The Courts: Acceptable Investigator Interrogation Behaviors

Over the last 20 years we have published numerous court decisions on interrogation issues in an effort to keep our audience up to date with the courts' views as to acceptable and unacceptable interrogation behaviors.

In this Tip we have reviewed 114 court decisions as to what the courts consider to be acceptable investigator interrogation behavior. Please note: While these court decisions offer a representative sample of what the courts generally view as acceptable investigator interrogation behaviors there are undoubtedly exceptions, so every investigator should be sure to review court decisions in their jurisdiction.

Before detailing these court decisions we have listed the Reid Core Principles and Best Practices that all investigators should follow and that we teach at all of our training courses and have published in our books.

The Core Principles of the Reid Technique are as follows:

- Always treat the subject with dignity and respect
- Always conduct interviews and interrogations in accordance with the guidelines established by the courts
- Do not make any promises of leniency or threats of harm or inevitable consequences
- Do not conduct interrogations for an excessively lengthy period of time
- Do not deny the subject any of their rights
- Do not deny the subject the opportunity to satisfy their physical needs
- Exercise special cautions when questioning juveniles or individuals with mental or psychological impairments

Within any established procedure (medical, therapeutic, manufacturing, education, engineering, etc.) there are optimum or ideal conditions under which the probability of success is maximized. These optimum procedures are called "best practices." Because of uncontrolled or unanticipated events, it is not always possible to apply best practices within a procedure in every instance. However, a practitioner should always strive to utilize best practices when feasible.

The successful interrogation is one in which (1) the suspect tells the truth to the investigator and, (2) persuasive tactics used to learn the truth are legally acceptable. With these goals in mind, the following are a list of the **Reid Technique Best Practices** for applying the Reid Nine Steps of Interrogation, along with a brief discussion of each practice:

Conduct an interview before an interrogation. Absent a life-saving circumstance the investigator should conduct a non-accusatory, non-confrontational interview before engaging in any interrogation. During the interview the investigator can establish rapport with the suspect, assess their credibility, develop investigative information and establish a behavioral baseline. Also, during the interview the suspect is more likely to reveal information that can be used to develop an interrogation strategy.

Conduct an interrogation only when there is a reasonable belief that the suspect is guilty or withholding relevant information. The belief that a suspect is guilty of a crime or is withholding relevant information may be based upon investigative information, evidence, the suspect's demeanor, or verbal responses to interview questions. The investigator should avoid conducting an accusatory interrogation as a technique to separate innocent from guilty suspects.

Consider a suspect's behavior in conjunction with case facts and evidence. The assessment of a suspect's credibility during an interview will be enhanced and likely more accurate if it is based not only on the suspect's verbal and nonverbal behavior, but also on case facts (the suspect's established opportunity, access, motive and propensity to commit the crime) as well as forensic or testimonial evidence.

Attempt to verify the suspect's alibi before conducting an interrogation. The most efficient means to prove a suspect's innocence is to verify his or her purported alibi. Conversely, when it is determined that the suspect provided a false alibi, this finding offers support for the suspicion of the suspect's probable guilt.

There should be no barrier between the investigator and suspect within the interrogation room. A desk or table separating the suspect from the investigator provides the suspect a sense of security and confidence in not having his lies detected. This is obviously undesirable. Rather, the furniture within the interrogation room should be arranged in such a way that the suspect and investigator are facing each other about 4-5 feet apart without any physical barrier between them.

A single investigator should be the lead communicator. While it is often appropriate to have a third person in the room during an interrogation, perhaps as an observer or witness, there should only be one primary investigator communicating with the suspect at a time. A guilty suspect is more likely to offer a voluntary confession to a single investigator who has established a rapport and trust with the suspect. A tactic to be avoided is to have two or three investigators simultaneously bombarding the suspect with themes or alternative questions or working as a "tag team" wearing the suspect down over an extended period of time.

Do not threaten the suspect's well-being or make threats of inevitable consequences. It is clearly improper to threaten a suspect, directly or indirectly, with physical harm or pain. This would include threats directed at the suspect's family members or loved ones in an effort to obtain a confession. Similarly, an investigator should never attempt to falsely convince a suspect that he or she is in a helpless situation and that the only way to avoid an inevitable consequence is by confessing.

Do not offer the suspect promises of leniency. An investigator should not offer the suspect a

quid pro quo promise of leniency in exchange for a confession. In other words, there should be no promise that the suspect will receive a less severe punishment if the suspect confesses.

Do not make promises you cannot keep. There are many promises an investigator can make to a suspect which are proper and will not cause a confession to be suppressed. These are promises that can be kept such as including the fact that the suspect cooperated in a written report or a promise not to reveal to coworkers the suspect's confession. However, false promises jeopardize the admissibility of a confession. An example of a false promise is the investigator telling the suspect, "If you confess you can sleep in your own bed tonight," when, in fact, the suspect is taken into custody after confessing.

Do not deny the suspect his legal rights. An investigator is legally obligated to honor a suspect's rights whether it be a custodial suspect's Miranda rights, a military suspect's article 31 rights or, within the private sector, a union member's rights.

When interrogating a non-custodial suspect, do not deprive the suspect of his freedom to leave the room. The suspect's exit from the interrogation room should not be blocked by positioning the investigator's chair between the suspect's chair and the door. The room should not be locked from the inside (requiring a key to open the door) and the room should not be in an area that requires a key or pass code to exit the building. Finally, the investigator should not make verbal statements implying that the suspect is not free to leave the room, e.g., "You're not going anywhere until we get this clarified!"

Do not conduct excessively long interrogations. In most instances, if the suspect is still adamantly maintaining his innocence and has not made any incriminating statements or admissions after three to four hours of interrogation the interrogation should be re-assessed and possibly terminated.

Exercise extreme caution when interrogating juveniles, suspects with a lower intelligence or suspects with mental impairments. This class of suspect is more susceptible to false confessions and, therefore, the investigator should be cautious in utilizing active persuasion such as discouraging weak denials, overcoming objections or engaging in deceptive practices. Proper corroboration of a confession will be critical with this class of suspect.

When using interrogation tactics involving deception the investigator should not manufacture evidence against the suspect. Courts make a distinction between false verbal assertions, e.g., "We found your fingerprints in her bedroom." which are permissible and manufacturing evidence, which is not permissible. An example of manufacturing evidence is taking the suspect's fingerprints and transferring the prints to an evidence card which indicates that the prints were found in the victim's bedroom.

When a suspect claims to have little or no memory for the time period when the crime was committed the investigator should not lie to the suspect concerning incriminating evidence. While it is not uncommon for guilty suspects to feign memory loss, an overriding concern is an innocent suspect who experiences true memory loss for the time period when the crime was committed. Under this circumstance, if the investigator lies to the suspect about incriminating

evidence and the suspect confesses, it may be argued that presenting false evidence caused an innocent suspect to believe that he had committed the crime.

Do not reveal to the suspect all information known about the crime. A legally admissible confession should include corroboration. One form of corroboration is information only the guilty suspect would know, e.g., the method of entry in a burglary, a memorable statement made to a victim, the denomination of money stolen, etc. When interviewing a suspect or offering information to the news media, the investigator should carefully guard this protected information so that the only person who would know it would be the investigator and the person who committed the crime.

Attempt to elicit information from the suspect about the crime that was unknown to the investigator. The best form of corroboration is information not known to the investigator about a crime that is independently verified as true. Examples of independent corroboration include the location of a knife used to kill the victim, where stolen property was fenced or the present location of a car the suspect stole.

The confession is not the end of the investigation. Following the confession, the investigator should investigate the confession details in an effort to establish the authenticity of the subject's statement, as well as attempt to establish the suspect's activities before and after the commission of the crime.

In conclusion, failure to follow the best practices of the Reid Technique will not necessarily result in a false or inadmissible confession. However, if these best practices are followed there is an extremely high probability that a confession will be a true statement of guilt and that the confession will be admitted as evidence against the defendant at trial. Consequently, an investigator should always strive to follow best practices when utilizing the Reid Nine Steps of Interrogation.

Court Decisions

Confession voluntariness: ambiguous invocation of right to remain silent and rejection of claim of coercive police tactics; rejection of exhaustion claims

In *State v. Perdomo-Paz* [Missouri Court of Appeals, Western District] the defendant contended on appeal that he invoked his right to remain silent by referencing, in isolation, his statement that he did "not for real, man, no, but..." want to answer questions about a homicide. He argues that this statement required Detective Ray to immediately cease her interrogation. But our Missouri Supreme Court has stated that it does "not read Miranda searching for out-of-context sentences that support a preferred outcome." ... "Instead, courts must look to the full context of a particular statement in order to determine whether a suspect invoked his rights or not."

From the courts opinion: "At the beginning of the interrogation, Detective Allen read Perdomo-Paz his Miranda rights. Perdomo-Paz signed a Miranda waiver and began talking to Detectives Ray and Allen. Detective Ray asked basic informational questions. She then told Perdomo-Paz that she and Detective Allen were conducting a homicide investigation:

Det. Ray: Well, the reason we are talking to you, we're, uh, conducting an investigation, it's a homicide investigation. Okay, so, I just want to ask you a few questions about that. You cool with that?
Perdomo-Paz: What is, I mean [unintelligible], I mean, I don't know that ... [several seconds of silence]
Det. Ray: You fine with that, just talking about a homicide. Is that, is that....
Perdomo-Paz: I mean not, not for real, man, no, but....
Det. Ray: Why not?
Perdomo-Paz: I mean because when Kansas tried to talk to me about a homicide, you know, ... sometimes I couldn't even sleep ... that I know who killed somebody, [parts unintelligible]
Det. Ray: Okay, well, these are going to be easy questions, okay? Is that, is that fine? You okay with answering some easy questions? [several seconds of silence when Perdomo-Paz paused and then nodded his head affirmatively]

Detective Ray then began questioning him. Throughout the interrogation, Perdomo-Paz's story remained consistent: he went to a party on Noland Road in Independence at 9:30; "Carlos" drove him home; he was home by 1:00 a.m.; he stayed home the rest of the evening and did not go to any other parties that night.

Perdomo-Paz's response, "not for real, man, no, but ..." to Detective Ray's question whether he was "fine" with talking about a homicide was not a clear and unequivocal assertion of the right to remain silent. As we have stated under a similar fact pattern: [A suspect's] use of the conjunction "but" is an equivocation, which suggests that he was experiencing an internal conflict: while he did not want to talk about what had happened, other factors compelled him to do so."

The court went on to state: "Considering the totality of the circumstances, Perdomo-Paz's statement was not coerced. First, Perdomo-Paz was advised of his Miranda rights and signed a waiver, indicating that he understood them. Second, Perdomo-Paz claims that his statement was coerced because when he asked for water because his throat was dry and when he asked for a bathroom break, the detectives did not immediately give him water or allow him to use the restroom. However, shortly thereafter, the detectives gave him water and a bathroom break when he asked a second time. Third, the length of Perdomo-Paz's interrogation-three hours with a break -was not coercive. Missouri courts have held that continuous questioning for four hours is not coercive.... Fourth, while Perdomo-Paz told the detectives during the interrogation that he was tired and at times laid his head on his folded arms on the table, he did not demonstrate that he was so tired that he was unable to resist the questioning. A statement is not involuntary due to a defendant's tiredness when the interrogation is conducted at a reasonable time and the length of the interrogation is reasonable.... Additionally, the video-recorded interrogation (which has been viewed by this Court) contradicts Perdomo-Paz's claims of exhaustion by showing he was sufficiently alert and energetic to actively participate in exchanges with the detectives. Fifth, Perdomo-Paz claims that Detective Ray made sporadic statements to him that were "aggressive and demeaning." The Missouri Supreme Court has held that tactics such as "yelling, 'getting in his face,' and misleading" a suspect about whether his accomplice was making a statement implicating him were not impermissibly coercive where the

detectives did not touch the defendant or threaten him with any physical harm.... We conclude that none of the factors identified by Perdomo-Paz establish that he was deprived of his free choice to admit, deny, or refuse to answer the detectives' questions or that his will was overborne when he made the statement.'

Supreme Court of New Hampshire carefully examines the issue of confession voluntariness

In *State v. Cloutier* the Supreme Court of New Hampshire carefully examined the issue of confession voluntariness. The defendant claimed that her confession should have been suppressed because she was threatened with harsher punishment if she did not confess; the length of the interrogation was coercive; she was advised that her refusal to confess could result in false accusations against her daughter; and, the officers were, at times, "insulting and used profanity," suggested that her "medication 'affected her intellect,' " and that she was " 'not a true friend of [the victim].'

The Supreme Court upheld the admissibility of her incriminating statements. From the court's opinion:

"... the defendant argues that Plourde's statement, "[I]f we leave here today, ... [w]e'll handle it like we handle ... like somebody who's done this many times," constituted " 'a threat of harsher punishment should [she] remain silent,' " and asserts that the remaining circumstances of the interview "did not mitigate the effect of this threat." She contends that Plourde's threat, in combination with certain other circumstances, "foreclosed any rational conclusion that her confession was voluntary beyond a reasonable doubt." ... As to the first factor, the defendant contends that the nature of Plourde's statement constituted a threat of harsher punishment should she not confess.

... to the extent Plourde's single statement constituted a threat, it was not a threat "to inform the prosecutor or the judge of" the defendant's refusal to cooperate. ... Nor did his statement convey "an unmistakable message that [the defendant] would be punished" if she remained silent and failed to admit her involvement in the crime.... Indeed, it is unclear what Plourde meant by this single statement. Nonetheless, even were we to assume that Plourde's statement constituted some sort of threat, our review of the video recording discloses no indication that this statement overbore the defendant's will or had any impact upon her conduct during the interview so as to render her confession involuntary.

Our review of the record reveals no other factor that undermines the trial court's finding of voluntariness. Although the defendant was at the police station for nearly six hours, an interview of this length, in and of itself, does not render a statement involuntary. See Belonga, 163 N.H. at 356, 42 A.3d 764 (holding that six *17 and one-half hour interview did not render confession involuntary). What is of paramount importance is what occurred during the interview.... Here, there was no evidence that the defendant "needed or was deprived of food, medical attention, or sleep."

Further, as the trial court found, the defendant's demeanor on the videotape is consistent with finding her statements voluntary. The trial court found that she "look[ed] relaxed" and "appeared

lucid and self-possessed." She answered the officers' questions and made statements "in a normal conversational way," and did not appear "intimidated." Although at the end of the interview, the defendant began to "tear up and sob[ ]," this alone is not dispositive. As the trial court concluded, "the tears and the emotional disturbance" demonstrated "remorse," "not the sign of a person ... whose will has been broken." Absent overreaching, deception or coercion by the police, a defendant's emotional response to an interview does not render her confession involuntary.

The defendant also claims that the officers suggested that her refusal to confess could result in false accusations against her daughter. Under some circumstances a confession may be rendered involuntary because the police unreasonably exploit a person's compassion for a loved one.... For example, courts have held that a confession may be involuntary when police make threats to arrest a suspect's family members.... Here, however, the officers did not make such a threat. Rather, they merely questioned whether the defendant's daughter was involved after the defendant agreed that video surveillance would show her and her daughter "over there." Thus, this is not a case in which the police impermissibly used a defendant's compassion for a loved one to "extract a statement."

Finally, the defendant claims that the officers were, at times, "insulting and used profanity," suggested that her "medication 'affected her intellect,' " and that she was " 'not a true friend of [the victim].' " (Brackets omitted.) Although the officers were "not entirely friendly and sedate," .... the interview consisted mainly of questioning in a reasonable tone. To the extent the officers raised the defendant's use of medication, they did so as a possible reason for why they thought she may have taken the safe. Under the circumstances of the interview, the defendant could not have expected that her conversation with the officers would occur without any confrontation or intimation that she might be connected to the crime or questioning as to why she might be connected to the crime.

In this case, the evidence supports the trial court's conclusion that the defendant's statements were the product of a free and unconstrained choice..... Accordingly, we affirm the trial court's finding that the defendant's statements were voluntary.

Aggressive behavior does not lead to a coerced confession

In the case, In the Interest of *P.G. v. State* the Court of Appeals of Utah did not find the investigator's aggressive behavior during the interrogation to be coercive. From the court's opinion:

"…..the detective's persistence during P.G.'s interrogation does not undermine the juvenile court's finding that "[w]hile the detective's manner was rather aggressive at times it did not rise to the level of being coercive." For example, during P.G.'s interrogation, the detective repeatedly told P.G. that he already knew that P.G. sexually assaulted M.G., he refused to accept P.G.'s denials, and he shouted once at P.G. to "stop lying." 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." ... Here, the detective was not merely posturing. He had substantial evidence prior to the interrogation that

P.G. sexually abused M.G. M.G. had already told a school counselor, another school employee, and another detective about P.G.'s abuse. P.G.'s younger brother also told the other detective that P.G. had informed their mother about the abuse. Thus, although the interviewing detective was persistent and his interrogation techniques were sometimes aggressive, these facts do not serve to render P.G.'s confession involuntary.

…… although neither P.G.'s parents nor his attorney were present during his interrogation, these facts are not determinative…… P.G. did not request to speak to his parents or an attorney prior to or during the interrogation. Instead, after the detective read P.G. his Miranda rights at the beginning of the interrogation, P.G. affirmatively stated that he understood his rights and agreed to speak to the detective. Accordingly, the absence of P.G.'s parents or an attorney during his interrogation does not undermine the juvenile court's finding that his confession was voluntary."

Investigator's statement that it was time for the defendant to "come to Jesus" was not a coercive statement

In *Singleton v State* the Court of Appeals of Mississippi found that the investigators comment to the defendant that it was time to "come to Jesus" did not constitute a coercive statement. From the court decision:

"Singleton asserts that his confession resulted from pressure and intimidation from the investigators. Singleton testified that Investigators Ellis and Huddleston "play[ed] good cop and bad cop," which led to a feeling of intimidation. Singleton primarily contends, however, Investigator Ellis coerced Singleton into confessing when he made the remark that it was time for Singleton to "come to Jesus."

Singleton, a preacher for approximately fifty-four years, argues that Investigator Ellis took advantage of his religious beliefs by using Jesus to elicit a confession. The United States Supreme Court has held "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment."

The Connelly Court further held "the Fifth Amendment privilege [against self- incrimination] is not concerned 'with moral and psychological pressures to confess emanating from sources other than official coercion.' In fact, the Supreme Court has found that the use of religious references does not automatically render a confession involuntary.

In this instance, Investigator Ellis told Singleton that it was "time to come to Jesus" after the investigators played the tape-recorded conversation between Singleton and Daniel, and Singleton continued to deny his involvement with Daniel. Investigator Ellis testified his use of the phrase was merely to get Singleton to tell the truth in light of the incriminating evidence.

The Mississippi Supreme Court held that "[a] mere exhortation to tell the truth is not an improper inducement that will result in an inadmissible confession." While Singleton stated he found the remark offensive, Investigator Ellis testified he did not use any threatening or intimidating language or tone that would constitute coercion. This inducement to tell the truth without more

does not rise to the level of coercion. Thus, the religious reference did not render Singleton's statement involuntary."

