custody Assessments in Identifying*

solutions to everyday problems; please persons in authority; seek out friends; feign competence; exhibit a short attention span; experience memory gaps; lack impulse control; and accept blame for negative outcomes.”³³ The desire to please others, “particularly those in authority,” creates a “bias toward providing a ‘socially desirable’ response [] so strong that many persons with mental retardation will literally tell the questioner whatever they perceive that he or she wants to hear.”³⁴ Studies have demonstrated that subjects with intellectual disability will often acquiesce to the questions of the interviewer, even in settings far less stressful than police interrogation:

When asked a yes/no question, the person with mental retardation is significantly more likely to answer “yes” regardless of the appropriateness of that response. This tendency is so strong that persons with mental retardation have been observed to provide affirmative answers to absurd questions. For example, in a study with a group of persons with mental retardation in Texas, [interviewers] found that 73% answered “yes” to the question, “Does it ever snow here in the summer?” and 44% to the question “Are you Chinese?”³⁵

Studies have also demonstrated that, as the linguistic complexity of a question increases, the likelihood of acquiescence also increases.³⁶ Furthermore, an individual’s degree of intellectual disability is directly proportional to their susceptibility to falsely confessing—as the severity of one’s disability increases, “suggestibility to leading questions and false information supplied by others increases.”³⁷

Suspects with Intellectual Disabilities and Attention Deficit Hyperactivity Disorder, 11 BMC MED. 248, 248-49 (2013).

33. Kassin et al., *supra* note 13, at 21.

34. Everington & Fulero, *supra* note 29, at 213 (internal citations omitted).

35. *Id.* (citation omitted). See also Christian A. Meissner et al., *Improving the Effectiveness of Suspect Interrogations*, 11 ANN. REV. L. SOC. SCI. 13.1, 13.4 (2015) (describing individuals with intellectual disability as having “the tendency to fantasize and difficulty in differentiating fact from fiction” (internal citations omitted)).

36. Everington & Fulero, *supra* note 29, at 213 (internal citations omitted).

37. *Id.* at 212.

Significantly, studies have also demonstrated that most people with intellectual disabilities typically “do not have a complete understanding of the *Miranda* warning and, thus, may not realize that a waiver of rights increases the likelihood of self-incrimination.”³⁸ One study demonstrated that “50% of people with mild mental retardation . . . could not correctly paraphrase *any* of the five *Miranda* components.”³⁹ In comparison, almost no individuals of average intellectual ability—less than 1%—had the same difficulty.⁴⁰ As a result, people with intellectual disabilities likely do not understand the irreversibly damning implications of falsely confessing and the high likelihood that they will be convicted and punished, even if the confession is the only evidence tying them to the crime.⁴¹ As one study concluded:

The harsh reality is that for mentally retarded suspects, the *Miranda* warnings cannot serve the instrumental functions for which they are intended—ensuring that confessions are the product of knowing, intelligent, and voluntary waivers of the right to remain silent, and not the result of the pressures inherent in custodial interrogation.⁴²

These factors, especially the inclination to acquiesce to an interviewer’s questions, dramatically increase the likelihood that a person with intellectual disabilities will falsely implicate himself during an accusatory police interrogation.

38. *Id.*

39. Kassin et al., *supra* note 13, at 21.

40. *Id.*

41. See Morgan Cloud et al., *Words without Meaning: The Constitution, Confessions, and Mentally Retarded Suspects*, 69 U. CHI. L. REV. 495, 499 (2002) (explaining that for people with intellectual disabilities, “the words of the [*Miranda*] warnings literally have no useful meaning” and that people with intellectual disabilities are not capable of understanding the consequence of waiving their *Miranda* rights).

42. *Id.* at 499. See also Kassin, *supra* note 28, at 41-42 (“Although *Miranda* is presumed to have provided a profound safeguard for people who stand accused, its benefits are unclear. For starters, many suspects lack the capacity to understand and apply these rights. Particularly problematic is comprehension among . . . adults who are mentally retarded.” (citation omitted)).

II. THIS CASE INVOLVES MANY OF THE FACTORS THAT INDICATE AN INCREASED RISK OF FALSE CONFESSION.

The record demonstrates that Kenneth Simmons possesses many of the personal characteristics that cause individuals with intellectual disabilities to falsely confess in response to police interrogation. Furthermore, the circumstances of his arrest, interrogation, and confession all indicate that skepticism and further examination are strongly warranted in this case. When considered in aggregate, these factors should give the Court pause and concern because they are strong indications that Mr. Simmons falsely confessed.

Most significantly, Mr. Simmons has intellectual disabilities. Repeated testing reliably indicates that Mr. Simmons has an IQ in the mid to high 60s. App. 4233. He is a “very low functioning individual” and has the mental capacity of “a second or third grader, seven or eight years old.” App. 1780:3, 1780:21-22.

