

In one of our prior Investigator Tips, [Interrogation and Confession Judicial Decisions Organized by Subject Matter](#), we included a section entitled, *Court decisions re appropriate/permissible investigator statements*. Here are a few highlights of what the courts have stated to be acceptable investigator statements during an interrogation:

- ***"these things happen, it is ok"; "we don't believe you had any intentions of doing it" and "a tragic accident occurred"*** *US v. Hunter* (2012) the US District Court, E.D. Virginia
- ***"The easy way is, that you [are] up front and honest. The hard way is, you want to play the game. Okay. If you want to play the game... I have her story*** The statement that questioning could go the "easy way" or the "hard way" does not constitute a threat when the statement is viewed in context.... the detective explained, *People v. Frith* (2012) the Court of Appeal, Second District, California
- ***"This is your opportunity to tell the truth ... 'cause if you were with somebody and they did something stupid that you didn't know about, that's on them. Let them deal with that but don't make this about you by lying about it because you're only, not only trying to help yourself, you're trying to help the other person...?" "If you sit in here and lie about it, if you know that somebody did something wrong like that and you lie about it for them, that's helping them after the fact. That could cause you problems down the road."*** *People v. Flores* (2012) the Court of Appeals, 4th District, CA
- However, *"a police officer's exhortations to tell the truth or assertions that a suspect is lying do not automatically render a resulting confession involuntary." ... the contrary, "we think it eminently reasonable that police officers challenge criminal suspects' questionable explanations in their pursuit of the truth. In the Interest of P.G. v. State* (January 2015) the Court of Appeals of Utah
- *A promise to take the suspect home after questioning--not relating to ultimate charges or sentences for the suspected crime--is merely a collateral benefit that does not require automatic exclusion of the confession. Sparrow v. State* (2013) the Court of Appeals of Georgia.
- ***"There was no improper coercion here. It is no exaggeration to say that Sergeant Alexander came across more like a mentor than a police officer during the interview. He spoke about family, character, overcoming problems, accepting responsibility for wrongdoing, and becoming a better man. He urged Powell to "walk the righteous path," to "do the right thing," to "tak[e] control of your life." ... "But, at no point during the interview did either officer expressly or impliedly promise Powell that he might not be charged with, prosecuted for, or convicted of the murder if he cooperated. Under the circumstances, the officer's suggestion that it would be better for Powell to tell the truth and promptings to consider his future did not amount to a promise of leniency. ...People v. Powell*** (2012) Court of Appeal, First District, Division 3, California

- " '.....*Questioning may include exchanges of information, summaries of evidence, outline of theories of events, confrontation with contradictory facts, even debate between police and suspect....* Yet in carrying out their interrogations the police must avoid threats of punishment for the suspect's failure to admit or confess particular facts and must avoid false promises of leniency as a reward for admission or confession.... "Police trickery that occurs in the process of a criminal interrogation does not, by itself, render a confession involuntary and violate the state or federal due process clause. Why? Because subterfuge is not necessarily coercive in nature.... And unless the police engage in conduct which coerces a suspect into confessing, no finding of involuntariness can be made. *Bolton v. McEwen* (2011), the U.S. District Court, N.D. California,
- *Telling a suspect "that if he cooperated and told the truth, he would get more points off his ultimate sentence under the federal Sentencing Guidelines" was not a promise of leniency.* In *US v Delaney* (2011) the U.S. District Court of Appeals, Sixth Circuit found that such a statement did not render a confession inadmissible.
- *Telling a suspect that he is lying is not coercive.* In *Revis v. State* (2011) the Court of Criminal Appeals of Alabama upheld the admissibility of the defendant's confession..... This evidence supports a conclusion that the law enforcement officers were confrontational, but it does not support a conclusion that they were coercive. The Court of Appeals reversed, finding that "*Obviously, interrogation of a suspect will involve some pressure because its purpose is to elicit a confession. In order to obtain the desired result, interrogators use a laundry list of tactics. Numerous cases have held that questioning tactics such as a raised voice, deception, or a sympathetic attitude on the part of the interrogator will not render a confession involuntary unless the overall impact of the interrogation caused the defendant's will to be overborne.* "