Court rejects the claim that the Defendant's mental condition, medication, lack of medication or feelings of sadness and nervousness rendered her the statement involuntary

In *US v. Harper* the US District Court, W.D. Kentucky, upheld the defendant's incriminating statements that she had given to agents from the Social Security Administration Office of Inspector General office. From their opinion the court stated the following:
Defendant, Janet Harper, is charged in Count 1 of the Indictment with knowingly receiving and retaining stolen property of the Social Security Administration consisting of $82,468.02 in supplemental security income benefits. In Count 2 of the Indictment, Defendant is charged with knowingly executing a scheme and artifice to defraud themMedicaid Program by falsely representing her living situation and marital status. At the evidentiary hearing, Agent Baker, Agent Krieger, and Defendant testified that after the Defendant entered the interview room, the Agent informed her of her rights. Specifically, Agents Baker and Krieger testified that Agent Baker read the non-custodial rights form to the defendant that provided in part as follows: "You have the right to remain silent and make no statement at all. Any statement you do make may be used as evidence against you in criminal proceedings. You are not in custody. You are free to leave and terminate this interview at any time." Defendant signed the signature line on the form and printed her name below the signature line. Defendant acknowledged signing the form and being informed of her rights. In as much as Defendant argued in her initial motion to suppress that her statements should be suppressed as a result of a violation of her rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1965), the motion is denied.

First, the Court finds that Agent Baker and Agent Krieger did not trick Defendant into signing the statement admitting that she made false statements regarding her living arrangement in her applications for supplemental social security benefits. The Court finds that during the interview, Agent Baker informed Defendant he had reason to believe that statements given by her to the Social Security Administration over an 11-year period were false. Defendant admitted that those statements were false, and she voluntarily initialed the statements to acknowledge their falsity.

The Court finds that Defendant's mental condition, medication, lack of medication, or feelings of sadness and nervousness did not render the statement made by Defendant nor the signing of the statement in question involuntary. The Agents testified that Defendant's demeanor during the interview was calm and even-keel; she did not appear to be upset. She talked in a normal tone. Agent Baker testified that she did not appear to have any physical impairment, did not appear to be under the influence of any drugs or alcohol, and did not have any difficulty answering the questions. During the interview, Agent Baker questioned Defendant if she was under the influence of any drugs or alcohol, and she indicated that she was not. Further, the Agents testified that Defendant's behavior did not indicate that she had anything wrong with her mental state that would impair her ability to participate in the interview. The Court credits the Agents' testimony on this issue finding that Defendant was calm, alert, and responsive at the time of the interview."

A Bible in the interrogation room is not coercive

In *Mauldin v. Cain* the US District Court, E.D. Louisiana upheld the lower court's decision not to suppress the defendant's incriminating statements and to reject the suggestion that the presence of a Bible in the interrogation room was coercive. In their opinion the court stated that, "Contrary to Mauldin's argument, defense counsel raised the issue of the Bible in the chair next to Mauldin during the police interview. The record reflects that both the prosecutor and defense counsel questioned the officers about the Bible, described as a "little Gideon Bible" that was on the chair next to Mauldin and which could be seen in parts of the video. Sergeant Troy Tervalon testified that he placed the "small version" of the Bible in the chair before the interrogation started. He stated that he put it there so that Mauldin's "conscience would kick in, to tell the truth." He indicated that he said nothing to Mauldin about the Bible and placed it there before Mauldin was brought into the room. It was just a technique he used.
The record demonstrates that Mauldin's counsel did take issue with the presence of the Bible during the interview and included the argument to bolster the alleged coercive circumstances forming the basis of the motion to suppress the confession. Mauldin's suggestion otherwise is without factual support.

In addition, there is no law to suggest that the mere presence of the Bible would have been sufficient for counsel to establish coercion of the confession. See Williams v. Norris, 576 F.3d 850, 868–69 (8th Cir.2009) (references from the Bible and appeals to God are not alone coercive); Williams v. Jacquez, No. 05–0058, 2011 WL 703616, at *24 n. 19 (E.D.Cal. Feb. 19, 2011) (officers indicating during interview that the Bible instructs that a person tell the truth), order adopting aff'd, 472 F. App'x 851 (9th Cir .), cert. denied, —– U.S. ——, 132 S.Ct. 378 (2012).

Relief on this claim was properly denied by the state courts and the denial was not contrary to Strickland. Mauldin is not entitled to relief on this point."

Statement the defendant would be taken home if he was honest did not require exclusion of the statement

In *Sparrow v. State* the Court of Appeals of Georgia, found that telling the suspect that he would be taken home after the questioning if he was honest with the investigators did not make the confession involuntary. The court stated the following:

"On appeal, Sparrow argues that the trial court erred by admitting his confession because it was not voluntary. He points to Mann's promises of secrecy and that he would take Sparrow home after the interview if Sparrow was honest with him. But based on our review of the videotape, it is clear that Mann did not promise anything with respect to prosecution for the burglary. Mann had told Sparrow that he still needed to speak with the victim of the crime to determine what would happen next, thus, Mann's promise was merely that he would take him home after questioning and not that Sparrow would be free from future charges. 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...

Further, ... a promise of secrecy shall not require exclusion of the statement, so Mann's promise not to tell Sparrow's sister or his parole officer about the drug use does not render Sparrow's statement involuntary.

Statements during the interrogation telling defendant that he thought she was lying were admissible

In *Johnson v. Commonwealth* the Supreme Court of Kentucky upheld the lower court's decision to allow the jury to hear audio tapes of the defendant's interrogation in which they heard the investigator say he thought the defendant was lying. From the court's opinion:

"The recordings contained instances of a detective telling the Appellant that he thought she was lying... Appellant initially objects to the playing of the tapes because they contain repeated instances where the interrogating detective expressed his opinions about whether the Appellant was telling the truth about the circumstances of the victim's death. Specifically, he stated on tape that Appellant "put [the bruise] there" and "punched him in the back." As the interview progressed, Detective Allen appeared to express more frustration, yelling "I'm so sick ... of your bullcrap, bullcrap, bullcrap! You keep sitting there saying [that the police are] lying! When twelve jurors are sitting there, we'll see who's lying!"

.....Appellant pleaded with Detective Allen that she was telling the truth, to which Detective Allen responded "I'm not buying into that. I'm wasting my time ... two days interviewing you ... we've got enough for an arrest ... tell [your story] to twelve jurors.".

The issue with playing these audiotaped interrogations in their entirety, specifically the portions of them that contain statements made by a law enforcement official that suggest, if not explicitly state, that the officer believes that the defendant is lying, is very similar to a witness characterizing the testimony of another witness as "lying." It has long been the law of this Commonwealth that a "witness's opinion about the truth of the testimony of another witness is not permitted.... That determination is within the exclusive province of the jury..... Technically speaking, however, when an officer makes statements during an interview accusing a person of lying, neither the officer nor the person is a witness at that time. The question, then, is whether the principle in Moss extends outside the courtroom so as to make it unduly prejudicial to allow a jury to hear the portions of an interrogation of a criminal defendant wherein an officer accuses the defendant of lying.

This Court addressed this precise issue in *Lanham v. Commonwealth*, and held that such statements are admissible. In so holding, the Court decided that Moss did not extend to recordings of police interrogations and stated: We agree that such recorded statements by the police during an interrogation are a legitimate, even ordinary, interrogation technique, especially when a suspect's story shifts and changes. We also agree that retaining such comments in the version of the interrogation recording played for the jury is necessary to provide a context for the answers given by the suspect.'

Claim that the implication of a lighter sentence resulted in a coerced confession rejected

In *Van Jackson v. State* the decision by the Texas Court of Appeals, Austin, points out the value of investigators video recording the interrogation. In their decision the court stated that, "Jackson argues that the video proves that he was "fatigued, hungry, injured[,] and left isolated in a small room for some time" and that the detective induced his confession by suggesting that he might receive a lighter sentence if he was honest and apologized for robbing Rivas. However, the detective never made a positive promise to Jackson that he would receive a benefit by confessing. Rather, he told Jackson that juries want to hear defendants say they are sorry and that prosecutors want to know if defendants are cooperative, truthful, and apologetic. These general statements were not enough to render Jackson's statements involuntary.....

..... Although Jackson was arguably tired during the interrogation, the video shows that he was alert, coherent, and could answer the detective's questions. The detective's questioning lasted less than twenty minutes, and at no time was the detective threatening or overbearing.... Therefore, we conclude that Jackson's confession was voluntary, and the trial court did not err in denying Jackson's motion to suppress the confession. Jackson's second point of error is overruled.

Statements to the defendant that his denials were "bullshit" and that he was "kind of screwed" and that he was "fucked" were not threats

In *Moore v. Scribner* 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.

Petitioner argues that Carr's misrepresentations about the evidence constituted coercion. ... During the first interview, Carr told Petitioner there was "physical evidence" that placed Petitioner at the crime scene... When Petitioner asked what evidence, Carr did not respond... During the second interview, Carr said the police had lifted fingerprints from Bennett's apartment door and a glass table inside the apartment, and the fingerprints matched Petitioner's.... After Carr continued to push for a reasonable explanation, Petitioner finally stated that "[i]t was a robbery."

Standing alone, Carr's misrepresentations would be insufficient to render Petitioner's confession involuntary. Petitioner also argues Carr made promises of leniency. Petitioner argues Carr told

Petitioner that unless Petitioner gave a "reasonable explanation" for what occurred, he would be "fucked," whereas if he gave a reasonable explanation, he would be "set ... free." ... Petitioner's contention distorts the record. While Carr repeatedly asked for a "reasonable explanation"..., there is no evidence Carr promised leniency. Telling Petitioner that he's "screwed" or he's "fucked" if he does not cooperate... does not amount to a promise of leniency. Telling Petitioner that his "cooperation is gonna go a heck of a long way" is not a promise of leniency.

Interrogator's "empathetic and caring demeanor" was not coercive

In *People v. Powell* the Court of Appeal, First District, Division 3, California, the court upheld the admissibility of the defendant's confession, finding that "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." He touched Powell gently on the leg and shoulder and said he was a good person who never intended for someone to die. "[O]n that day you made a bad decision. But ... your decision was not as bad as the outcome. You're not a killer." He told Powell that he cared about him and his mother, and that he believed Powell was "put on this earth to excel and succeed in life. And, unfortunately, you're not, you are making decisions that aren't good up 'til this point. This could be a turning point." He urged Powell to help himself and "do what's best for you right now." He invited Powell to think about a future life, family and career "when this is all said and done...."

"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. They did not suggest that Powell could influence the decisions of the court or district attorney, but simply suggested that his truthfulness would be beneficial in an unspecified way. Indeed, Sergeant Alexander said he did not know what kind of charges would be brought and that those decisions were made by other people. 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. ..

Statements such as, "these things happen, it is ok"; "we don't believe you had any intentions of doing it" and "a tragic accident occurred" do not offer a promise of leniency

In *US v. Hunter* the US District Court, E.D. Virginia, upheld the lower court's decision to admit the defendant's confessions. "The facts and circumstances in this case establish that Hunter's statements were "voluntary" for constitutional purposes. Though still in her early twenties, the defendant was not a juvenile at the time of C.P.'s injuries or her interrogation. There is no evidence in the record that Hunter lacks education or has low intelligence. Neither Agent David nor Investigator Hampton harmed or threatened to harm Hunter if she did not answer their questions.

... "Of all the facts pertaining to the voluntariness of Hunter's statements, the most concerning are Agent David's intentional efforts to minimize the seriousness of the defendant's criminal exposure, which certainly had the potential to cause Hunter to discount her own assessment of

her jeopardy, as evidenced in her initial description of events. The defendant also claims that by making such statements as such as "these things happen, it is okay", "no one is going to fault you for it", "we don't believe you had any intentions of doing it", and "a tragic accident occurred" [Doc. No. 33], Agent David made an "implied promise" that if Hunter were to admit to shaking C.P., she (Hunter) would suffer no punishment. Likewise, the defendant argues that Agent David impermissibly induced her statements by suggesting that she (Hunter) needed to provide accurate details of how C.P. was injured in order to maximize the chances of C.P.'s recovery. Based on these and other statements, the defendant claims that overall, her will was "overborne" by Agent David's tactics and that her "capacity for self-determination was critical impaired," particularly when Agent David allegedly conditioned Hunter's ability to see her husband on her willingness to confess.

... "In this Circuit, only certain types of promises, when not kept, will render a resulting confession involuntary.... These promises are limited to explicit statements by the questioning official that he will do, or not do, a specific act, in exchange for the confession... Moreover, the cases that have suppressed statements on the basis of an implied promise involve promises that were compelling in terms of the consequences that would befall the defendant or those associated with the defendant.

,,, "Agent David's statements were not so much promises as they were opinions concerning the criminality of Hunter's conduct and how it would be viewed by others. While Agent David's repeated assurances that she understood how Hunter must have felt and that she (Agent David) believed the incident was an accident were no doubt persuasive and inducing, nothing in those statements constitutes a quid pro quo promise to Hunter in exchange for a confession. Based on all the facts and circumstances, the Court finds that that Agent David did not make a promise to Hunter that vitiates her confession.

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.

In *People v. Frith* the Court of Appeal, Second District, California upheld the admissibility of the defendant's confession, even though the defendant was told that the questioning could go the "easy way" or the "hard way" which he claimed was an implication of physical force. From the Court of Appeals decision:

Our review of the record reveals no substantial indicia of deception, undue pressure, or coercion by the detectives.... First, defendant's argument that Detective Durden's statement that questioning could go the "easy way" or the "hard way" implied the use of physical force takes the statement out of context. Directly after stating they could do it the easy way or the hard way, the detective explained, "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." Detective Durden went on to state there were always three sides to a story--his, hers, and the truth. Taken in context, it is clear the detective was exhorting defendant to tell the truth and even went so far as to indicate that he did not give defendant's story less weight than Breanna's. There was no threat, express or implied, in the detective's statements. A confession is not involuntary, where,

as here, "[the detective] did not cross the line from proper exhortations to tell the truth into impermissible threats of punishment or promises of leniency."

Defendant next argues that when Detective Durden suggested he was "shucking and jiving," defendant believed the detective was accusing him of lying and felt intimidated by the detective's tone and body language. Even aggressive accusations of lying do not amount to coercive threats absent threats of punishment or promises of leniency.... In Joe R., the court held that a minor's confession was voluntary even though the police accused him of lying "loudly, emphatically, and with terse language (e.g., 'bullshit')...." ...

Defendant does not claim to have suffered any language stronger than "bullshit," and as a 43-year-old man and a TSA officer, he was far less likely to have felt coerced by the implication that the officers believed he was lying than the 17-year-old boy in Joe R. Any implication by the detectives that defendant was lying does not invalidate his confession.

Court rejects claim investigators made "misleading and manipulative comments" that coerced the confession

In *People v. Flores* the Court of Appeals, 4th District, CA rejected the defendant's claim that the "Detective Rondou's comments during his interview "were calculated to make [him] believe he would be legally benefitted by explaining his role in the crime to them." .... To support his argument, Flores cites the following comments from the interview:

"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."

"[W]hatever you say in here is what you have to live with down the road. We've had a lot of guys that we talk to them like this and then, you know, things go the way that they go and then they sit there and they, they look at us and say, man, I wish I would have told you when I had the chance. You know, all of a sudden now they're sitting in court."

"This isn't new and I've had countless times, most of the guys tell me, but the guys that didn't, countless times when they've looked over at me in court, [ ]cause we're sitting with them at the table, damn man, I wish I had told you that day, and I look back and say, I told you to tell us that day. [P] ... [P] We gave you every chance and now look at you.... [W]e know you got caught up in some stuff that you weren't planning on doing.... As men, we put it on the table, we deal with it.... It's not the end of the world but you [sic] sitting in here lying. All that does is make us think you had a bigger deal in this, whether you were the one that planned this out or you had a bigger role than what you really did...."

"This is your chance to tell your side of the story. If you want to go with what other people told us it's not going to be good for you."

Flores cites these statements as some of the "misleading and manipulative comments" made to him. He argues "[o]ver and over [the] police extolled the benefits of telling them the truth, and stated that it was his last chance, his one and only chance to reap the benefits of telling the truth."

The officers' statements were permissible exhortations to tell the truth. It was not objectionable to emphasize the dangers of lying to the officers, which if later discovered, would damage Flores's credibility. As the Attorney General notes, the officers did not tell Flores he would receive any legal benefit if he told the truth and admitted his involvement. Statements suggesting a defendant has one chance to cooperate with the police and tell his version of the facts generally are permitted. (See United States v. Gamez (9th Cir.2002) 301 F.3d 1138, 1144 [officer's "comment that it would 'behoove' [defendant] to disclose what he knew about [the victim's] murder and that this was his 'last chance' to come forward does not amount to coercion"].)

The police can lie to a suspect by telling him that they are not recording the interrogation when they actually are

In *Evans v. Phelps* the U.S. District Court, D. Delaware, upheld the court's decision to admit the suspect's confession even though the police had lied to the suspect when they denied that they were recording the interrogation. From the District Court's opinion:

"In his second sub-argument, Petitioner contends that his due process rights were violated by the admission of the confession, because Lieutenant Jamison's untruthful remark that the interrogation was not being videotaped amounted to police coercion and rendered Petitioner's confession involuntary.

Petitioner presented both sub-arguments to the Delaware Supreme Court on direct appeal. The Delaware Supreme Court denied Petitioner relief, holding that: [I]t is clear from the videotape of [Petitioner] with Lieutenant Jamison that [Petitioner] was advised of his Miranda rights, and that [Petitioner] waived those rights knowingly, intelligently and voluntarily. Moreover, we agree with the Superior Court that [Petitioner's] inquiry of Lieutenant Jamison mid-interview as to whether the interrogation was being videotaped was not, as [Petitioner] argues, an invocation of his Miranda rights.

Here, Petitioner asked Lieutenant Jamison "Is this being recorded?" …. Lieutenant Jamison responded, "No. I will get you to write whatever you confess to." Id. Nothing in this exchange indicates an unambiguous request on Petitioner's part for counsel or an unambiguous invocation of his right to remain silent. Therefore, the Court concludes that the Delaware Supreme Court's denial of Petitioner's first sub-argument was based on a reasonable determination of facts, and was neither contrary to, nor an unreasonable application of, clearly established Federal law.

It was not a promise of leniency when the suspect was told he would "only be a witness if he had merely been present but had not been a shooter."

In *Thlang v. Jacquez* the U.S. District Court, E.D. California, upheld the Appeals Court's decision to reject the defendant's claim that "his statements after Detective Seraypheap urged him to be a witness rather than a suspect were involuntary and inadmissible because this was an implied promise of benefit or leniency which induced him to admit he was present at the shooting. In his view, the witness/suspect dichotomy was a false representation that admitting he was present "would result in his being a mere witness and not a suspect and his release from custody."

"As the trial court noted, defendant was strong-willed and was sophisticated about the nature of police interrogation tactics in a serious case. Detective Seraypheap had earlier told him that regardless of whether he did the shooting or not, "I'll tell you this right now, you can't get off the hook. You have to answer to it." After making the witness/suspect remark and before the incriminating admission, the detective told defendant that denying he was present "hurt[s] your case more." This, too, implies that there will be a case against defendant regardless of an admission of presence.

Court finds use of a videotape as a prop during an interrogation acceptable

In *People v. Lewis* the Supreme Court, Appellate Division, Fourth Dept., New York upheld the admissibility of the defendant's incriminating statements. On appeal the "Defendant further contends that one of his statements to the police was involuntary inasmuch as it was obtained as a result of police deception, i.e., the use of a videotape as a prop, and as a result of the conduct of the police in attempting to capitalize on the potential criminal liability of defendant's girlfriend. We reject that contention. "Deceptive police stratagems in securing a statement 'need not result in involuntariness without some showing that the deception was so fundamentally unfair as to deny due process or that a promise or threat was made that could induce a false confession' .... Under the circumstances of this case, the fact that the police used a videotape as a prop does not warrant suppression."

Interrogating a suspect after continued denials not coercive

In *Murga v. State* the Court of Appeals of Texas upheld the admissibility of the defendants 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.....

Viewing appellant's confession under the totality of the circumstances, we conclude the trial court's findings and conclusions that appellant's confession was voluntarily made and thus admissible are supported by the record. Appellant was informed of his Miranda rights, and he stated more than once that he understood his rights. 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."