Mr. Simmons was eager to please authority figures. Psychiatrist and defense expert Dr. Foxworth testified that Mr. Simmons will “agree when you don’t think he really understands [H]e tends to want to agree with just about anything he thinks that you want him to say or to agree with basically. I mean, he is very easily led.” App. 1517:21-1518:1. Dr. Foxworth also described Mr. Simmons as highly suggestible: “[T]here are times when he would almost ask you to give him the answer. He’d be like . . . what do you want me to say here.” App. 1519:18-21. Dr. Foxworth also testified that Mr. Simmons was eager to please or provide “correct” answers: “I was really struck by . . . his almost total lack of defensiveness. . . . I don’t think he is self-protective at all basically. . . . I think he’s submissive. You know, he wants you to smile at him. He wants you to show him that he’s doing okay, that he’s doing what you want him to do, and so forth.” App. 1538:25-1539:7.

In addition to his intellectual disability, Mr. Simmons possesses several other individual risk factors common in false confession cases, including memory problems and a history of blackouts. App. 4233.

The police investigation was flawed. More than a year elapsed between the murder and Mr. Simmons' arrest. Furthermore, the crime was particularly shocking and extensively reported in the local media in the small town in which Mr. Simmons lived. During this time, the police rounded up nearly thirty individuals. Mr. Simmons only became a suspect because of a police officer's hunch. App. 1252-54. Poor police work and the seemingly random targeting of the eventual false confessor are classic indications of an unreliable false confession.⁴³

The police interrogation was conducted in a fashion likely to elicit a false confession from a person with intellectual disabilities. Over a period of eight days, Mr. Simmons was interrogated six times. App. 4231. Interrogators repeatedly insisted that Mr. Simmons committed the murder, asking him leading yes or no questions to which he eventually acquiesced. App. 4223-33. A lengthy interrogation period is a shared characteristic of almost all false confession cases.⁴⁴ And again, as described above, individuals with intellectual disabilities are especially susceptible to stressful interrogation environments and likely to simply tell interrogators what they wish to hear.⁴⁵

The content of Mr. Simmons' incriminating statements bears many indications that his confession was false. Inconsistencies within a confession are a strong indication of a false confession, as the confessor does not have the first-hand knowledge required to compose a

43. See Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979, 986-87 (1997).

44. Redlich et al., *supra* note 28, at 3-4 (explaining that thirty-one out of thirty-four false confessions involved lengthy interrogations, "typically involving multiple interrogations over a period of days").

45. See *supra* Part I.a-b.

coherent narrative and is forced to guess at specifics.⁴⁶ These are mistakes that the true perpetrator simply would not make. Mr. Simmons gave multiple statements to police, each of which contained factually inconsistent, fictional, contradictory, or absurd information. App. 4231. Psychologist and defense expert Dr. Richard Leo characterized Mr. Simmons' initial statements as "bizarre, incoherent, and clearly false," as well as "inconsistent, contradictory, and [contrary to] the physical evidence." App. 4235. For example, Mr. Simmons' initial statements contained fictional characters named Shorty and Blackie. App. 4232. Simmons' ultimate confession contained many errors relating to essential facts about the crime. App. 4235-36. For example, Simmons stated that the murder happened on Friday night because he and his friend Derek always went to a club on Friday nights, but the victim was last seen alive on the following Saturday afternoon and the pathologist testified at trial that she was killed sometime on Saturday evening. App. 4235-36. Further, the victim's official cause of death was manual strangulation, but Simmons' confession stated that "she was beaten and made no mention of asphyxiation or strangulation." App. 4236. Simmons stated that he picked up the victim's telephone to call 911, but fingerprints taken from the only telephone inside the house did not match Simmons' fingerprints. App. 1175 ("The previously reported unidentified latent fingerprints from this case are not the fingerprints of Kenneth Simmons[.]").

CONCLUSION

In light of the special concern that Mr. Simmons, a person with intellectual disabilities, was wrongfully convicted, and for the reasons set forth in Mr. Simmons' brief and the brief of

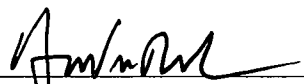
46. See Garrett, *supra* note 13, at 1088 (explaining that 74% of the false confessions given by DNA-exonerated defendants contained facts inconsistent with the facts of the case).

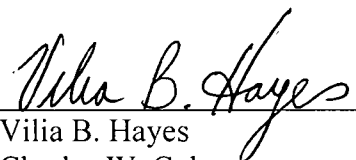
the Innocence Project, this Court should grant Mr. Simmons' request for a new trial.

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Respectfully Submitted,

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