"Few criminals feel impelled to confess to the police purely of their own accord without any questioning at all.... Thus, it can almost always be said that the interrogation caused the confession.... *It is generally recognized that the police may use some psychological tactics in eliciting a statement from a suspect.... These ploys may play a part in the suspect's decision to confess, but so long as that decision is a product of the suspect's own balancing of competing considerations, the confession is voluntary.*

- "Excessive friendliness on the part of an interrogator can be deceptive. In some instances, in combination with other tactics, it might create an atmosphere in which a suspect forgets that his questioner is in an adversarial role, and thereby prompt admissions that he suspect would ordinarily only make to a friend, not to the police.... "*Nevertheless, the 'good guy' approach is recognized as a permissible interrogation tactic.*" *State v. Parker*, the Court of Appeals of South Carolina
- The statements that the interrogator made that he had some "serious problems" and needed to do the right thing and help himself out by talking to them, and that he was facing "serious time," (Tr. 5/12/08 13, 20),-fall within the permissible bounds of psychological persuasion. These statements, informing petitioner of the possible repercussions of conviction, were not "so manipulative and coercive that they deprived

[petitioner] of his ability to make an unconstrained, autonomous decision to confess." The Court concluded that the defendant was properly Mirandized and was not coerced into giving a confession in violation of his Fifth Amendment rights. *US v. Zavala* (2008)

- "it is generally recognized that the police may use some psychological tactics in eliciting a statement from a suspect..... an investigator may "play on the suspect's sympathies or explain that honesty might be the best policy for a criminal who hopes for leniency from the state."
- In *US v. Sanchez* (2010) the US Court of Appeals, Eighth Circuit, overruled the trial court's decision to grant the defendant's motion to suppress incriminating statements. The Court of Appeals reversed, finding that "Obviously, interrogation of a suspect will involve some pressure because its purpose is to elicit a confession. In order to obtain the desired result, interrogators use a laundry list of tactics. *Numerous cases have held that questioning tactics such as a raised voice, deception, or a sympathetic attitude on the part of the interrogator will not render a confession involuntary unless the overall impact of the interrogation caused the defendant's will to be overborne.....* "[T]here is nothing inherently wrong with efforts to create a favorable climate for confession." *United States v. Santos-Garcia*, 313 F.3d 1073, 1079 (8th Cir.2002)."
- In *Moore v. Scribner* (2011) U.S. District Court, C.D. California rejected the defendant's claim that his confession was coerced by threats and lying about the evidence. From the court's opinion:
"Petitioner cites the following "threats" by Carr. During the first interview, Carr told Petitioner that his denials were "bullshit." ... Carr told Petitioner: "You're in deep trouble if you continue to feed me a line of bullshit." ... Carr also told Petitioner that because the police has physical evidence contradicting Petitioner's story, he was "kind of screwed." ... During the second interview, Carr told Petitioner he could "prove" Petitioner was at the scene of the crime... Carr added: "I don't believe you shot the man. What I do know is you're fucked unless you can come up with a reason and explain to me what happened." None of Petitioner's allegations rises to the level of a threat indicating Petitioner's confession was coerced. *Carr's statements that Petitioner was in "deep trouble," was "kind of screwed," and was "fucked" were designed to induce Petitioner to tell the truth. Carr did not threaten Petitioner with any specific consequence if Petitioner failed to confess.*
- In *U.S. v Kasey* (2007) the US District Court D. Arizona found that such statements as: "*You can help yourself out by telling the truth.*".... "*[T]his is probably going to be a 50-year-to-life-type count. You know you need to mitigate, try to help yourself out....*" "*And they'll give the benefit for standing up. Because that's the way the Federal system works for cooperation with the Government. That's the way it works. You get the benefits for doing that. It shows a truthfulness. Whether the truth hurts, you get a benefit for the truth, and the truth can hurt. It's not fun talking about this kind of stuff.*" "*You just need to make a decision if you want to do something like that to explain to the world why this went down. But it's up to you. I mean, this is to help you. It's not going to help me, I don't need the help.*"

"They're young like you are. They are trying to do whatever they can to rectify a bad situation and make it in their best interest, and I would do the same thing".

"There's just a huge amount of evidence and when we work with the Apache Detectives and us, that's the kind of cases we put together. And they're very thorough, very solid. So you're young, you need to do something that's going to help you out." The court stated, "A promise only vitiates consent if it is "sufficiently compelling to overbear the suspect's will in light of all attendant circumstances."... Reciting possible penalties or sentences does not render a statement involuntary.