Telling defendant length of punishment and misrepresenting evidence not coercive

In *People v. Riley* the Court of Appeal, Fourth District, Division 1, California upheld the admissibility of the defendant's confession even though the interrogator stated the possible punishment she was facing and misrepresented the evidence against the defendant. In their opinion the court points out the following:

"Riley contends she was coerced into confessing by Vasilis's promises of leniency in exchange for cooperation. Riley claims Vasilis's statement that they were discussing "something that could ... give you a, a sentence if you get to like youth authority till you're twenty-five or for life" was a promise to treat her as a juvenile if she confessed, or as an adult if she refused.

We acknowledge the weight of opinion condemning promises of leniency.... However, we reject Riley's assertion that Vasilis's comment amounted to such a promise. There is no indication in the record that Vasilis implied Riley would receive a juvenile sentence instead of a life term for cooperating, and Riley's assertion to the contrary is a mischaracterization. Vasilis stated the possible sentences Riley might face for murder, including incarceration in the youth authority until the age of 25 or life imprisonment, but did not suggest her confession would be a factor in determining the outcome in her case. ... he simply outlined the maximum sentences possible for her crime depending on her age, a distinction he made no claim of control over. A bare mention of consequences, absent some promise or threat, cannot overbear a defendant's will.... The evidence thus shows Vasilis's statements, however characterized, did not have a coercive effect upon Riley. Rather, Riley's internal guilt led to her confession.

Riley next claims her statements were involuntarily because Vasilis lied to her about the existence of surveillance video. We disagree. While "police deception is a factor to be taken into consideration" when determining whether a confession is voluntary, deception alone will not invalidate a confession..... Our courts have allowed numerous instances of police mendacity, including those "far more intimidating and deceptive" than those employed here..... Generally, deceptive interrogation techniques only cross the line when they are of a type "reasonably likely to procure an untrue statement." ... Put another way, deception only mandates reversible error when it overbears the will of the suspect to the extent that confession becomes preferable even to the truth. .

Promise to keep the suspect's name out of the media will not invalidate the confession

In *State v. Alaniz* the Court of Appeals of Texas (Corpus Christie) ruled that the trial court abused its discretion when it found that an improper promise induced Alaniz to confess. During the interrogation the investigator stated to the suspect "we were going to do our very best to keep

her out of the media."

The Court of Appeals stated that, "... the record supports a finding that Detective Lerma was explaining the policy of the police department to Alaniz, i.e., explaining how the department handled victims of alleged sexual assault... The trial court was unreasonable in isolating Detective Lerma's one statement made while articulating department policy and in concluding that because the one statement focused on Alaniz's concerns about the victim, it was a promise on the part of the detective that rendered Alaniz's confession invalid.

Furthermore, even assuming that Detective Lerma's statement was a promise, we agree with the State that there is no evidence that the promise induced Alaniz to confess or depended upon his confession. The court of criminal appeals has held that an " 'if-then' relationship [is] required to establish [such] a promise." .... "[T]here must be some indication that the police "induce[d] appellant to confess by implicitly or explicitly suggesting a 'deal, bargain, agreement, exchange, or contingency.' " ..... In other words, it is a promise made in exchange for a confession that is prohibited, not some free-standing promise untied to the decision to confess.

"Incessant questioning or demands to tell the truth" do not render a confession inadmissible

In *Bolton v. McEwen*, the U.S. District Court, N.D. California, upheld the trial court's decision to admit the defendant's incriminating statements. In their opinion the District Court outlined the following:

Bolton maintains that his statement to police should have been excluded as involuntary because the interrogation was lengthy, coercive, and included "incessant" demands to admit he killed Barfield. When an interrogation is recorded, as it was here, the facts surrounding the giving of the statement are undisputed, and we independently review the determination of the trial court on the ultimate issue of voluntariness.

" '.....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...."
Bolton first argues that the officers' "incessant" demands that he admit his involvement and their statements that they "knew" he did it rendered his confession involuntary and unreliable. Bolton's argument appears to be that he was coerced into confessing because the detectives were not being truthful about "knowing" that he killed Michelle. Police deception during interrogation, however, is not necessarily impermissible..... "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. [Citation.] 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.

Next, Bolton maintains that the detectives' "incessant" questioning during the "lengthy"

interrogation rendered his confession involuntary. Our review of the videotape of Bolton's interrogation reveals otherwise. The interrogation lasted for only two hours, hardly "lengthy." The detectives, though insistent at times, never threatened Bolton or even raised their voices. Bolton did not appear confused or exceptionally fatigued. Much of the detectives' questioning involved background information and the sequence of events on the evening of the killing. The detectives pointed out inconsistencies between his and J.'s statements, and questioned him about his improbable claim that "some dudes" attacked his wife, yet he failed to try to help her or call police.

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 that would nullify the confession

In *US v Delaney* the U.S. District Court of Appeals, Sixth Circuit found that such a statement did not render a confession inadmissible. In their discussion as to what constitutes an acceptable promise, the court stated the following:

"The first prong of the Mahan test asks whether the agents' statements were objectively coercive. A promise of leniency in exchange for cooperation may be a relevant factor in determining whether a confession was involuntary..... Nevertheless, such statements usually are permissible.... In general, such promises are coercive only "if they are broken or illusory." We have found that "promises to inform a prosecutor of cooperation do not, ipso facto, render a confession coerced."..... Similarly, promises "to recommend leniency" or "speculation that cooperation will have a positive effect" do not make subsequent statements involuntary. Here, the agents explained to Delaney that if he cooperated and told the truth, he would get more points off his ultimate sentence under the federal Sentencing Guidelines. They also explained that his chances of going home that day were greater if he cooperated. Certainly, the agents made these statements with the intent to compel Delaney to testify, but they were not false. The agents did not inform Delaney that he did not have to accept responsibility at that time to receive the sentence reduction, but the absence of this information does not render the statements illusory. Without more, these statements were permissible promises of possible leniency.

Telling the suspect he could help himself by telling the truth was not coercive)

In *Renteria v. Curry* the US District Court, E.D. California, upheld the trial court's admission of the defendant's incriminating statements. From the District Court's opinion:

At the hearing on the motions, the prosecutor played, and the court reporter transcribed, a tape recording of that interview. Representative of the statements he characterizes as improper promises of leniency are a detective's comments that he could help himself by telling the truth and being "totally forthright" because it would "really look bad to the jury if the evidence doesn't match what you're telling us," that "it's going to go a lot better for you" if he were to cooperate, and that "[w]e can't help you unless you're honest."

Representative of the statements he characterizes as improper threats of the death penalty are a detective's comments that "you need to help yourself right now because if you don't you're probably going down forever and you'll probably never see daylight again," that "the death penalty's not totally out of the question," and that "you're looking at a possible death sentence here." The record of the end of the interview shows that as a detective asked him to be "honest with us and tell us the truth" [Petitioner] interrupted him and said, "I want to talk to a lawyer." The detective replied, "I can't help you," and asked no other questions.

The court reject the defendant's claim that his confession was coerced by threats and promises, saying that "although Petitioner argues that the questioning was coercive, Petitioner presents no evidence that coercion led to Petitioner's statements or that Petitioner's will was overborne."

References to religion during an interrogation do not result in a coerced confession

In *Reeves v. State* the District Court of Appeal, Florida, Fourth District found that "we agree with the trial court's reasoning 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."

Reference to "God forgiving the suspect" did not render the confession involuntary

In *Harden v. State* the Supreme Court of Mississippi upheld the lower court's decision to find the defendant's confession voluntary. In their opinion the Supreme Court relates the following:

"In the audiotaped confession, Harden repeatedly denied that anything had happened with L.Q., before he finally confessed. Detective Zacharias told Harden that he was aware Harden was under a lot of pressure; Harden cried and stated that he might as well be dead. Detective Zacharias told Harden that as humans "we all make mistakes," have "weaknesses" and "at some point we all as men [must be] willing to step up to the plate and accept responsibility." The following exchange occurred:

Q: Do you believe in God?
A: Yeah, I believe in God.
Q: Okay, do you believe God forgives all?
A: Yeah, He forgives all.
Q: He does forgive all, doesn't He? No matter what your sins are, he forgives you doesn't He? But do you not also have to accept responsibility, as hard as it is for you right now? As a man, you need to step forward and accept forgiveness. But that forgiveness is not given easily. You have to meet half-way don't you? Right? And the only way is for you to accept

responsibility, for you to admit your weakness ...

The trial court found that Harden's statement was voluntary. The trial court noted Detective Zacharias's testimony that Harden had been emotional, that he had understood what was being asked, and that he had understood his rights. The trial court held that the statements regarding religion did not amount to coercion. The court found that there was nothing to indicate Harden did not understand what was going on, that he had a particular susceptibility to religious matters, or that he was overcome due to a lack of mental capacity."

Court upholds confession after suspect told he has two choices – cooperate and we will talk to the DA; don't cooperate and we will not talk to the DA

In *US v. Siler* , the U.S. District Court, E.D. Tennessee, agrees with the magistrate's decision when she found that during the interrogation of the defendant Investigator Ogle presented the defendant with two choices, either (1) cooperate, be charged with two burglaries, and the investigator would speak with the DA and the probation officer about the defendant's cooperation, or (2) not cooperate, potentially be charged with a "bunch of charges," and the investigator would not speak with the DA and the probation officer. The magistrate judge also found that one of the investigator's statements, taken in isolation, could constitute a promise of leniency, coupled with a threat of imprisonment. However, when the magistrate judge viewed that statement in the context of the entire interview and the whole of the investigator's conduct, the magistrate judge determined that it was not objectively coercive because the investigator repeatedly told the defendant he could not promise him anything except that he would go to the DA.

The defendant, on the other hand, asserts that he was presented with the following choices, either: (1) cooperate, not be charged with the burglary charges or a gun charge, and the investigator would speak with the DA and the probation officer about the defendant's cooperation, or (2) not cooperate, be charged with the burglary charges and a gun charge, and the investigator would not speak with the DA and the probation officer. The defendant also asserts that he made the inculpatory statements only after the investigator assured him he would not be charged.

In sum, the Court agrees with Magistrate Judge Shirley that the investigator promised the defendant that if he cooperated, the investigator would speak with the DA and the probation officer and, contingent upon the decisions of the DA and the probation officer, the defendant could receive drug rehabilitation and probation. The Court agrees with Magistrate Judge Shirley that, when the context of both interviews are considered, along with the whole of the investigator's conduct, Investigator Ogle did not threaten the defendant with immediate imprisonment versus promises of leniency dependent on the defendant's cooperation. Accordingly, because the investigator's promises of leniency were not illusory, did not threaten immediate imprisonment, and because the investigator did not promise the defendant that no charges would be brought against him if he cooperated, the Court agrees with the magistrate judge that the investigator's statements and/or promises of leniency regarding the burglary charges, drug rehabilitation, and probation were not objectively coercive."

Telling a suspect that he is lying is not coercive

In *Revis v. State* the Court of Criminal Appeals of Alabama upheld the admissibility of the defendant's confession, even though the defendant had claimed that his statements were the result of coercive techniques, including the fact that the police told him he was lying to them during the interrogation.

In addressing this issue the Appeals Court points out several cases that rejected the suggestion that telling a suspect he is lying is a coercive tactic:

"Moreover, any statements that the investigators made indicating that Revis was lying or accusing him of lying did not cross the boundaries of impropriety by becoming threats. See *United States v.. Artis*, [No. 5:10-cr-15-01, September 16, 2010] ___ F.Supp.2d ___, ___ (D.Vt.2010) ("[T]he only evidence that weighs in favor of a finding of involuntariness is the fact that three law enforcement officers questioned Mr. Artis, confronting him with evidence of his guilt and accusing him of lying after telling him that lying to them would be a crime. This evidence supports a conclusion that the law enforcement officers were confrontational, but it does not support a conclusion that they were coercive. See *Parsad[v. Greiner*], 337 F.3d[175] at 185 [(2d Cir.2003)] ('all custodial interrogations inherently involve pressure, and officers routinely confront suspects with incriminating evidence.')." See also *State v. Owen*, 202 Wis.2d 620, 642, 551 N.W.2d 50, 59 (1996)(the court found that Owen's claim that his statement was involuntary because of improper police tactics such as "good cop/bad cop" and confrontational questioning was without merit and stated, "The adoption of roles by the investigators and [the investigator's] accusation that Owen was lying and that he was responsible for [the victim's] death are not improper police procedures. Further, the fact that the investigator raised his voice and invaded Owen's space by getting close to him does not establish actual coercion."). See also *Estrada v. State*, 313 S.w.3d 274 (Tex.Crim.App.2010)(statement by Estrada, a youth pastor, to police in which he admitted impregnating and murdering a member of his youth group was not coerced and involuntary despite the use of the following interrogation techniques: accusing him of impregnating and murdering the victim, falsely telling his girlfriend that he had admitted to their allegations and then allowing the girlfriend to meet with him, telling him he was the central figure in the investigation, and accusing him of lying)."

Court rules that exhorting the defendant to be truthful so that "his sins would be forgiven" was not coercive

In *State v. Phillips* 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. See *State v. Smith*, 735 S.W.2d 65, 68 (Mo.App.1987) (holding defendant's confession to be voluntary when it came after six and a half hours in custody with intermittent interrogation); *State v.Simpson*, 606 S.W.2d 514, 517 (Mo.App.1980) (holding that continuous questioning for four hours is not coercive)."

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."

"[T]here is nothing inherently wrong with efforts to create a favorable climate for confession."

In *US v. Sanchez* the US Court of Appeals, Eighth Circuit, overruled the trial court's decision to grant the defendant's motion to suppress incriminating statements. The trial court had found that "the officers were angry and intimidating toward Sanchez, got close to Sanchez's face, yelled and badgered Sanchez, told Sanchez that he was "going to jail," and threatened Sanchez with charges of attempted murder and assault with a deadly weapon.... Additionally, the magistrate judge concluded that the officers' "threat of possible violent retaliation" by the victim's brother-who had a reputation for violence-was "particularly coercive in light of the fact Officer Rave knew Sanchez had younger sisters." .... Also, he found that the officers' showing Sanchez a picture of the victim's injuries "may have been a significant factor in overbearing the will of Sanchez, given his level of immaturity, low tolerance for resisting others' influence, and seeing his mother emotionally upset after viewing the graphic photograph of [the victim's] injuries."

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. *Astello*, 241 F.3d at 967 (internal quotations and citations omitted). "[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) (internal quotations and citation omitted)."

Suggesting defendant would receive counseling and lenient treatment if he admitted to the sex offenses did not invalidate the confession

In *State v. Douglas*, the Court of Appeals of Ohio, Tenth District, upheld the admissibility of the defendant's confession. In this case the "Appellant argues that Phillips rendered his confession involuntary by suggesting that he would receive counseling and lenient treatment if he admitted to the sex offenses. Assurances that a defendant's cooperation will be considered or that a confession will be helpful do not invalidate a confession, however."

"Appellant argues that his low intelligence and learning disability rendered his confession involuntary. The record does not establish that appellant's mental condition led to an involuntary confession. Although the psychologist who evaluated appellant recognized that appellant has difficulty with complex information and that his "passive, compliant style" may prevent him from seeking needed assistance, he also concluded that appellant has the "capability to understand concepts and principles" and "make a decision that is likely to be in his best interest."

(Defense Exhibit A.) Furthermore, the psychologist concluded that appellant is neither mentally ill nor mentally disabled.

"In addition, the totality of the circumstances establishes that appellant's will was not overborne and his capacity for self-determination was not critically impaired when he spoke with Phillips. ..... Appellant's videotaped confession shows that he comprehended Phillips' questions and was able to express his thoughts and recall his actions in a rational manner. Lastly, appellant was not new to the police interview process; Phillips had previously interviewed appellant on a different matter."

Telling the suspect that the prosecutor will be advised of their cooperation does not constitute a promise of leniency

In *People v. Carrington*, 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. Indeed, defendant understood that punishment decisions were not within the control of the police officers. As noted above, she said it "just depends on the judge and DA and how are they going to prosecute it." Under these circumstances, Detective Sherman's statement that he would inform the district attorney that defendant fully cooperated with the police investigation did not constitute a promise of leniency and should not be viewed as a motivating factor in defendant's decision to confess."

"You're digging a hole you're not gonna be able to get out of." "This is the one percent of the time, I tell you, if you keep quiet they're gonna hammer you." Discussion of what constitutes a threat

In *State v. Evans* the Supreme Court of New Mexico examined the defendant's claim that his September 18, 2005 statement to police, admitting culpability in the victim's death, should have been suppressed because the police used coercive tactics which rendered his statement involuntary. Specifically he claimed that the following statements made by the interrogator were coercive:

"You're digging a hole you're not gonna be able to get out of." "This is the one percent of the time, I tell you, if you keep quiet they're gonna hammer you."

"[I]f you leave it like it is, you're through...."

Defendant's interrogator made this statement after Defendant denied involvement in the killing:

"Just because you don't wanna be a rat, you're gonna be treated as a monster in court and you're never gonna get out of prison."

The Supreme Court then discussed what constitutes a threat:

"The critical difference in the case law between impermissibly coercive threats and threats which do not cross the line is in how credible and immediate the accused perceives the threat to be. Threats which the accused may perceive as real have been held to be impermissibly coercive. (holding that where defendant-inmate had a below-average IQ and had already received "rough treatment" by other inmates and was a convicted child murderer, a promise to protect him from further physical violence if he confessed amounted to a "credible threat" of physical violence). On the other hand, threats that merely highlight potential real consequences, or are "adjurations to tell the truth," are not characterized as impermissibly coercive. (holding that police threat to the defendant that the court would "hang [your] ass" if the defendant did not confess, a comment which was disputed by the State, did not render confession involuntary). It is not per se coercive for police to truthfully inform an accused about the potential consequences of his alleged actions.

Three of the four statements at issue here could be taken as threats: (1) "they're gonna hammer you"; (2) "you're through"; and (3) "you're gonna be treated like a monster in court and you're never gonna get out of prison." All of these statements lie between the two poles described above-the statements are more than adjurations to tell the truth, but less than credible threats of violence. "You're never gonna get out of prison" can reasonably be taken to refer to a potential life sentence-well within reality for a first-degree murder conviction, which is at issue in this case. "You're gonna be treated like a monster in court" appears to be a reference to the way those in court might perceive Defendant. The comment may be a stretch or an exaggeration, but it is not out of the realm of a real possibility. Agent Ness never specified what he meant by "you're through," or who he was referring to as "they" in "they're gonna hammer you." Both statements, taken in isolation, could be taken as a threat of physical violence. However, taken in context with the entire interrogation, where Agent Ness repeatedly communicated to Defendant that he was not interested in vengeance, and certainly not in physical vengeance, the statements-vague though they are-cannot credibly be taken to threaten Defendant with physical violence.

Our case law makes clear that deception is not coercive per se. ("[D]eception, in itself, is not a basis for ruling, as a matter of law, that a confession should be suppressed."). The degree of deception is but one factor to consider in deciding whether a confession was given contrary to the accused's free will. Considering the deception as one factor in our analysis, we must also consider Defendant's probable reaction to those statements. At the time of the confession,

Defendant was a 30-year-old man who, in the district court's words, was "in full control of his faculties," and who had prior exposure to the criminal justice system. Agent Ness made veiled and somewhat ambiguous threats to Defendant, but unlike the "mentally dull" teenage defendant in *Payne v. Arkansas*, or an illiterate defendant with mental retardation, as in *Culombe.* Defendant had an adult capacity to sort exaggerated tough talk from real threats. There is certainly a point at which police threats, promises, or deception, would cross the line into coercion, but that line has not been crossed here."

Court rejects claim of threatening statements

In *State v. Neal* the Court of Appeals of Arizona upheld the trial court's decision to admit the defendant's confession. The defendant claimed that he confessed as a result of threatening statements made to him during the interrogation. The court found that:

"Here, the statements made by police to which Defendant's counsel objected included, "Before you go down the path of not being able to set things straight and us going to the prosecutor and saying hey, [']he wants to beat around the bush and all this craziness,['] then you are looking at other things," "When this story comes out, ultimately, who will you be insulting is the person who [,] who reviewing the case-who is the prosecutor" and "If Jarvis didn't tell us everything, then that is something we are going to have to report." Tempe Police Department Detective Trent L. (Detective L.) testified that such statements were designed to communicate that "[t] he prosecutor was going to indeed review the case, and that the evidence as it sat" did not include Defendant's version "as to what happened inside the store that evening." Defendant testified he believed that if he did not confess, "the punishment was going to be harsher." The trial court and this court reviewed a recording of the interrogation and concluded that "there was no conduct on the part of the police that served to overcome the defendant's will or there were no promises, no threats, no coercions, no force."

Defendant claims confession was coerced because interrogator was sympathetic, understanding and tried to justify his criminal act – court upholds confession

In *State v. Parker*, the Court of Appeals of South Carolina stated that "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 the suspect would ordinarily only make to a friend, not to the police." *Miller v. Fenton*, 796 F.2d at 604 (3d Cir.1986), cert. denied, 479 U.S. 989, 107 S.Ct. 585, 93 L.Ed.2d 587 (1986). "Nevertheless, the 'good guy' approach is recognized as a permissible interrogation tactic." Id. (holding confession

admissible despite interrogating officer's "supportive, encouraging manner ... aimed at winning [appellant's] trust and making him feel comfortable about confessing."). See also *Beckwith v. United States*, 425 U.S. 341, 343, 96 S.Ct. 1612, 48 L.Ed.2d 1 (1976) (interrogator had sympathetic attitude but confession voluntary); *Frazier v. Cupp*, 394 U.S. 731, 737-38, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969) (confession voluntary when petitioner began confessing after the officer "sympathetically suggested that the victim had started a fight.")."

No quid pro quo bargain

In *Harris v. State* "Harris claims that his admissions were obtained through police trickery, and the detectives "delude[d]" him by minimizing the dangers of admitting to the assault and robbery and threatening to prosecute for first-degree premeditated murder on the basis of statements allegedly made by other defendants." The Court of Appeals found that "the detectives did not make promises or threats that coerced Harris into confessing. Rather, they made general statements, such as, that a witness had identified Harris and that Harris faced significant jail time. They did not offer a quid pro quo bargain for a confession. See *Philmore v. St*ate, 820 So.2d 919, 928 (Fla.2002) (finding that statements suggesting leniency in interview are objectionable only if they amount to express quid pro quo deal). Nor did the detectives indicate that murder resulting from a robbery is any less serious than intentional murder. They only inquired as to whether the boy had planned a robbery, as opposed to having grabbed the victim off the bike to intentionally beat him to death."

Court rejects claim that lies, threats and promises coerced a confession

In *US v. Freeman* the Defendant claimed that his will was overborne by a number of factors, including the interrogators' use of the following lies, threats, and promises. "Over the course of the interview, SA Bogle suggested to the accused that everyone makes mistakes and the best thing to do is admit it and get it behind you. He promised the accused that if he cooperated, they could tell his commander about it and it might help. On the other hand, he told the accused, if you don't tell the truth, the case will go downtown and with a civilian victim you could get five years in jail. When the accused denied being out that night, SA Bogle lied to him and told him a witness saw him out. He also told the accused that his fingerprints were found at the scene." The Court found that "Viewing all the facts taken together, we agree with the Court of Criminal Appeals that they were not "so inherently coercive as to overcome the appellant's will to resist."

Statements 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," fall within the permissible bounds of psychological persuasion

In *US v. Zavala* the court stated that, although it is possible to find involuntariness based on psychological coercion, "it is generally recognized that the police may use some psychological tactics in eliciting a statement from a suspect." The question to be answered when such tactics are used is whether they 'were so manipulative or coercive that they deprived [the suspect] of his ability to make an unconstrained, autonomous decision to confess.' However, 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."

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," ……, 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.

False imprisonment – why it is important for the investigator not to block the employee's access to the interview room door

In *Asay v. ALBERTSONS, INC.* the U. S. District Court (D. Oregon) found that an employee's claim of false imprisonment was not substantiated by the facts of the case. One of the primary elements that the Court considered was the positioning of the investigator in relation to the employee (plaintiff) during the questioning. Specifically, the court stated, "Even considering the facts in a light most favorable to plaintiff, Poe's statements or actions did not serve to actually restrain plaintiff. Poe did not position himself in a way to "block" the door, and though plaintiff alleges that she did not feel free to leave, plaintiff acknowledges that this was because she did not want to lose her job, not because she felt physically restrained from leaving."

Continued exhortations to tell the truth and references to religious beliefs do not render a confession inadmissible

In *State v. Blank* the Supreme Court of Louisiana relied on the videotape of the interrogation to uphold the admissibility of a confession the defendant claimed was coerced as a result of the interrogator's references to the defendant's deceased mother, appeals to his emotions and religious beliefs, as well as repeated exhortations to tell the truth. The court stated the following:

While defendant's factual allegations are accurate, he does not show that any of the state's conduct coerced his admissions or rendered the confession involuntary. Our review of the videotapes and the verbatim transcript does not show the officers exercising any type of coercion which would at all indicate that this confession was involuntary. To the contrary, the vast majority of the interview was extremely benign on the part of the officers and Blank was treated very well throughout. In response to defendant's specific examples of coercive conduct, it is evident from the record that defendant did not request food during the interview, during which, notably, none of the interrogators stopped to eat a meal. Despite intermittent statements expressing fatigue and or physical discomfort, defendant never requested to terminate the interview. Moreover, for the most part, officers accommodated defendant when possible, providing him drinks, allowing him to use the restroom and heating the interrogation room. While at first the officers denied defendant's request to smoke, after he smoked a cigarette while he was alone in the bathroom, they continued to let him smoke, and he was allowed to smoke before he confessed to any crimes.

As to the references to defendant's deceased mother, appeals to a defendant's emotions and/or religious beliefs typically do not render an ensuing confession involuntary. Defendant also

claims that the officers' relentless exhortations that he tell the truth in conjunction with false suggestions indicating that they possessed forensic evidence of his guilt, illegally coerced the confession. Defendant claims that during the interrogation, officers used the word "truth" no less than 30 times, including several communications in which they urged that he answer their questions truthfully. Courts have routinely held that a mild exhortation to tell the truth, or a remark that if the defendant cooperates the officer will "do what he can" or "things will go easier," will not negate the voluntary nature of a confession.

In this situation, defendant fails to show the existence of coercion rendering the statement involuntary.

Offer to work with police in exchange for favorable recommendation to prosecutor upheld

In *State v. Moore* the Washington Court of Appeals ruled that:

"Here, the trial court found that the offer to Moore (to work with the police in exchange for a favorable recommendation to the prosecutor) was made post-Miranda, but not necessarily before or after the confession (which was also post-Miranda). A mere promise of leniency, without more, is not enough to invalidate a confession. *State v. Riley*, 19 Wn. App 289, 297-98, 576 P.2d 1311 (1978). At best, all that was promised here was a recommendation of leniency, which was offered in exchange for informant work, not for the confession. Because no evidence of coercion for a confession is in the record, the findings of fact support the conclusion that the offer did not invalidate Moore's confession.

US District Courts upholds admissibility of incriminating statements even though subterfuge was used as to the purpose of the interview

In *US v Rosen* the US District Court, E.D. Virginia found that the incriminating statements made by the defendants were admissible even though the investigators misrepresented the reason for the interview and even indicated at one point that the interviews did not relate to a criminal investigation. In their decision the court stated, "No Supreme Court or Fourth Circuit decision has ever suppressed a defendant's statements on the sole ground that false statements by law enforcement officers to the defendant rendered the statement involuntary. At most, courts consider police deception or trickery as one factor to consider in a totality of circumstances assessment of voluntariness."

What constitutes a promise of leniency?

In *U.S. v Kasey* the US District Court D. Arizona examined the issue of what statements constitute a promise of leniency that would render a confession inadmissible. They 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.

Here, the agents told Defendant that she could help herself by telling her version of the events. There is nothing in the interview transcript to indicate that the agents said or did anything to overbear Defendant's will. Merely stating that Defendant should "help herself by telling her story" is not sufficiently compelling to overbearing her will by offers of leniency. Furthermore, Defendant states that she confessed to prevent others, who had nothing to do with the murders, from being charged. At no point in the interview did Defendant indicate that she confessed because the agents promised leniency or that her confession was in exchange for a lighter sentence. Nor do the agents state that they are offering Defendant a lesser sentence in exchange for her confession. Finally, the agents' recital of possible prison sentences does not render Defendant's statement involuntary."

California Supreme Court upholds the use of deception

In *People v. Smith* 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." (*People v. M*aury (2003) 30 Cal.4th 342, 411, 133 Cal.Rptr.2d 561, 68 P.3d 1.)

Courts have repeatedly found proper interrogation tactics far more intimidating and deceptive than those employed in this case. (See, e.g., *Frazier v. Cupp* (1969) 394 U.S. 731, 739, 89 S.Ct. 1420, 22 L.Ed.2d 684 [officer falsely told the suspect his accomplice had been captured and confessed]; *People v. Jones* (1998) 17 Cal.4th 279, 299, 70 Cal.Rptr.2d 793, 949 P.2d 890

[officer implied\ he could prove more than he actually could]; *People v. Thompson* (1990) 50 Cal.3d 134, 167, 266 Cal.Rptr. 309, 785 P.2d 857 [officers repeatedly lied, insisting they had evidence linking the suspect to a homicide]; *In re Walker* (1974) 10 Cal.3d 764, 777, 112 Cal.Rptr. 177, 518 P.2d 1129 [wounded suspect told he might die before he reached the hospital, so he should talk while he still had the chance]; *People v. Watkins* (1970) 6 Cal.App.3d 119, 124-125, 85 Cal.Rptr. 621 [officer told suspect his fingerprints had been found on the getaway car, although no prints had been obtained]; and *Amaya-Ruiz v. Stewart* (9th Cir.1997) 121 F.3d 486, 495 [suspect falsely told he had been identified by an eyewitness].) Indeed, at least one Court of Appeal has approved of the particular practice used in this case. (*People v. Parrison* (1992) 137 Cal.App.3d 529, 537, 187 Cal.Rptr. 123 [police falsely told suspect a gun residue test produced a positive result].)

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.

Court outlines acceptable interrogator behavior

In reaching their decision to deny the motion to suppress the defendant's confession in the case *US v Jourdain* the court outlines acceptable interrogator behavior. In their decision they state, "As our Court of Appeals has recognized:

To state the obvious, “interrogation of a suspect will involve some pressure because its purpose is to elicit a confession.” [*United States v. Astello*, 241 F.3d 965, 967 (8th Cir.2001), cert. denied, 533 U.S. 962 (2001)]. “[T]he fact that the tactics produced the intended result * * * does not make a confession involuntary.” Id. at 968. In other words, ‘there is nothing inherently wrong with efforts to create a favorable climate for confession.” United States v. LeBrun, 306 F.3d 545, 555 (8th Cir.2002)(internal citations omitted. “ ‘[Q]uestioning tactics such as a raised voice, deception, or a sympathetic attitude will not render a confession involuntary unless the overall impact of the interrogation caused the defendant's will to be overborne.’ “ Astello, 241 F.3d at 967 (quoting *Jenner v. Smith*, 982 F.2d 329, 334 (8th Cir.1993)). Nor will a promise of leniency, an “expressed disbelief in the statements of a suspect * * *, or lie[s] to the accused about the evidence against him” necessarily render a confession involuntary. *Wilson v. Lawrence* County, 260 F.3d 946, 953 (8th Cir.2001) (internal citations omitted). Rather, the coercive conduct must be “such that the defendant's will was overborne and his capacity for self-determination critically impaired.” *Astello*, 241 F.3d at 967 (internal citations omitted). As was true with Kelly's statements in Graves' vehicle, we find no responsible basis upon which to conclude that the Defendant's will was overborne by the questioning techniques that were employed by Peterson, or because of any of Kelly's individual characteristics."

Accident scenario (self-defense)

Court rules confession voluntary even though defendant was told that if the baby’s death was the result of a 100% accident he would probably go free

In *Hayes v. Plumley* the US District Court, S.D. West Virginia upheld the admission of the

defendant’s incriminating statement that he caused the death of an eighteen-month-old child and rejected his claim that the confession was the result of coercion. From the District Court’s opinion:

Petitioner claims that his limited admission to his role in R.M.'s death was coerced by law enforcement. Detectives coaxed the statement at issue from him during a two and one-half hour interview held on October 4, 2010, the day following R.M.'s death. The interview took place in the kitchen of the South Charleston Police Station, where Petitioner agreed to be interviewed, acknowledged his understanding that he was not under arrest and free to leave at any time, and executed a waiver of his Miranda rights.

Given their view of the evidence, the detectives presented Petitioner's predicament in terms of two options: he could either continue to feign ignorance and, from his silence, be treated as a remorseless killer, or otherwise confess to an accident resulting from a brief fit of rage or lapse in judgment and receive mercy. As the interview proceeded, Petitioner became obviously intrigued by the idea that confession to an accidental injury could result in a less severe sentence. He asked the detectives if he would be “put away” if R.M.'s injuries were accidentally inflicted. It is the detectives' subsequent attempts to distinguish between an accidental, as opposed to a deliberately inflicted, injury which Petitioner claims amounted to coercion. He finds the following two portions of dialogue particularly objectionable:

Q: ... If it's an accident, we would deal with it. Accidents happen all the time.
A: And you'd still put me in jail.
Q: That's not true. If an accident happened, an accident happened. Accidents happen all the time. I investigate lots of accidents.
A: And do those people still do time?
Q. No. There's a difference between an accident and something with malice....

Later on, Petitioner again pressed the detectives to tell him the “best case scenario” if he admitted knowledge of the circumstances surrounding R.M.'s death:
A: I'm saying what is a judge going to do to me?
Q: I ... I will tell you if we go in there and you tell him that this baby was a hundred percent fine ... when you put her in the car seat[,] [a]nd you showed up ten minutes later with this much damage ... they're gonna' say you' re just a fat liar and ...
Q: I'm saying that it's an accident.
A: ... If it's a hundred percent an accident, it'll be a completely different story.
Q: That's what I want to know.
A: If it was a hundred percent an accident, you would probably be free to leave once it's dealt with. You might get charged with lying to us at the beginning of this because you ... you had no ... you shouldn't have done that.

Reviewing this transcript, the magistrate judge concluded that while the interviewing detectives “certainly emphasized the positive aspects of Hayes providing a statement describing R.M.'s death as accidental ... the detectives never unambiguously promised that Hayes would receive a lesser sentence or would not be criminally charged for R.M.'s death.”

A detective's truthful statements about a suspect's predicament "are not the type of 'coercion' that threatens to render a statement involuntary."... The detectives arrived at the interview armed with evidence clearly pointing to Petitioner's culpability. Met with his incredible claim of ignorance, the detectives did not coerce his admission to an accidental event by merely pointing out the harsher reception he would face if he continued to deny the obvious. As the Supreme Court has recognized, "very few people give incriminating statements in the absence of official action of some kind." .... Moreover, drawing Petitioner's attention to the potential legal consequences of his actions was not patently coercive. "[T]elling the defendant in a noncoercive manner of the realistically expected penalties and encouraging him to tell the truth is no more than affording him the chance to make an informed decision with respect to his cooperation with the government."

Furthermore, the Court simply does not accept Petitioner's assertion that he believed the detectives to be promising immediate release in exchange for an inculpatory statement. The detectives told Petitioner that regardless of the content of any confession, he would be processed, presented before a magistrate, and then left to "work it out with the prosecutor." They acknowledged that his admission to any involvement in the child's death might result in him being "put away," but that the "putting away part [would] be a lot worse for somebody who shows no remorse."... Petitioner's own statements during the interview prove that he was acutely aware of the risks before him and belie his current assertion that he inculpated himself with the belief that he would not be criminally charged. Immediately following their discussion of the difference between accidental and malicious acts, Petitioner remarked, "[y]ou're going to take me and process me any way it goes." ... The detective agreed, admitting that Petitioner's imminent arrest was "[m]ore than likely." ... Again, Petitioner acknowledged his understanding, stating, "[w]hen I leave here today, it's going to be in handcuffs." ... He even asked before offering the critical statement which one of the detectives would take him "downtown" for booking.

Furthermore, even if the detectives' statements highlighting the benefits of confessing to an accidental incident constituted implied promises of leniency, the surrounding circumstances do not indicate that Petitioner's "will [was] overborne or his capacity for self-determination critically impaired." ... Petitioner maintained an awareness throughout the interview that the evidence inexorably pointed to him as the one who caused R.M.'s injuries and appeared to be weighing the benefits of implicating himself in an accidental, as opposed to a purposeful, event. And for the detectives' best efforts, Petitioner never offered an account of the alleged accident that comported with the medical evidence....

In light of the countervailing contextual factors, the Court does not believe that the detectives' suggestion that Petitioner would not serve prison time if R.M.'s injuries were purely accidental overcame his capacity for self-determination. Therefore, the Court FINDS that Petitioner has not met his burden to demonstrate that his limited—and subsequently discredited—admission to injuring R.M. was involuntary.

Suggesting to the defendant that the stabbing death was self-defense does not render the confession involuntary

In *Fundaro v Curtin* the US District Court, E.D. Michigan, denied the defendant's claim that his

confession should have been found to be involuntary because the police suggested that the stabbing was self-defense. From the court's opinion:

"Petitioner's sole claim is that the statements he made to police after his arrest were involuntary and should have been suppressed because the interrogating officers misrepresented the consequences of admitting to the homicide. He claims that the officers told him that his conduct constituted self-defense and therefore he did not have anything to worry about by cooperating. The trial court held an evidentiary hearing on the claim in which the officers in question and Petitioner testified. After the hearing, the trial court issued an opinion finding that Petitioner's confession was voluntary and a product of his own free will. The Michigan Court of Appeals upheld this decision. Respondent argues that the state court adjudication of Petitioner's claim reasonably applied the established Supreme Court standard, and therefore habeas relief is not warranted.

The test for the voluntariness of a statement to the police is whether the confession [is] the product of an essentially free and unconstrained choice by its maker[.] If it is, if [the suspect] has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process.

Here, the evidence presented at the pretrial hearing indicted that Petitioner was informed of and waived his Miranda rights. Petitioner did not contest that he told the officers that he was willing to talk to them after he was read his rights, and he did not claim that he invoked his right to cut-off questioning during the interview. Petitioner was familiar with the criminal justice system and police questioning, having been involved with investigations from 2007-2009.

The officers participating in the interview denied that they made any threats or promises to Petitioner in exchange for his cooperation. Petitioner appeared to the officers to be coherent, understood what was happening, and answered questions logically. During the initial interview by Sergeants Troy and Wittebort, which lasted from 7:45 p.m. until 9:00 p.m., Petitioner denied any involvement at all in the death of the victim. The officers suggested that perhaps the victim attacked him because a hammer was found near his arm.

Mistretta told Petitioner that he did know anything about the facts of the homicide. He explained that he was telling Petitioner that he should cooperate because if he didn't, then the officers would not hear his side of the story and consider that Petitioner may have acted in self-defense. Petitioner then claimed that the shop owner came at him with a hammer so he stabbed him in self-defense.