- **Interrogating a suspect after continued denials is not coercive**

In *Murga v. State* (2012) the Court of Appeals of Texas upheld the admissibility of the defendant's confession, even though the defendant claimed his statements were coerced. In examining the circumstances surrounding the interrogation, the court reported that, "Both detectives testified they did not coerce or harass appellant into making a statement against his will and that appellant freely and voluntarily spoke to them; at no time did appellant ask to terminate the interview or state that he wanted an attorney. Appellant was offered necessities such as food, water, and bathroom breaks. The record reflects that appellant never complained that any lack of sleep or anything else rendered him unable to continue with the interview. *Lopez testified the method of interrogation the detectives used was not to accept appellant's denials and to continue the interview until appellant told the truth. Appellant was accused several times of lying when he denied committing the crime, and he was encouraged to tell the truth even when he was crying. There were long periods of time when appellant was in the interview room alone....* Although the detectives continued to encourage appellant to tell the truth after he denied involvement in the offense, they did not threaten or coerce appellant during the approximately five hours they actually interviewed him."

- In *People v. Smith* (2007) the interrogating officers administered to the defendant a "Neutron Proton Negligence Intelligence Test" that *purportedly* showed that the defendant had recently fired a gun. On appeal the defendant claimed that this was a coercive tactic. *In the California Supreme Court's opinion they stated, "Police deception "does not necessarily invalidate an incriminating statement."...* After examining the circumstances surrounding the "Neutron Proton Negligence Intelligence Test," it does not appear that the tactic was so coercive that it tended to produce a statement that was involuntary or unreliable.
- In *Reeves v. State* (2011) the District Court of Appeal, Florida, Fourth District found that the detectives' use of religion to encourage the defendant to tell the truth did not make the defendant's statements coerced. The trial court's parenthetical descriptions of Walker, Smithers, and McNamee are accurate. In each of those cases, *the Supreme Court and this court considered various religious references in the context of the totality of the circumstances and found that the confessions in those cases were voluntarily given and not coerced. Similarly in this case, the detectives merely played off the defendant's initial religious expressions of "God as my witness" and "The Lord's more powerful than anybody on this earth" to encourage him to tell the truth. "Encouraging or requesting a person to tell the truth does not result in an involuntary confession."*

- *Court rules that exhorting the defendant to be truthful so that "his sins would be forgiven" was not coercive.* In *State v. Phillips* (2010) the Missouri Court of Appeals, Southern District, upheld the admissibility of a confession after a four and one half hour interrogation, stating, in part, that "Missouri courts have found confessions to be voluntary which resulted from interrogations that lasted as long as or longer than Defendant's.

In this case, the defendant, objected to "Detective Hope's exhortation that he be honest so that God would forgive him of his sins. While the cynic may question the sincerity of the Detective's spiritual advice, these remarks clearly did not represent promises of worldly benefit, nor did they suggest that by confessing Defendant would be able to escape punishment or incur a lesser one.... *An appeal to a suspect's religious beliefs does not render his confession involuntary unless other circumstances indicate that his will was overborne, and Defendant in this case has put forth no such evidence.*"

- *Telling the suspect that the prosecutor will be advised of their cooperation does not constitute a promise of leniency.* In *People v. Carrington*, (2009) the Supreme Court of California upheld the confession that the defendant killed three people and examined each interrogation to assess the defendant's claims that she confessed due to promises of leniency.

In their opinion the Supreme Court stated that the "Defendant also contends that Detective Lindsay's assurances that the police merely were attempting to understand defendant's motivation in committing the crimes impermissibly coerced her to confess. *To the contrary, Detective Lindsay's suggestions that the Gleason homicide might have been an accident, a self-defensive reaction, or the product of fear, were not coercive; they merely suggested possible explanations of the events and offered defendant an opportunity to provide the details of the crime. This tactic is permissible.*" They also stated that "The statements made by the officers did not imply that by cooperating and relating what actually happened, defendant might not be charged with, prosecuted for, or convicted of the murder of Esparza. The interviewing officers did not suggest they could influence the decisions of the district attorney, but simply informed defendant that full cooperation might be beneficial in an unspecified way.