The record supports that state court's decision that Petitioner's statement to the police was voluntary. "Ploys to mislead a suspect or lull him into a false sense of security that do not rise to the level of compulsion or coercion to speak are not within Miranda's concerns." So while it is true that a promise of leniency can render a confession coerced depending on the totality of the circumstances, ... here there was no promise of leniency made to Petitioner. The officers merely informed defendant that if what he did was self-defense then it was in his best interests to say so. While Petitioner testified that he understood the officers to be saying that he did nothing wrong, their testimony shows that they made no such representation. Rather, the statements were

conditional: if Petitioner acted in self-defense, then he should explain his side of the story. The statements did not inform him that he in fact acted in self-defense. In light of this, Petitioner's choice to give his version of events was reasonably construed by the state courts to be the product of an essentially free and unconstrained choice by Petitioner…… The police did not promise Petitioner that his story would exonerate him, only that the interview was his opportunity to share it. The state court decision that Petitioner's statement was voluntary therefore did not constitute an unreasonable application of the established Supreme Court standard.

Georgia Supreme Court rejects the idea that a suggestion that the shooting was an accident constitutes a hope of leniency

In *Smith v. State,* the Supreme Court of Georgia held that statements by the police detectives during a custodial interrogation to the effect that shooting the victim was an accident in response to the victim lunging at the defendant did not constitute a slightest hope of benefit that could render defendant's confession inadmissible. From their opinion the Supreme Court stated the following:

"At the time appellant made a statement to police, he was under arrest for the Perez robbery and suspected of the two other crimes. He was given his Miranda rights before the interrogation commenced and he waived those rights. Within the first twenty minutes of the interrogation, appellant admitted that he shot Justin Patel at the BP station. During the discussion of the BP incident, the police told appellant that there was a surveillance tape showing that the victim lunged at appellant before appellant shot him. The police made statements to appellant to the effect that the shooting was an "accident" in response to the victim lunging at appellant and appellant eventually made inculpatory statements.... Appellant contends the trial court erred in admitting the videotaped confession into evidence because he contends it was induced by the slightest hope of benefit "as the hope of lighter punishment was clearly implied by the [detective's] excusable accident theory," in violation of the former OCGA § 24–3–50. We disagree.

"A hope of benefit generally arises from 'promises related to reduced criminal punishment—a shorter sentence, lesser charges, or no charges at all.' [Cit.]" ... At no point did detectives tell appellant that he would not be charged with murder, that he would be charged with a crime less than murder, or that he would receive lesser punishment if he confessed. In fact, appellant understood that he would be incarcerated for his actions because he twice asked about obtaining a bond and made statements to the effect that he knew he was going to jail. Under these circumstances, there was no violation of OCGA § 24–3–50."

Investigator's statement that felony murder would receive a lesser sentence than premeditated murder did not render confession involuntary

In *State v. Turner* the Nebraska Supreme Court held that misinformation by police officers during the defendant's interview that felony murder would receive a lesser sentence than premeditated murder did not overcome defendant's will so as to render his confession involuntary based on purported promises of leniency. From the court's opinion:

“Turner argues that his confession was involuntary because it was induced by an implied promise that he would receive a lesser sentence if he confessed that the shooting was accidental. As evidence of this implied promise, he points to Ficenec's statements that it made “a big difference” how and why the shooting occurred and to Krause's statement that the possible penalty could be 1 to 10 years' imprisonment if the shooting was accidental. He claims that these statements constituted an implied promise of leniency which overcame his will and caused him to confess. He further argues that the officers' statements were deceptive because first-degree murder encompasses felony murder— which does not require a showing of malice, intent, or premeditation.

Turner is correct in his assertion that the officers deceived him during the course of the interview at the parole office. Ficenec's statements as to there being “a big difference” how and why the shooting occurred, and specifically Krause's statement that Turner could get 1 to 10 years' imprisonment if the shooting was accidental, incorrectly indicated that felony murder would receive a lesser sentence than premeditated murder.....

We have previously noted that a deceptive statement regarding possible sentences is only one of several factors to be considered. In *State v. Thomas*, we determined that the defendant's confession was voluntary and not caused by misinformation regarding possible sentences due to the presence of three factors. These factors included that (1) the officers returned to previous themes between the discussion of possible penalties and the defendant's confession, (2) the defendant indicated a knowledge that he could receive life imprisonment for the crime both before and after his confession, and (3) the confession occurred after an officer indicated that he did not know what sentence would be imposed.

... As in Thomas, Turner's confession did not follow the discussion in which the officers misrepresented that a lesser sentence would be imposed for felony murder. Rather, his confession was immediately preceded by the officers' return to the prior theme of Turner not being a bad, evil person; Krause's exhortation to “do the right thing”; and the colloquy regarding Turner's belief in God and the fate of his soul. Thus, the dialog immediately preceding Turner's confession supports the conclusion that his confession was primarily motivated by remorse and a desire to do the right thing—not to receive a lesser sentence.

As to the second factor we identified in Thomas, Turner indicated both before and after his confession that he was aware he could receive a sentence of life imprisonment. Before Turner confessed at the parole office, he stated, “Man, I'm going to get life for this shit.” And after he confessed and was transferred to the police department, Turner stated to Coleman, “I'm about to get like, life.” Thus, this factor indicates that Turner did not believe his confession precluded him from receiving life imprisonment.

Finally, like the defendant in Thomas, Turner confessed after officers stated that they did not know what sentence would be imposed. In response to Turner's statement, “I'm going to get a hundred years,” Ficenec replied, “I can't tell you what the potential penalty could be. I mean I'm not going to bullshit you. Could you potentially get life? Is that a possibility? I mean, I'm not a

judge, I'm not a prosecutor." And during the colloquy immediately preceding Turner's confession, Krause stated, "I don't know, okay?" in response to Turner's assertion that he "might be in jail for a long-ass time." Thus, although they incorrectly indicated that felony murder would receive a lesser sentence, the officers made no representations as to what sentence Turner would receive if convicted. This factor supports the conclusion that Turner's confession was not motivated by a belief that he would receive a particular sentence.

Accident versus intentional act was a "red herring" but not coercive

In *Walker v. Davis* the US District Court, E.D. California, upheld the lower courts finding that the defendant's confession was not coerced by the investigators. "Petitioner argues that the criminal justice system naivete of her client, when juxtaposed with the skill and persistence the interrogators utilized in questioning over a three-day period, made for a due process violation, i.e., an involuntary number of damaging admissions.

Defendant's argument centers on representations from the detectives during the interviews on October 23 and 24. On October 23, Detective Tyndale informed defendant that she failed the polygraph examination, and he was having a hard time with whether she intentionally caused the child's death. He told her that people would forgive a mistake, but if someone made a mistake and was not honest about it, "people aren't as forgiving." He also said: "I don't think you're someone who would intentionally kill a child.... [P] ... [P] But if there was something that happened that was an accident, ... [P] ...[P] that's what you need to tell me. 'Cause otherwise the detective[']s gonna think you did do something on purpose."

Later, Detective Tyndale told defendant he would like to design a polygraph test she could pass, and he would have to explain to Detective Jason why she did not pass the polygraph. Detective Tyndale repeatedly asked defendant if the child's death was an accident, and continued: "When you tell me what it was, that's how I'm gonna design the polygraph test.... [P] ... [P] Because if it's an accident, that's what people understand. Especially when you're sorry for it. When you don't tell the truth, people don't believe you're sorry."

Detective Tyndale continued this line of questioning, assuring defendant he believed the killing was accidental, and telling her: "if you tell me the truth, I promise you're gonna pass the test. If it was an accident, I can show that. But you gotta be honest with me about it." He repeatedly promised defendant that if she told the truth, he would develop a test she could pass. He also told defendant, "You know, what kind of person would kill a small child on purpose? Are you that kind of person?"

Detective Tyndale then told defendant he knew she was "worried" and "scared" as someday "12 people sitting in a jury" would be looking at her, wondering whether she did it on purpose or it was an accident. He reiterated that it would be important for him to "walk out of here and be able to go up to Detective Jason and say, she's telling me the truth? She did it, but she didn't do it on purpose. It was an accident." As the interview wound down, he told defendant she took on more children than she could handle, and "I can help you show that it was an accident." By the end of the interview, defendant admitted she accidentally killed the child.

The Court of Appeal opinion, accurate as it is, nevertheless does not reflect the persistency of the questioning. The first two days of the interviews by Detective Jason were plodding, polite and persistent. Petitioner was asked again and again to describe the circumstances which led to the infant's death. The tireless questioning led to petitioner being caught in inconsistencies/ absurdities, e.g., she administered CPR at the time when she found the infant dead in the middle of the night, and later, after she "panicked," several hours later, when she repeated CPR on a known lifeless body in the process of a conversation with a 911 dispatcher. After a polygraph was administered on October 23, Detective Tyndale attempted to force the issue. This interview on October 23, and that of detective Jason on October 24, 2007, was of a more aggressive character, although at all times, the interrogation was civil. In the latter interviews, if the police detectives told petitioner she was not telling the truth regarding the causation of the death once, they told her 100 times. The detectives were not going to accept any answer by petitioner that she did not take the actions which led to the death. Similarly, the numerous statements to petitioner stressing the different possible outcomes depending on whether "it was an accident" or "purposeful," was a red herring in that Cal.Penal Code 273ab only required purposeful actions of petitioner in causing injury, which resulted in death. The prosecution would not have to prove that petitioner intended the death of the infant by her actions. And, the police knew at the time that the injuries to the infant were incompatible with an accident. Many times petitioner was coaxed to be honest, and that the truth would make her feel better. She was in fact told on occasion that she was being honest, but the questioning continued with the clear indication that she was not. She was also confronted numerous times with the alleged falsity of her polygraph exam, often coupled with the "accident-purposeful" dichotomy, i.e., people would understand if the death was an accident.

Moreover, petitioner's unsupported-in-degree by the record, "naivete" assertion is not the same as the "critical" factor of Doody's juvenile status, although the undersigned recognizes that Doody was almost an adult at the time of his interrogation. Many persons who are interrogated by the police are being questioned for the first time; these persons may not have developed a skill set of "admission avoidance." But something more than unfamiliarity with police techniques is necessary before persistent questioning will be found to have overborne the will of the person being questioned. It appears to the undersigned that petitioner believed she could talk her way out of her problems; many people make that mistake as the interrogators are politely weaving the web ever tighter on the person questioned. Good interrogation technique should not be confused with undue pressure. As recounted above, petitioner was permitted to go home after the first and second day of questioning to recover and reflect on the day's interrogation.

In sum, the Court of Appeals' determination that petitioner's confession was not involuntary cannot be termed unreasonable as that term is defined in AEDPA.

Interrogator's reference to mitigating circumstances, including the fact that the shooting may have been an "accident" or from a "fit of rage" "fall far short of being promises of lenient treatment in exchange for cooperation"

In *People v. Carrillo-Garcia* the Court of Appeal, Third District, California rejected the defendant's claim that his confession was coerced by the police through implied promises of leniency and implied threats "that his failure to cooperate would work against him." The trial

court found the statements were voluntary and denied the motion to suppress. From their opinion the Court of Appeal stated:

"Defendant, who maintains he was particularly susceptible to influence because he was only 18 years old and naive about the criminal justice system, contends the police coerced his confession with repeated promises of leniency. Not so. As aptly pointed out by the Attorney General, two Supreme Court cases with remarkably similar interrogations found the confessions were voluntary.

In *People v. Holloway* (2004) 33 Cal.4th 96, the interrogator suggested that the killings might have been accidental or resulted from a fit of rage and that these circumstances could " 'make[ ] a lot of difference.' " ... Similarly, the sergeant here also suggested to defendant that mitigating circumstances could "make[ ] a difference." Thus, he reinforced the message that defendant might not have intended to kill, but that his emotions got out of control. Here, as in Holloway, the interrogator's suggestions "fall far short of being promises of lenient treatment in exchange for cooperation. The detectives did not represent that they, the prosecutor or the court would grant defendant any particular benefit if he told them how the killings happened." ... Rather, the interrogators' admonitions did no more than tell defendant the benefit that might " ' "flow[ ] naturally from a truthful and honest course of conduct" ' [citation]...." .

The interrogator in *People v. Carrington* (2009) 47 Cal.4th 145 employed the same techniques. He too tried to convince his suspect that it would behoove her to explain any mitigating circumstances and suggested, " 'What if she scared you? She confronted you. Or maybe there was someone else with you.' " ... Like the sergeant, the interrogator in Carrington encouraged the suspect to tell the truth and take the weight off her shoulders... And he promised that if the suspect cooperated during the interview, the officers " 'would try to explain this whole thing with, with Los Altos P.D. as [best] we can.' "

None of these exhortations crossed the impermissible line and rendered the police conduct coercive. The officer's statement that "he would help defendant in explaining 'this whole thing' to the Los Altos police did not constitute a promise of leniency...." ... Nor did the assurances that the police were attempting to understand the defendant's motivation coerce her to confess; rather "they merely suggested possible explanations of the events and offered defendant an opportunity to provide the details of the crime."

The sergeant used the very same interrogation techniques in trying to persuade defendant to tell the truth. Neither his repeated references to the district attorney, his attempts to get a better understanding of defendant's motives and to extract mitigating circumstances, nor his encouragement to defendant to lighten his load constituted coercion, even when considering defendant's age and lack of experience with the criminal justice system. Although defendant, to his credit, had no criminal record and was a very young adult, there is nothing in the record to suggest he was particularly vulnerable, did not understand English, or was mentally or emotionally compromised. Given the utter lack of coercive police interrogation and no evidence defendant's statements were not voluntary, we conclude the trial court properly admitted the statements he made during his interrogation."

"If for some reason you went in [the restaurant] to do a robbery and somehow the gun went off [accident]" was not a statement that suggested leniency

In *Commonwealth v. Johnson* the Supreme Judicial Court of Massachusetts upheld the admissibility of the defendant's confession. On appeal, the defendant had argued that his statements were not made voluntarily, claiming that at the time of the interview, he was young, inexperienced, terrified, and likely intoxicated, and that, during the interview, Detective Black lied about forensic evidence implicating him and falsely suggested that confessing would be advantageous. From the court's opinion:

"Similarly, there is scant justification for the defendant's current contention that he was "terrified," such that his statements were not made voluntarily. To be sure, Black noted that the defendant briefly put his head in his hands and, at times, seemed "nervous" and "scared." On the other hand, the defendant also appeared lucid, coherent, and articulate throughout the questioning, and Black told him, in a nonaggressive manner, "I'm not trying to scare you and I hope you understand that. I'm trying to explain to you how serious this is." The defendant's emotional state is wholly consistent with the situation in which he found himself and the gravity of the charges he faced; it did not render him so emotionally unstable or irrational that he could not act voluntarily, nor was it the product of any alleged police coercion.

Relatedly, Black also never improperly implied that confessing would benefit the defendant. Specifically, Black told the defendant: "This is kind of a bad situation"; "If for some reason you went in [the restaurant] to do a robbery and somehow the gun went off, I don't know how, today is the day to tell me that"; and "I want to give you the opportunity today to get out in front of this." These statements fall within the general rule that "[a]n officer may suggest broadly that it would be 'better' for a suspect to tell the truth, ... or may state in general terms that cooperation has been considered favorably by the courts in the past."

Rationalizing a defendant's actions (self-defense/accident) in such a way that he "might hope that he would not be charged with murder" did not render the confession inadmissible

In *State v. Fundaro* the Court of Appeals of Michigan upheld the trial court's denial of Fundaro's motion to suppress his statements. "Fundaro explained that the officers kept telling him that it sounded like it was an accident or self-defense and that it would be better for him if he would just tell them what happened. He stated that he would never have admitted to committing the crime had he known that he would be facing life in prison.

At the hearing, Wittebort testified that he and Troy tried to get Fundaro to tell them about the stabbing by throwing out "theories" or "scenarios" that might help Fundaro rationalize what happened:

It's just another, it's another theory.... I mean, the bottom line is we're trying to get to the bottom of what happened. So, throw a bunch of scenarios ... and see which ... appeals to him. So, I mean, it's just another rationalization that was tossed at Mr. Fundaro.

Although they suggested theories and scenarios under which Fundaro might not be guilty of murder, Wittebort testified that he never promised Fundaro leniency and that he did not hear anyone else promise him leniency. And Fundaro testified that the officers talked about leniency, but did not specifically promise him anything. Indeed, he acknowledged that Troy told him that he could not promise him anything. Fundaro suggests that he only confessed because the officers convinced him that he would not be charged with murder, but the officers used these types of themes from the very beginning of the interview and Fundaro had no trouble denying involvement throughout the majority of the questioning. Moreover, during the interview, and despite all the allegedly misleading statements, Fundaro repeatedly indicated that he understood that he would likely go to prison; he even told Mistretta: " 'I killed a guy and I went in there to rob the joint. I'm still going to go to prison?' "

.... Although the officers might have helped him rationalize his actions in such a way that he might hope that he would not be charged with murder, the evidence does not demonstrate that these tactics so affected Fundaro that his will was overborne or his capacity for self determination was critically impaired."

Court rules that accident scenario is not coercive

In *People v. Batiste* , the Court of Appeal, 1st District, Div. 3, California, the defendant claimed that his confession was coerced because it was the product of deception or implied promises of leniency by the officers. From the court's opinion:

"Batiste argued in the trial court that the officers made an implied promise of leniency when they suggested he might have acted in self-defense. That argument lacked merit. Here, as in *People v.. Carrington* 47 Cal.4th 145, 171, "suggestions that the ... 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. [Citation.] Moreover, any benefit to defendant that reasonably could be inferred from the substance of [the officer's] remarks was ' " 'merely that which flows naturally from a truthful and honest course of conduct,' " ' because the particular circumstances of a homicide can reduce the degree of culpability, and thus minimize the gravity of the homicide or constitute mitigating factors in the ultimate decision as to the appropriate penalty. [Citation]."

Suggesting the homicide was an accident or self-defense was not coercive

In *People v. Carrington*, 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. Indeed, defendant understood that punishment decisions were not within the control of the police officers. As noted above, she said it "just depends on the judge and DA and how are they going to prosecute it." Under these circumstances, Detective Sherman's statement that he would inform the district attorney that defendant fully cooperated with the police investigation did not constitute a promise of leniency and should not be viewed as a motivating factor in defendant's decision to confess."

Court rejects Dr. Leo testimony that suggesting accident increases the risk of a false confession

In *People v. Wroten* Dr. Richard Leo testified that the interrogators suggested to the defendant "that the offense was accidental, thereby minimizing the suspect's perception of the consequences of an admission and implying that an accidental killing might result in leniency. This technique can increase the risk of a false confession." The court rejected this position and the jury convicted the defendant of first-degree murder. In their review of the case the Court of Appeal, 2nd District, Division 2, California stated "There were also no promises of leniency made to appellant. The statements he points to as making such promises are at worst ambiguous and, in any event, did not pervade the interrogation. Detective Lait's statement that they were giving the appellant a "million-dollar opportunity" to explain whether the shooting was intentional or accidental contains no promise of benefit. While the detective stated that knowing whether the murder was intentional or accidental might make a difference in "how we proceed," he did not say it would benefit appellant or that it would make a difference as to whether they would proceed. Furthermore, after Detective Lait made those statements, appellant continued to deny involvement in the Mosley shooting....Those statements did not overbear his will to resist and proximately cause him to confess. Detective Garrido's statement that they wanted to get appellant "cleared up" was little more than encouragement to tell the truth."

Court upholds admissibility of confession in which detectives focused on difference between accidental and intentional killing

In *Bramley v. State* the Indiana Court of Appeals upheld the admissibility of the defendant's confession. In their opinion the court stated:

"The voluntariness of a statement is determined by examining the totality of the circumstances surrounding the interrogation.... Relevant factors include the length, location, and continuity of the interrogation, and the maturity, education, physical condition, and mental health of the defendant. Id. In making its determination, the trial court weighs the evidence to ensure that a confession was not obtained "through inducement, violence, threats or other improper influences so as to overcome the free will of the accused." .... A confession is inadmissible if it is obtained

by promises of mitigation or immunity, but vague and indefinite statements by the police that it would be in a defendant's best interest if he cooperated do not render a subsequent confession inadmissible.... Where a promise of leniency stems from a defendant's specific request for leniency as a precondition for making a statement, the voluntariness of the statement is not induced by misconduct.

Bramley directs us to three statements that the detectives made that he contends amount to promises of leniency and threats and render his confession involuntary. First, Bramley directs us to an analogy Detective Jowitt used while transporting him to the Hamilton Count Jail. Detective Jowitt told Bramley that there were three suspects and only one apple and that "[o]ne person generally gets to eat the whole apple." ... Detective Jowitt testified at trial that the apple in the analogy represented a plea deal a defendant could get if he cooperated with the police before the other suspects did.

Bramley next directs us a statement Detective Jowitt made during the interrogation:

And you don't want other people giving accounts of Michael Shane Bramley because you don't know what they're saying and you don't know ⋯ like I said you don't know the spin that they're putting on it. The spin can be real important. Ok? ‘Cause that can be the difference between Michael Shane Bramley is ⋯ a cold hearted ruthless, dangerous, psychopathic, you know yada, yada, yada, or just hey, something happened up there and it didn't really go down like it was supposed to and there was ⋯ a problem or there was a mistake or there was an accident or it didn't happen quite the way it maybe appeared just by looking at the surface facts of it, okay?

Finally, Bramley highlights statements that the detectives made that he claims implied that he would receive a lesser sentence if he testified that Moody's death was an accident. Typical examples of the detectives' statements are: "I sure wouldn't want to be put in the situation where someone else is putting stuff down on me that wasn't quite the way it happened," id. at 363, and "[the difference between intentional murder and an accident] is just different. Worse thing in the world [is intentional murder]," id . at 377. The detectives focused on the differences between an accidental and an intentional killing and emphasized the benefits that a suspect could reap if he tells his side of the story because the other suspects cannot adversely fill in the "gray parts" of the crime:

Here, there were two other suspects in Moody's murder and Detective Jowitt tried to explain to Bramley, by using the apple analogy and the "grey parts" comment, that the other two suspects could wrongly implicate Bramley if he did not tell the truth about his role in the crime. While Bramley may have lost the prisoner's dilemma game, Detective Jowitt's comments do not rise to the level of specific promises of leniency or threats that have previously been held to render a confession involuntary.

Deception

Using deception during the interrogation of a defendant classified as mentally retarded is not coercive

In *Turner v. Coleman* the US District Court, W.D. Pennsylvania upheld the trial court's decision to deny the defendant's claim that his incriminating statements should have been excluded because the investigator lied to him during the course of the interrogation which allegedly caused the defendant's will to be overborne, and that the trial court failed to take into consideration the fact of his mental retardation in reaching their conclusion. From the District Court's opinion:

The trial court conducted a hearing on the suppression motion and made credibility determinations: "[t]he Court accepts as credible the testimony of Trooper Lipniskis and rejects as not credible the testimony of Defendant Turner.... .

The trial court then went on to address the issue of whether Trooper Lipniskis' tactics of misleading Petitioner amounted to police coercion of Petitioner's statements/confession... The trial court noted that "[o]nce an individual has been told of his or her Miranda rights, any statement elicited from him or her during a continuing interrogation is inadmissible in evidence against him or her, unless the totality of the circumstances surrounding the interrogation indicates that the accused in fact knowingly and voluntarily decided to forgo his or her Miranda rights." ... The trial court then went on to note that [f]actors that affect the validity of the waiver of Miranda rights include: (1) the duration and methods of interrogation; (2) the conditions of detention; (3) the manifest attitude of the police toward the accused; (4) the accused's physical and psychological state; and (5) any conditions which may serve to drain one's powers of resistance to suggestion and undermine one's self-determination.

Considering all of the foregoing factors, the trial court then went on to find that Petitioner's statements were not the product of coercion.

The Court finds that Trooper Lipniskis' use of a misleading statement during the questioning of Defendant was not so manipulative or coercive that it deprived the Defendant of the ability to make a free and unconstrained decision to confess. Therefore, the Court finds that Trooper Lipniskis' misleading statement to Defendant that doctors informed Trooper, while he was out of the interview room and Defendant was writing his first statement, that the victim's injuries were not consistent with the Defendant's version of what happened does not rise to the level of compulsion or coercion and thus are not within Miranda's concerns.

Petitioner fails to show that the trial court's reasoning was contrary to or an unreasonable application of United States Supreme Court precedent on Fifth Amendment Miranda rights or voluntary confessions/statements. Indeed, we find the foregoing to not be contrary to or an unreasonable application of United States Supreme Court precedent. Frazier v. Cupp, 394 U.S. 731, 739 (1969) ("The fact that the police misrepresented the statements that Rawls had made is, while relevant, insufficient in our view to make this otherwise voluntary confession inadmissible. These cases must be decided by viewing the 'totality of the circumstances,' and on the facts of this case we can find no error in the admission of petitioner's confession.").

To the extent that Petitioner argues that Trooper Lipniskis' use of deception was per se a violation of Miranda or a per se cause of his statements to be coerced, Petitioner is simply wrong on the law.... ("The Supreme Court has noted a distinction between police trickery

as a means of coercion and police trickery as mere strategic deception; '[p]loys to mislead a suspect or lull him into a false sense of security that do not rise to the level of compulsion or coercion to speak are not within Miranda's concerns.'.... In other words, a law-enforcement agent may use some psychological tactics or even actively mislead a defendant in order to obtain a confession, provided that a rational decision remains possible.").

To the extent that Petitioner argues that the trial court erred as a matter of fact in finding that Trooper Lipniskis' use of deception did not cause Petitioner's statements to be coerced, Petitioner fails to rebut the factual determinations of the trial court by pointing to any evidence other than perhaps the fact of his mental retardation. Petitioner seemingly argues that the trial court failed to take into consideration the fact of his mental retardation.

The trial court was aware of Petitioner's potential mental retardation as early as October 8, 2009 and, and certainly, no later than November 3, 2009, when the trial court had available to it an expert report by Dr. R. William Tallichet, Psy.D. who opined that Petitioner was mentally retarded within the meaning of Atkins.... The trial court did not issue its decision on Petitioner's suppression motion until November 6, 2009.

Hence, the evidence of record affirmatively rebuts Petitioner's seeming contention that there was no evidence of Petitioner's retardation before the trial court when it made the decision on Petitioner's suppression motion. Nor can we accept Petitioner's suggestion that merely because Petitioner's mental retardation was not specifically mentioned in the trial court's November 6, 2009 opinion denying Petitioner's suppression motion, that the trial court did not consider such in its decision. The trial court specifically invoked the totality of the circumstances test, and specified that coming within the totality of the circumstances test is a consideration of "(4) the accused's physical and psychological state; and (5) any conditions which may serve to drain one's powers of resistance to suggestion and undermine one's self-determination." Presumably, the fact of Petitioner's mental retardation falls within these categories.

Manipulative tactics - lying about evidence; lying about the victim being a federal informant; lying about his friends naming him as the shooter - did not render the confession inadmissible

In *Valle v Butler* the US District Court, N.D. Illinois, upheld the lower court's ruling that the "aggressive and manipulative" tactics used by the investigators did not cause an involuntary confession. From the District Court's opinion:

Shortly after 10:00 p.m., detectives Jeffrey Parish and Robert Wallace of the Aurora Police Department and Agent Larissa Camacho of the Federal Bureau of Investigation resumed interrogating Valle. During this interrogation, Camacho told Valle numerous lies to induce a confession. She showed him a compact disc in a plastic case and told him it contained a recording, made by a federal informant wearing a wire at the Latin Kings party Valle had attended the night of Lozano's death, on which Valle bragged about the shooting. Camacho also said that Lozano was a federal informant himself, which, she repeatedly explained, meant that Valle would be prosecuted for a more serious federal crime unless he could convince the police he did not know he had targeted an FBI informant. All of this was untrue. Lozano had not been a

federal informant, and the authorities had no recording of Valle.

Camacho told Valle that she already knew everything that had happened because his friends had already turned on him and she had listened to the allegedly incriminating recording. This, too, was untrue. Valle told the officers that the recording must have captured him telling ‘a little bullshit lie...just trying...to be cool.‘ Parish told Valle that this was one of his last chances to say that he had made a mistake, that nobody was going to believe him, and that he was ‘fucked.‘ Parish and Camacho explained that Valle had two choices. One option was to ‘sit here and lie‘ by continuing to maintain his innocence and await trial, at which time Camacho and her informants would testify, the recording on the compact disc would be played for the jury, and Valle would be ‘fucked‘ because no jury would ever believe his story. His other option, the truth‘ and admit that he ‘made a mistake.‘

Valle moved to suppress the statements he made during his interrogation based on the claim that they were involuntarily given. He claimed that he had been deprived sufficient food, water, and sleep, and that his high susceptibility to deceptive police tactics due to his personal intellectual limitations led him to be coerced into falsely confessing. The trial court denied Valle's motion.

As the appellate court later summarized:
It found that the officers did not falsely suggest sympathy. It recognized that the tone of the interviews sometimes became accusatorial and that the officers ‘slid their chairs into defendant's space‘ and shook a finger at defendant. It noted that Camacho had engaged in deception. The court accepted the validity of the Miranda warnings. It found that defendant had been articulate and responsive in his answers throughout the interrogation. The court concluded that Valle's confession was not given involuntarily.

Lying about DNA evidence is not coercive

In *Demarest v. Secretary*, *Dept of Corrections* the US District Court, M.D. Florida, upheld the lower court’s ruling that lying about DNA evidence is not coercive. From the court’s opinion:

Demarest claims that the state trial court erred in denying his motion to suppress his confession, resulting in a violation of his constitutional rights. In his motion to suppress, Demarest asserted .... that police lied about the presence of DNA evidence to intimidate him into confessing. From the court’s opinion:

..... However, misstating the evidence, without more, is not the type of coercive police activity that results in an involuntary confession. See *Frazier v. Cupp*, 394 U.S. 731, 739 (1969) (an officer's false statement that suspect's companion confessed was insufficient to render the suspect's statement involuntary). Accordingly, misrepresentations of fact “are not enough to render a suspect's ensuing confession involuntary.” *United States v. Lall*, 607 F.3d 1277, 1285-86 (11th Cir. 2010). “Misleading a suspect about the existence or strength of evidence against

him does not by itself make a statement involuntary." *United States v. Farley*, 607 F.3d 1294, 1328 (11th Cir. 2010). Rather, "courts have held statements involuntary because of police trickery only when other aggravating circumstances were also present." Id. (citing *United States v. Castaneda-Castaneda*, 729 F.2d 1360, 1363 (11th Cir. 1984)). Thus, "statements have been held involuntary where the deception took the form of a coercive threat, or where the deception goes directly to the nature of the suspect's rights and the consequences of waiving them." Id. (citations omitted).

Furthermore, there is no evidence to indicate that any threats were made against Demarest, that anything was promised to him, or that the officers pressured him into making either written or oral statements. Nor does the record support a finding that the officers' misstatements regarding DNA evidence were accompanied by, or amounted to, a coercive threat or other aggravating circumstance that deceived Demarest about the nature of his rights or induced his confession.

Accordingly, the totality of the circumstances under which Demarest confessed reflects that his confession was voluntary and was not coerced by police misinformation about the existence of DNA.

Intrinsic falsehoods do not create a coerced confession

In *Marquez v. State* the Supreme Court of Nevada found that the investigators did not coerce the defendant's incriminating statements and that intrinsic falsehoods do not cause a coerced confession. From the court's opinion:

The totality of the circumstances shows that the police did not coerce Marquez during the interrogation. First, the record shows that Marquez was 46 years old at the time of the interrogation, so the police did not take advantage of his youth. Second, nothing in the record reflects that Marquezs education or intellect is below normal, so the police did not take advantage of his lack of education or intelligence. Third, Marquez received Miranda warnings, he indicated that he understood the warnings, he did not invoke his right to remain silent or request an attorney, and he spoke to the detective. Thus, the police did not overbear Marquez by failing to advise him of his rights. Fourth, Marquez was not detained prior to the interrogation. Therefore, the police did not overcome Marquez's will through a lengthy detention. Fifth, the interrogation lasted only about an hour before Marquez confessed, so this was not a prolonged interrogation. Also, the detective only questioned Marquez on one occasion, so the questioning was not repeated. Lastly, the record does not indicate, and Marquez does not argue, that police mistreated him.

Therefore, the police did not use physical coercion to overcome Marquez's will and secure a confession.

Coercion through police deception

This court has held that trial courts should also consider police deception in evaluating the voluntariness of a confession... Police deception does not automatically render a confession involuntary. Police subterfuge is permissible if "the methods used are not of a type reasonably

likely to procure an untrue statement." ... This court has distinguished between intrinsic falsehoods and extrinsic falsehoods.... Intrinsic falsehoods imply the existence of implicating evidence and are more likely to secure a truthful confession from a defendant.... Extrinsic falsehoods involve issues that are collateral to the crime and are more likely to overbear a defendant's will and secure a false confession or "a confession regardless of guilt." (concluding that a confession was coerced when police threatened a defendant that "state financial aid for her infant children would be cut off, and her children taken from her, if she did not 'cooperate" '). Deceptions that are likely to produce a false confession are not permissible and render a confession involuntary.

Marquez alleges that the detective impermissibly deceived him in order to secure a confession when the detective said that their conversation was confidential. If the detective had promised Marquez that their conversation would remain confidential, such deception would constitute an external falsehood and require suppression of his statement.... The deception would be an external falsehood because such a promise is collateral to the crime and could motivate a suspect to confess regardless of guilt. Here, the detective said that he was not telling everyone about the sexual assault allegations. His statement is ambiguous and we cannot conclude that it rises to a guarantee of confidentiality. Moreover, the detective provided Miranda warnings at the beginning of the interview and the detective also informed Marquez that anything he said could be used against him in a court of law. As such, Marquez could not expect immunity or confidentiality after confessing. Therefore, the police did not use an external falsehood to coerce Marquez's confession and the trial court did not err when it denied Marquez's motion to suppress his statements to police.

Lying about evidence - saying a witness placed the defendant in the victim's car – was not coercive

In *State v. Bates* the Missouri Court of Appeals, Eastern District upheld the lower court's decision that the defendant's confession was not coerced. From the court's opinion:

On appeal, Appellant asserts his videotaped statements should have been suppressed as unknowingly, unintelligently, and involuntarily made in that he was incapable of understanding his Miranda rights. Appellant contends his confession was the product of a coercive interrogation because the detectives took unfair advantage of his age, illiteracy, and learning disability to obtain the statements. Appellant maintains the detectives' act of lying to him about their evidence in the case and telling Appellant he was a cold-blooded killer who should get the gas chamber were coercive police tactics. We disagree.

Contrary to Appellant's assertion, there is no evidence of any coercive police activity or that Appellant did not understand his rights. Appellant was 18 years old when he was detained and interviewed for Victim's murder, making him an adult, not a juvenile. Appellant relies heavily on the fact that he told detectives he was illiterate during the interview for support yet provides no explanation as to how this affected Appellant's ability to understand his rights... Here, the detectives orally advised Appellant of his Miranda rights three times and Appellant indicated he understood those rights. Although Appellant told the detectives he had a learning disability and left school after the tenth grade, Appellant also told the detectives that his learning disability had

no effect on him. Det. Ray testified there was nothing apparent about Appellant that led him to believe Appellant was suffering from any physical condition or any kind of impairment that prevented Appellant from understanding what was happening.

Furthermore, the fact that the detectives provided Appellant with false information regarding the investigation does not invalidate Appellant's confession. Statements obtained by subterfuge "are admissible unless the deception offends societal notions of fairness or is likely to produce an untrustworthy confession."... Det. Ray's act of falsely telling Appellant that the police had eyewitnesses placing Appellant in Victim's car when he was killed does not offend societal notions of fairness and was unlikely to produce an untrustworthy confession.

Viewing the evidence in the light most favorable to the trial court's decision, we find, under the totality of the circumstances, that Appellant's statements to police were made knowingly, intelligently, and voluntarily.

Is it coercive to tell a subject that it was important for him to tell the investigators how the child was injured so he could get proper treatment when the investigators knew that the victim was brain dead and would not recover?

In the case *State v. Rodriquez-Moreno* the Court of Appeals of Oregon upheld the lower court's decision not to suppress the defendant's incriminating statement. From the Court of Appeals decision:

"A third interview began about 3:00 a.m., this time conducted by Matrisciano. The trial court found that the detective began by asking if defendant recalled the Miranda warnings. When Matrisciano began repeating them, defendant interrupted to say that he understood the warnings and would speak to the detective. The third interview lasted for one hour and fifteen minutes.

Matrisciano insisted that "there was something else that had happened." At some point, Matrisciano told defendant "that it was important that [he] know what happened so that the doctors could be able to treat [S]." The trial court found that Matrisciano's statement was untrue and that the detective knew the child was brain dead and would not recover.

Defendant broke eye contact and sat quietly. He told Matrisciano that he was scared that Onofre-Nava would leave him. Matrisciano asked how many times defendant had shaken S. Defendant admitted that he shook S one time after she had gotten into his food and started crying. At Matrisciano's request, he demonstrated how he shook S forcefully by the arms. Matrisciano noticed that defendant demonstrated that he had shaken the imaginary S three times and that he demonstrated her head moving all the way backward and forward each time. Defendant admitted that he was angry and that, on a scale of one to ten, from low to high, he had been "a seven." After shaking S, defendant said, he laid S down forcefully on the couch. Defendant agreed to make a tape-recorded statement, and he repeated what he had just told Matrisciano. At the end of the third interview, defendant was arrested and told that S would likely die from her injuries.

Defendant moved to suppress all his statements made after Matrisciano "falsely told him that they needed information from him * * * in order to be able to assist the doctors in saving [S's] life ." Defendant argued that the statement contributed to coercive circumstances in violation of defendant's rights under Article I, section 12, and under the Fifth and Fourteenth Amendments.

The trial court denied the motion, determining, among other things, that "defendant was never given any promises or threatened in any way"; "[t]here was no evidence that defendant suffered from any mental impairment at any time"; "defendant was never denied any request he made to use the restroom or for water"; the conversations with officers "were civil and polite"; Matrisciano's misstatement did not render defendant's statements involuntary; and, under the totality of the circumstances, the state had met its burden to prove that defendant's statements "were freely and voluntarily given."

In this case, the record supports the trial court's findings that "defendant was never given any promises or threatened in any way." Although defendant remained at length in the hospital, his stay was voluntary. As the trial court found, "defendant was never denied any request he made to use the restroom or for water," and the conversations with officers "were civil and polite." Defendant was reminded of his rights, and he chose to continue speaking with the investigating detectives. He understood that he was the primary suspect in causing S's injuries. His will was not overborne, and his capacity for self-determination was not critically impaired. His candid statements were not the result of any threats or promises. We conclude that the trial court did not err in determining that, in the totality of these circumstances, defendant's statements were voluntary.

Lying to a suspect and "playing on his emotions" does not render the confession inadmissible

In *State v. Pellikan* the Court of Appeals of Ohio, Fifth District, upheld the lower court's decision to admit the incriminating statements by the defendant that he sexually touched his eight-year-old cousin (KM) in the vaginal area. The defendant claimed that his statements were coerced and should have been suppressed. From the Court of Appeals opinion:

"In deciding whether a defendant's confession is involuntarily induced, the court should consider the totality of the circumstances, including the age, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement." As noted by the Ohio Supreme Court in *State v. Osie*, 140 Ohio St.3d 131, 2014-Ohio-2966, 16 N.E.3d 588 at paragraph 93: Nevertheless, "the use of an inherently coercive tactic by police is a prerequisite to a finding of involuntariness..... Consequently, unless a coercive tactic was used, we need not assess the totality of the circumstances.

Appellant does not allege that he was subjected to physical abuse, threats, or deprivation of food, medical treatment or sleep. Nor does he allege that he was yelled at during the two interviews. Rather, appellant alleges that his confession was involuntary because Detective Grizzard lied to him and played on his emotions.

Appellant, who was nineteen years old at the time, was interviewed two separate times. The first interview was for 45 minutes and the second was for 25 minutes. Both were recorded.... appellant, in support of his argument that his confession was coerced, notes that at the suppression hearing, Detective Grizzard admitted that he told appellant that KM loved him and that his family was on his side, forgave him and wanted to help him. Detective Grizzard further admitted that he told appellant that the investigation showed that he did it and could get a second chance if he admitted that he had touched KM. Appellant also argues that, at the suppression hearing, the Detective admitting to playing on his emotions and love for the victim by asking him if he would "do anything" to prevent her from having to go through the process. Detective Grizzard, at the hearing, admitted that he told appellant that KM said that she was "willing to get over it" when, in fact, she had not... Detective Grizzard also admitted that he "played hard on this let's save [KM] ."

At the suppression hearing, Detective Grizzard was questioned about the second interview. He testified that he brought appellant in for a second interview because he did not believe that appellant had told him everything that had happened. When asked, he admitted telling appellant that he thought that appellant was scared and frightened the day before and that things had gone too fast. Appellant argues that at the second interview, the Detective continued playing on his emotions and love for the victim. He also notes that after appellant said that he was done talking, Detective Grizzard told appellant that he was not. At the suppression hearing, on redirect, Detective Grizzard testified that when he said no to appellant, he was not telling appellant that he was not free to leave and that, in fact, appellant left a few minutes later. Detective Grizzard clarified that after appellant said that he was done talking because he believed that they had all of the information they needed, he told appellant that he was not because they needed more information. Appellant then continued talking to Detective Grizzard.

We find that the record does not demonstrate that appellant's statements to Detective Grizzard were coerced and involuntarily made. While appellant argues that he was a 19-year-old who had not been read his rights or interrogated before, he had been informed of his Miranda rights, he had indicated that he comprehended those rights, and he had expressly waived those rights. The two interviews were not lengthy or intense and no deprivation or threats occurred. At the end of the first interview, appellant went home and then agreed to come back the next day. At the beginning of the second interview, appellant told Detective Grizzard that he felt better after admitting what he had done was wrong. He had asked Detective Grizzard to pick him up for the second interview and then left after such interview.

Considering the totality of the circumstances surrounding the appellant's statements to Detective Grizzard, we find that appellant's statements were voluntary and not coerced."

Employing deceptive practices to elicit a confession are not coercive

In *US v Hunter* the US District Court, N.D. Georgia, upheld the lower court's decision not to suppress the defendant's incriminating statements. From the court's opinion:

Hunter argues that the statements he made to the agents on May 16, 2013, were involuntary, and are therefore inadmissible, because: (1) he "believed that the agents came to his residence ... to

help Anna, [ ] who was in danger," but he "did not understand that the agents were looking for child pornography,; (2) he did "not believe he had any choice" to make a statement "because of his prior experience with law enforcement,"; and (3) the agents never advised him that he had a right to counsel or that his statements could be used against him. Whether a statement was voluntarily given must be examined in light of the totality of the circumstances.... "This totality of the circumstances test directs the Court ultimately to determine whether a defendant's statement was the product of 'an essentially free and unconstrained choice.' ... "Among the factors the Court must consider are the defendant's intelligence, the length of his detention, the nature of the interrogation, the use of any physical force against him, or the use of any promises or inducements by police." Id. (citations omitted).

The focus of the voluntariness inquiry is whether the defendant was coerced by the government into making the statement, so "the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception." ... Thus, "[t]hose cases where courts have found confessions to be involuntary 'have contained a substantial element of coercive police conduct.' "Sufficiently coercive conduct normally involves subjecting the accused to an exhaustingly long interrogation, the application of physical force or the threat to do so, or the making of a promise that induces a confession." Another "factor to consider among the totality of the circumstances in determining voluntariness' " is whether the police employ deceptive tactics to elicit a confession. However, " '[c]ourts have been reluctant to deem trickery by the police a basis for excluding a confession on the ground that the tricks made the confession coerced and thus involuntary.' Rather, courts have held that "trickery or deceit is only prohibited to the extent it deprives the suspect of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them." Thus, "[t]he kinds of deception that are generally deemed to trigger suppression are lies about a defendant's legal rights (i.e ., 'you must answer our questions'), false promises (i.e., 'whatever you say will be just between us'), or threats (i.e., 'if you don't talk, you won't see your family for a very long time') ."

Additionally, the law in the Eleventh Circuit "is clear, that the police's use of a trick alone will not render a confession involuntary," unless there are "other aggravating circumstances" beyond the mere use of deceptive tactics, ... Indeed, "[c]onfessions are not generally rendered inadmissible merely because they are obtained by fraud, deception, or trickery practiced upon the accused, provided the means employed are not calculated to procure an untrue statement and the confession is otherwise freely and voluntarily made."

Under the totality of the circumstances in this case, the Court concludes that Hunter's statements to the agents on May 16, 2013, were made voluntarily.

Confession voluntariness – lying about the evidence

In *Jefferson v. State* the Supreme Court of Nevada upheld the lower court’s decision to admit the defendant’s confession. In this case the defendant argued that “ the district court erred in denying his motion to suppress the statements he made to law enforcement. He argues that his confession was involuntary because he was subjected to repeated and prolonged questioning, as well as

deceptive interrogation techniques. From the court's opinion:

"We conclude that substantial evidence supports the district court's conclusion that Jefferson's confession was voluntary. Jefferson, an adult, does not claim that he misunderstood what was happening; he responded cogently to the detectives' questions; his interrogation began with an explanation of his Miranda rights; it took place at a reasonable time (9:00 p.m.) and lasted only 45 minutes; and, while one of his hands was handcuffed to a bar, he was free to leave any time for water or to use the restroom.

Additionally, Jefferson's argument that his confession was rendered involuntary by the detectives' deceptive interrogation techniques is unavailing. Jefferson argues that the detectives misrepresented DNA evidence by exaggerating what DNA evidence could reveal to them and the time frame in which they would learn the information. However, "an officer's lie about the strength of the evidence against the defendant is, in itself, insufficient to make the confession involuntary." ... The question is whether the tactics " 'interject[ed] the type of extrinsic considerations that would overcome [Jefferson's] will by distorting an otherwise rational choice of whether to confess or remain silent.' ... In this case, such tactics would not likely overcome Jefferson's will because, if Jefferson was truly innocent, he would not be concerned that DNA evidence would implicate him. Rather, he would know that it would exonerate him. Thus, nothing about the detectives' tactics appears coercive or likely to produce a false confession.

Jefferson's arguments that the detectives impermissibly implied that the prosecutor would be informed that he refused to cooperate, and threatened to take away his children are equally unavailing. The detectives indicated that if the DNA showed something different than what Jefferson had told them, then the DA would be aware of the discrepancy, which would likely be bad for Jefferson. But that is not the equivalent of a threat to inform the DA that Jefferson was not cooperating. Likewise, the detectives told Jefferson that, given the allegations against him, he might not be able to be around his children for a while. However, this statement was only made in response to Jefferson's own questions regarding his children. This was not a coercive tactic to get Jefferson to confess, but merely a true statement of the current situation."

"the law permits the police to pressure and cajole, conceal material facts, and actively mislead"

In *US v. Graham* the US District Court, N.D. Georgia, upheld the admissibility of the defendant's incriminating statements, and carefully examined the issue of police deception during an interrogation. The District Court stated the following in their opinion:

"The focus of the voluntariness inquiry is whether the defendant was coerced by the government into making the statement, so "the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception." ... Thus, "[t]hose cases where courts have found confessions to be involuntary 'have contained a substantial element of coercive police conduct.'... "Sufficiently coercive conduct normally involves subjecting the accused to an exhaustingly long interrogation, the application of physical force or the threat to do so, or the making of a promise that induces a confession."

... Whether the police employ deceptive tactics to elicit a confession is "one factor to consider among the totality of the circumstances in determining voluntariness." ... However, "[c]ourts have been reluctant to deem trickery by the police a basis for excluding a confession on the ground that the tricks made the confession coerced and thus involuntary." ... Rather, courts have held that "trickery or deceit is only prohibited to the extent it deprives the suspect of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them." ... Thus, "[t]he kinds of deception that are generally deemed to trigger suppression are lies about a defendant's legal rights (i.e ., 'you must answer our questions'), false promises (i.e., 'whatever you say will be just between us'), or threats (i.e., 'if you don't talk, you won't see your family for a very long time') ."

... Although Graham asserts that the agents' use of deception in this case "[wa]s itself aggravated and standing alone is sufficient basis to hold that [his] statements ... were the product of coercion," [Doc. 41 at 23], the law in the Eleventh Circuit "is clear, that the police's use of a trick alone will not render a confession involuntary," unless there are "other aggravating circumstances" beyond the mere use of deceptive tactics, ... Indeed, "[c]onfessions are not generally rendered inadmissible merely because they are obtained by fraud, deception, or trickery practiced upon the accused, provided the means employed are not calculated to procure an untrue statement and the confession is otherwise freely and voluntarily made."

Graham cites to a number of cases in which statements elicited from a defendant in response to police deception were found involuntary,.... but these cases all involve significant aggravating circumstances not present here, see, e.g., Lynnum, 372 U.S. at 534 (mother's confession held involuntary where "made only after the police had told her that state financial aid for her infant children would be cut off, and her children taken from her, if she did not 'cooperate' "); Spano, 360 U.S. at 321–22 (finding confession involuntary where defendant was foreign-born, had only one-half year of high school education and a history of emotional instability, and was subjected to prolonged late-night questioning that included repeated denials by police of the request to consult with attorney and the threat that if he remained silent his friend on the police force would lose his job); Irons, 646 F.Supp.2d at 971–72 (confession involuntary where police sought to "exploit [defendant's] friendship" with a female officer, in whom he also had a romantic interest, by falsely telling him that the officer had been arrested and that he "should confess in order to protect her from prosecution"); but see United States v. Charlton, 565 F.2d 86, 89 (6th Cir.1977) (confession voluntary notwithstanding police threats to arrest son absent cooperation).... Indeed, the cases cited by Graham illustrate nothing short of "extreme forms of deception or chicanery," United States v. Jacques, 744 F.3d 804, 812 (1st Cir.2014) (citations and internal marks omitted), which are far removed from the ruse used here. Moreover, the defendants in those cases were given the impression by police that they could avert some impending harm that would otherwise befall their family or friends, if only they would "cooperate" with the investigation. In this way, they were essentially confronted with the dilemma of either cooperating with the police or else allowing their loved ones to suffer as a result of their own recalcitrance, which "not only impaired [the defendants'] free choice, but also cast doubt upon the reliability of the resulting confession," Holland, 963 F.2d at 1051. Here, in contrast, there is not the slightest hint that the agents rendered Graham's confession unreliable by confronting him with a similar ultimatum that directly implicated any close personal or familial relations. And if Graham was actually deceived by the ruse and agreed to speak with the agents

in order to help them find the missing girl, as he appears to allege, see [Doc. 41 at 5, 24–25], this would not make his statements less reliable, since it would have been counter productive for him to provide the agents with false information that would only impede their efforts to locate her.

In brief, "the effect of psychological pressure or deception on the voluntariness of a statement depends on the particular circumstances in each case,"... and the circumstances in this case simply do not show that the agents' misrepresentation about a missing girl, unaccompanied by any aggravating factors, rose to the level of "coercive police activity,"... that so overpowered Graham's will or "critically impaired" his "capacity for self-determination," as to render his statements involuntary, ... Indeed, "[f]ar from making the police a fiduciary of the suspect, the law permits the police to pressure and cajole, conceal material facts, and actively mislead—all up to limits not exceeded here[.]"... Accordingly, the ruse employed by Agents Harris and Westhall "did not amount to coercion in violation of [Graham's] Fifth Amendment rights," ... and the totality of the evidence in this case demonstrates that Graham's statements at the interview of May 31, 2012, were made voluntarily.

Lying about DNA evidence did not make the confession inadmissible

In *State v. Smith* the Court of Appeals of Nebraska found that lying to a suspect about DNA evidence did not render the confession inadmissible. From the court's opinion:

"Smith asserts that he repeatedly denied the accusations until the detective "told him the police had his DNA evidence on [E.H.'s] clothes," and this made "Smith believe that the police had scientific proof that he [was] guilty of the charges." Smith claims that the detective's tactics were employed to elicit an incriminating statement and that "[a]lthough providing false information to a suspect has been deemed normal police protocol, taken in the totality of the circumstances it was a direct violation of ... Smith's constitutional rights."

It is fundamental that a statement must be suppressed if it is obtained by offensive police practices.... However, mere deception will not render a statement involuntary or unreliable; the test for determining the admissibility of a statement obtained by police deception is whether that deception produced a false or untrustworthy confession or statement. Id. If a benefit is offered in exchange for testimony, and the offer is definite, then a confession is involuntary and must be suppressed...

Nothing in this record indicates that Smith's statements made to Kavars or the letter written to E.H. were false or untrustworthy, nor is there any evidence that Kavars made any inappropriate offers to Smith in exchange for a statement. Kavars testified that the OPD has a protocol for conducting suspect interviews, which protocol includes providing false information to a suspect as a means of eliciting statements. Kavars explained that in this case, he had clothing that belonged to E.H. but that it did not have any DNA from Smith, contrary to what he suggested to Smith during the interview. Upon cross-examination, Kavars acknowledged that he obtained clothing from E.H. "[t]o lead the suspect to believe I had evidence I didn't have," and he agreed that the clothing was "basically used as a prop." Kavars confirmed that during his interview with Smith, he pulled those clothes out of an envelope and told Smith his DNA was on the clothing,

and told him that on more than one occasion. He agreed it was a lie, but was a tactic he used. Kavars also "led [Smith] to believe that everything that happened with the victim at that residence was okay with her when she told me in the interview it wasn't."

On redirect, however, he confirmed that this was an acceptable method of interviewing and that further, he did not force Smith "in any way to admit that he had rubbed his penis on [E.H.'s] body." He further confirmed that he did not "force him in any way to admit that he had, in fact, pulled his pants down and touched the victim."

Kavars' testimony is supported by the recordings of the interview.....

The tactics used by the police in this case, while deceptive, cannot be characterized as such coercion that it caused Smith's "will to be easily overborne." .

Lying about evidence such as minimizing the victim's injury, and telling the defendant gunshot residue and eyewitnesses showed that he was the shooter, would not cause an innocent person to confess

In *People v. Boner* the Court of Appeal, Third District, California upheld the admissibility of the defendant's confession. The court heavily relied upon the DVD of the interrogation to assess the defendant's claim that his statements were involuntary because the police the lied to him about the victim's physical condition. From their opinion the court stated that:

"[T]elling a suspect falsehoods regarding the status of the case against him is widely accepted." ... "Where the deception is not of a type reasonably likely to procure an untrue statement, a finding of involuntariness is unwarranted." .....

The detectives said the gunshot residue test and eyewitness statements showed defendant was the shooter, and both Antwaine and Moody had told the detectives everything. Although apparently these statements were not true, we do not find that any of these statements, nor all of them together, would tend to cause an innocent person to confess.
Defendant contends that minimizing the victim's injury, as well as the statements that defendant "can help [himself] out" and "can dig ... so big of a hole that we can't help you out," amounted to an improper offer of lenity if defendant confessed. We are not persuaded by this argument.

Here, the detectives did not state or imply that if defendant admitted he shot the victim he would get lenient treatment because the victim had not been badly hurt. Instead, they employed a technique of minimizing the consequences of defendant's actions. We do not see that such conduct is likely to make an innocent person falsely confess.

In this case defendant knew he had shot someone during an armed robbery, and knew he was being questioned about that incident. The fact he was told the victim only needed a band-aid was not the sort of deception that would tend to cause an innocent person to admit to the shooting."

Incriminating statements admissible even though police deceived defendant about what offenses they were investigating

In *US v. Whitfield* the U.S. Court of Appeals, Fourth Circuit upheld the lower court's decision not to suppress incriminating statements even though the investigating police "deceived him [defendant] about the offenses they were investigating." From the Appeals Court opinion:

"Whitfield's chief complaint is that the police officers deceived him about the offenses they were investigating, particularly those involving the forced accompaniment and death of Mrs. Parnell. Nevertheless, Whitfield concedes that the officers "had no duty to advise [him] of the identity of the specific offense under investigation" or "inform [him] of every potential theory of liability related to [his] conduct."... Although Detectives Sampson and Sumner led Whitfield to believe that their only interest at the start of the interview was the Belmont home break-ins, Whitfield obviously knew that his interactions with Mrs. Parnell were the result of his breaking and entering of her home. Whitfield persists, however, that he could not have rationally assessed the consequence of confessing to the break-ins because Sergeant Reynolds had indicated that Mrs. Parnell was alive and had "ID'd" Whitfield.... Because of Reynolds' misrepresentations, Whitfield contends that he mistakenly believed that he was being investigated for only a minor crime.

As the Supreme Court has explained, "[p]loys to mislead a suspect or lull him into a false sense of security that do not rise to the level of compulsion or coercion to speak are not within Miranda's concerns." Illinois v. Perkins, 496 U.S. 292, 297, 110 S.Ct. 2394, 110 L.Ed.2d 243 (1990).

As a result, the totality of the circumstances support the district court's denial of suppression.

Telling the suspect that the victim had accused him of a more serious crime is not a coercive tactic - even though the victim had not made such an assertion

In *People v. Jaeger* the Supreme Court, Appellate Division, Third Dept., New York, the court found that they were not "persuaded by defendant's contention that his statements were the product of coercive and deceptive interrogation practices by the police. "Police may generally engage in deception while investigating a crime, with suppression required only where 'the deception was so fundamentally unfair as to deny due process or [where] a promise or threat was made that could induce a false confession' ".....On more than one occasion during the interview, Stack suggested to defendant that victim A accused him of having intercourse with her despite the victim neither stating nor implying that any intercourse had occurred. However, as the tactic employed by Stack was not accompanied by any threats or promises that might induce a false confession and was not fundamentally unfair, the deception did not render defendant's confessions involuntary."

Lying about evidence (number of witnesses that identified suspect) did not render confession inadmissible

In *Arrue v. Hedgpeth* the US District Court, C.D. California upheld the lower court's decision to admit the defendant's incriminating statements. In this case the defendant claimed that the "police used coercive tactics that overcame his will, leading to his confession. Petitioner argues

that the police lied to him when they told him that he had been identified as one of the perpetrators and when they offered him leniency by telling him that if he confessed, he would avoid a special circumstances murder conviction and would help his family. Petitioner says the officers also threatened him by telling him he was "fucked" because he faced a special circumstances conviction, which meant that he would be in prison for life if he did not confess. The California Court of Appeal denied Petitioner's claim, finding that the totality of the circumstances showed that the confession was voluntary."

The District Court further stated that, "...the state court found that, although police did use language such as "fucked" to describe Petitioner's situation, they did so only in describing the facts in colorful language, and that police made no threats or promises which might have overborne Petitioner's will.....The only circumstance the court found could have suggested an involuntary confession was the fact that police lied to Petitioner about being identified as the shooter by his three confederates. But, the record shows that police did not entirely invent this statement; at trial, both attorneys agreed that one person had identified Petitioner as the shooter, but that it was untrue that three people had identified him. In any event, the state court found that Petitioner had been identified as the shooter did not render the confession involuntary.

Lying to a suspect about the extent of inculpatory evidence against him does not render a confession inadmissible, and telling a suspect that his cooperation would be to his benefit is not coercive

In *State v. Perez* the Court of Appeals of Wisconsin upheld the admissibility of the defendant's incriminating statements even though the police lied to him about the extent of the inculpatory evidence, and even though the interrogator told the defendant that his cooperation would be to his benefit.

On the issue of misrepresenting evidence the court pointed out that, "Of the numerous varieties of police trickery, however, a lie that relates to a suspect's connection to the crime is the least likely to render a confession involuntary. Such misrepresentations, of course, may cause a suspect to confess, but causation alone does not constitute coercion; if it did, all confessions following interrogations would be involuntary because "it can almost always be said that the interrogation caused the confession." Thus, the issue is not causation, but the degree of improper coercion.... Inflating evidence of [the defendant's] guilt interfered little, if at all, with his "free and deliberate choice" of whether to confess, for it did not lead him to consider anything beyond his own beliefs regarding his actual guilt or innocence, his moral sense of right and wrong, and his judgment regarding the likelihood that the police had garnered enough valid evidence linking him to the crime. In other words, the deception did not interject the type of extrinsic considerations that would overcome [the defendant's] will by distorting an otherwise rational choice of whether to confess or remain silent."

The court further stated, "DuBois did not promise Perez leniency in exchange for his confession. "An officer telling a defendant that his cooperation would be to his benefit is not coercive conduct, at least so long as leniency is not promised. Similarly, coercive conduct does not occur when ... an officer, without promising leniency, tells a defendant that if he or she does not

cooperate the prosecutor will look upon the case differently."

Court upholds confession in which investigators lied about the strength of their evidence during interrogation

In *Mata v. Martel*, the United States District Court, N.D. California, upheld the confession which was the result of an interrogation in which the investigators " used two ruses". The investigator "told Mata that his saliva provided a DNA match with sperm found on the victim's underwear and that the victim's sister, Julissa, had seen Mata having sex with the victim. The detectives also made suggestions about what they thought happened. They encouraged Mata to tell the truth, told him that he wouldn't want to look like a liar if he went to court, called him a liar at certain points, and accused him of calling the victim a liar. .....They also told Mata that they didn't believe him, and that they believed he had raped the victim."

Furthermore, "Detective David Gonzalez suggested how he thought the sexual assault occurred: "Here's what I think happened, okay, I think that she's probably a very promiscuous girl ... I think that she was very attracted to you and liked you ... she started saying that, you know, she liked you ... and maybe wanted to do things with you ... you didn't intend, you know, you didn't intend to have sex with her ... but it just happened."

Falsely telling suspect he has been identified as the shooter is not coercive

In *People v. Rubio* the Appellate Court of Illinois Second District upheld the admissibility of a confession the defendant claimed was the result of coercive police deception. From the Appellate Court opinion:

"In urging that his confession was involuntary, defendant emphasizes that the detectives misled him as to the strength of the evidence against him by insinuating that the shooting had been filmed and that several witnesses had identified him as the person who shot the victim or escaped the scene after the shooting. However, defendant correctly concedes that "police trickery, standing alone, does not invalidate a confession as a matter of law."
Frazier v. Cupp, ("The fact that the police misrepresented [the evidence] is, while relevant, insufficient in our view to make this otherwise voluntary confession inadmissible"); ("A misrepresentation which prompts inculpatory statements is only one factor to be considered in determining the voluntariness of the resulting statements"). In Frazier, Kashney, and Martin, police or the prosecution falsely exaggerated the evidence against the defendants, and the defendants thereafter confessed their guilt. See Frazier, (defendant falsely told that his accomplice had confessed); Kashney, (prosecutor falsely told defendant that his fingerprints were found at the crime scene); (defendant falsely told that an accomplice had identified him as " 'the triggerman' "). The courts held the confessions to have been voluntary and admissible.

Defendant recognizes the above line of precedent and instead relies on another case, *People v. Bowman,* to support his argument that the police deception here rendered his confession involuntary. In Bowman, police enlisted the defendant's cell block mate to convince the defendant, who was "intensely fearful" of being returned to a particular correctional center in

which he had spent four years, "that if [the defendant] [confessed], [he] would avoid a transfer to [the correctional center] and stay in the county jail long enough for [the cell block mate] to be released from jail, to return, and to assist in [the defendant's] escape." …. The appellate court affirmed the trial court's judgment that the defendant's confession was involuntary; it concluded that police used deceptive interrogation tactics, calculated to take advantage of the defendant's intense fear of returning to the correctional center, as a means to overcome the defendant's free will.

We see a wide chasm between Frazier, Kashney, and Martin on one hand and Bowman on the other. In Frazier, Kashney, and Martin, the deception related to the ability to prove the defendants' involvement in the crimes; in Bowman, the police used deception to offer the defendant a provocation to confess extrinsic to the interrogation process. In an appeal of a habeas corpus proceeding in an Illinois case, the Seventh Circuit aptly described the difference between these two types of deception:

Of the numerous varieties of police trickery * * *, a lie that relates to a suspect's connection to the crime is the least likely to render a confession involuntary. [Citations.] Such misrepresentations, of course, may cause a suspect to confess, but causation alone does not constitute coercion; if it did, all confessions following interrogations would be involuntary because 'it can almost always be said that the interrogation caused the confession.' [Citation.] Thus, the issue is not causation, but the degree of improper coercion * * *. Inflating evidence of [the defendant's] guilt interfered little, if at all with his 'free and deliberate choice' of whether to confess [citation], for it did not lead him to consider anything beyond his own beliefs regarding his actual guilt or innocence, his moral sense of right and wrong, and his judgment regarding the likelihood that the police had garnered enough valid evidence linking him to the crime. In other words, the deception did not interject the type of extrinsic considerations that would overcome [the defendant's] will by distorting an otherwise rational choice of whether to confess or remain silent."

We agree with the Seventh Circuit and conclude that the police deception here had little, if any, undue coercive effect."

A fake polygraph test did not render involuntary the defendant's incriminating statement; a listing of other misrepresentations

In *People v. Mays* the Court of Appeal, Third District, California found that "mock polygraph test administered to defendant after he requested a lie detector test during detective's questioning, and fake test results, did not render involuntary defendant's incriminating statement after he received the fake test results.." From the court's decision:

Police deception during a custodial interrogation may but does not necessarily invalidate incriminating statements. A psychological ploy is prohibited only when, in light of all the circumstances, it is so coercive that it tends to result in a statement that is both involuntary and unreliable. [undercover law enforcement officer posing as fellow inmate was not required to give Miranda warnings to suspect.

As summarized in *People v. Chutan*: "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.

"So long as a police officer's misrepresentations or omissions are not of a kind likely to produce a false confession, confessions prompted by deception are admissible in evidence. [Citations.] Police officers are thus at liberty to utilize deceptive stratagems to trick a guilty person into confessing. The cases from California and federal courts validating such tactics are legion. [officer falsely told the suspect his accomplice had been captured and confessed]; [officer implied he could prove more than he actually could]; [officers repeatedly lied, insisting they had evidence linking the suspect to a homicide]; [wounded suspect told he might die before he reached the hospital, so he should talk while he still had the chance]; [police falsely told suspect a gun residue test produced a positive result]; [officer told suspect his fingerprints had been found on the getaway car, although no prints had been obtained]; and [suspect falsely told he had been identified by an eyewitness]. [defendant's confession to child molestation was not rendered involuntary by officer's failure to reveal he was conducting a criminal investigation and not just asking questions regarding placement of the children.

People v. Smith, held it was not impermissibly coercive for a police officer to tell the defendant that a "Neutron Negligence Intelligence Test" (a sham) indicated he had recently fired a gun. Additionally, the sham did not elicit a full confession, but only incriminating statements.

People v. Farnam, held the defendant's confession to robbery and assault of hotel occupants was voluntary, despite the police having falsely informed the defendant that his fingerprints were found on the victim's wallet. In California, it has been held that if a defendant takes a lie detector test willingly, " 'neither the fact it was given nor the fact that the defendant was told by the test giver it revealed in his opinion that defendant was not telling the truth, inherently demonstrates coercion. [Citation.]' "

Courts in other states have held defendants' confessions/admissions voluntary where the police told the defendant he or she failed a polygraph test, when no real test was performed, or a real test was given but did not show deception by the defendant, or the police misled the defendant as to the accuracy of the test or its admissibility in court. [confession voluntary despite police (apparent) deception in informing the defendant that he failed a polygraph examination]; [confession voluntary where defendant was hooked up to a polygraph, but it was not turned on]; [affirmed conviction based on confession obtained after the police (perhaps) untruthfully told the 17-year-old defendant that he failed a computer voice stress analyzer, when in fact the test did not so indicate, or did so unreliably]; [police misrepresentations to defendant concerning performance on polygraph test did not invalidate confession].)

Here, we disagree with defendant's view that the police engaged in shocking and outrageous misconduct. The request for a polygraph examination was initiated by defendant, not by the police. The deception was a mock polygraph. A polygraph is designed to elicit the truth, and the police already had information from other sources that defendant was the shooter (including

Schallenberg's identification of defendant as the gray-clad person in the AM/PM photo, and eyewitness statements that the gray-clad person was the shooter). The use of the mock polygraph was not likely to produce a false confession. Although defendant testified he believed polygraphs are 100 percent accurate, that belief was not induced by the police. Moreover, we know the trickery was not particularly coercive because, even after the police showed defendant the fake test results, defendant continued to deny involvement in the crime. He merely admitted being present at the scene wearing a gray sweatshirt. It was other evidence, other than defendant's statements, which gave his admission its weight, i.e., the AM/PM surveillance photo of a gray-clad male, Schallenberg's identification of defendant as the gray-clad male in the photo, and the testimony of eyewitnesses that the gray-clad male was the shooter. (Although the prosecutor used defendant's admissions in closing argument to the jury, he used them as corroboration for the other evidence.)

Can an interrogator tell a suspect "this is just between you and me" when, in fact, the interrogation is being recorded and the recording will be used against the suspect? In this case, yes.

In *Lee v. State* the Court of Special Appeals of Maryland upheld a trial court's decision to admit the confession of a defendant who had been led to believe by the interrogator that their conversation was "just between you and me" when it was actually being recorded. From the court's decision:

"Appellant's first contention is that the circuit court erred in denying his motion to suppress the statement that he gave to the police following his arrest. This contention is based on an exchange between appellant and Detective Schrott, which occurred after appellant had waived his Miranda rights, and after some discussion of the events of the evening. This exchange was as follows:

[APPELLANT:] Yeah, this is being recorded [somewhere ain't it?]

[DETECTIVE:] This is between you and me, bud. Only me and you are here, all right? All right?

Although the suppression court initially expressed "some concern" that the statement vitiated the Miranda waiver, it ultimately denied appellant's motion to suppress, stating:

The statement he makes is, this is being recorded, ain't it? The Detective does not directly answer that question by saying yes or no, but he certainly leaves the Defendant to believe that the conversation is just between the two of them, which was not true. But I do not think that the, it changed the Defendant's willingness to answer the questions in any way. Or violated his rights. So the Motion to Suppress the Defendant's statement is denied."

The Court of Special Appeals found that "Here, unlike the cases cited, supra, there was no express promise that the defendant's statements would remain confidential or that the statements were "off-the-record." Detective Schrott merely responded to appellant's query regarding whether the interrogation was being recorded by stating: "This is between you and me, bud. Only me and you are here, all right? All right?" As the State notes, this statement did not reflect any agreement of confidentiality. Rather, it was an equivocal response that was designed, not to

establish a confidential relationship, but to deflect appellant's suggestion that he was aware that the interrogation was being recorded. We view Detective Schrott's response as sidestepping appellant's question regarding whether the interrogation was being recorded.

Even if the response is viewed as an affirmative misstatement that the interrogation was not being recorded, however, such a response would not violate Miranda. "There is no requirement that a defendant who has properly been given Miranda warnings must also be told he ... may be tape-recorded or video-recorded or both." *State v. Vandever*, 714 A.2d 326, 328 (N.J.Super.Ct.App.Div.1998), cert. denied, 834 A.2d 405 (2003). Police deception regarding whether an interrogation is being recorded, does not contradict the Miranda warning that anything the suspect says can be used against the suspect. A police officer's false statement that an interrogation is not being recorded, when in fact it is being recorded, does not render a confession inadmissible. State v. Wilson, 755 S.W.2d 707 (Mo.Ct.App.1988). "

Interrogators misrepresentation of hair and fiber evidence is insufficient to make the otherwise voluntary confession inadmissible

In *State v. Hardy* the Court of Criminal Appeals of Tennessee, at Nashville upheld the admissibility of the defendant's confession. In their opinion they state: "Next, the appellant challenges the admission of his statement on the grounds that officers were deceptive when they told him they could place him in Vanessa Claude's van during the month of the crime by dating hair and fiber evidence. In *Frazier v. Cupp*, 394 U.S. 731, 89 S.Ct. 1420 (1969), police obtained a full confession from Frazier after they misrepresented to him that his co-defendant confessed. Viewing the totality of the circumstances, the Supreme Court upheld the admission of Frazier's statement, concluding that the misrepresentation was insufficient to make the otherwise voluntary confession inadmissible. We likewise agree with the trial court's assessment in the present case. Under the totality of the circumstances, Detective Downing's misrepresentation about being able to date the appellant's prints in the van was not sufficient to overbear the appellant's will so as to render his confession involuntary.

Finally, the appellant argues that his confession is involuntary because officers impliedly gave him false legal advice when they told him that he would benefit from giving a statement if Lillard had him "snaked up" in something. The trial court found that "the police officers did not give false legal advice" to the appellant during the interrogation.

We agree with the trial court that the officers' comments did not amount to false legal advice. Further, we note that such vague statements encouraging cooperation are not sufficient to overbear an accused's will so as to render a statement involuntary."

Police misrepresent eyewitness and fingerprint evidence against suspect - court upholds confession

In *Weaver v. State* the police falsely told the defendant during his interrogation that 1) witnesses saw him commit the crime, (2) his fingerprints were found, and (3) a videotape showed his involvement in the crime. "Finally, appellant argues that one of the officers made false promises. After inquiring as to appellant's age, the officer told appellant he had his whole life ahead of him,

even though the officer knew appellant was charged with capital murder. Additionally, when discussing appellant's drug use, the officer stated, "You know what if this just happened when you, you know you might had been doing something you didn't realize what you were doing, that's fine! There's nothing wrong with that...." Appellant appears to contend that, by making this statement, the officer was falsely promising that appellant would not face legal consequences if he committed the crime while under the influence of an illegal substance"

"In viewing the totality of appellant's interrogation, we determine that the trial court did not err in concluding that appellant's confession was voluntary. Appellant's inquiries as to what charges were being brought against him did go unanswered, but, as the trial court found, the officers specifically told appellant that they were investigating a capital murder. Officers' misrepresentations that witnesses, fingerprints, and video linked appellant to the crime merely related to his connection to the crime and were not the type of deception that likely causes an involuntary confession. Similarly, any promises made that appellant "had his whole life ahead of him" or relating to appellant's drug use during the crime were not of such an influential nature that would cause appellant to speak."

Lying about results of a black light test not coercive

In *Brown v. State* the court found that "During the interrogation, Detective Zacharias lied by telling Thomas that the police had conducted a black light test of the house where Thomas was living. Detective Zacharias lied further by telling Thomas that this test uncovered traces of Thomas's semen throughout the house. After these misrepresentations, both detectives testified that Thomas recanted his previous denial and admitted to fondling Jill between twelve to fifteen times. Looking at the totality of the circumstances, we cannot say that the trial court's ruling that Thomas's confession was voluntary, despite Detective Zacharias's misrepresentation, is against the overwhelming weight of the evidence."

Court upholds confession in which police lied about satellite imagery implicating suspect

In *People v Minniti* the Illinois Appellate Court upheld a confession that resulted from an interrogation in which the police misrepresented the evidence against the suspect. "The defendant contends that his statements were involuntary because they were the result of police trickery. The trial court found that there were three instances of police deception. The police lied to the defendant when they told him that there was (1) satellite imagery showing someone go from the defendant's home to the victim's home on the night of the murder and (2) DNA evidence, matching him, found inside the victim. The police also misled the defendant's father when they told him they wanted to do a routine follow-up interview of the defendant but did not inform him that they had DNA evidence from the victim's bathroom indicating that the defendant had been present inside the victim's home. While we do not condone Officer Gardner's tactics, the trickery here does not render the defendant's confession involuntary.

Minimization

Minimizing the seriousness of the crime is not coercive

In *State v. Fouts* the Court of Appeals of Ohio upheld the trial court's finding that the defendant's confession was voluntary; rejecting his claim that the interrogator's effort to minimize the seriousness of his actions was coercive.

A jury convicted Douglas W. Fouts of gross sexual imposition and attempted unlawful sexual conduct with a minor; the trial court sentenced him to prison and Fouts filed this appeal, arguing in part, that his statements were involuntary because the police engaged in deceptive practices by minimizing the seriousness of his actions.

The record of the suppression hearing shows that Fouts was a 40–year–old man with no apparent mental deficiency who had worked in the real estate business and had previous criminal experience arising from a grand larceny charge. He voluntarily drove himself to the police station and was questioned for approximately 30 minutes. During the interview the officer told Fouts she did not believe he had raped the minor. The officer testified that she never told Fouts that if he confessed there would be no charges. Fouts neither alleges, nor do we find, any evidence that the police officer made statements constituting direct or indirect promises of leniency, or that she made representations concerning sentencing or probation. Likewise, there is nothing in the record that suggests the officer made any misrepresentations of the law.

Fouts's argument is that the officer minimized his offense by telling him she did not believe he committed rape. We find nothing deceptive about this statement; the officer testified that the minor's factual allegations did not include rape. The other possible statements in the record that arguably minimized Fouts's offense were the officer's statement that she believed he "made a mistake" and "mistakes can be fixed", and her characterization of what might have happened the night before as "iffy." However, we find nothing about those vague and indefinite statements that would render his confession involuntary.

Court finds that interrogators are permitted to use minimization techniques

In *State v. Belonga* the Supreme Court of New Hampshire upheld the admissibility of the defendant's incriminating statements, finding that police can use minimization techniques. In this case the defendant claimed that the interrogator's "minimization of the possible causes of Rylea's [her child] injuries affected the voluntariness of her statements." The court pointed out in their opinion the following:

"At the suppression hearing, Maher testified that he used an interrogation technique that involves "minimizing the actions [of defendants to suggest] that they are less culpable for their actions, whether it be due to a chemical dependence or being under the influence of alcohol or drugs or being [under] the stress of a single parent." Therefore, this interrogation technique does not entail the use of outright falsehoods, but rather the use of subtle subterfuge. Given that police are permitted to mislead a suspect, they are likewise permitted to use minimization techniques." .

The value of videotaping an interrogation – minimization

In *Commonwealth v. Chaperon* the Appeals Court of Massachusetts upheld the admission of the

defendant's confession after reviewing the videotape of the interrogation. In their decision the court stated that, "The defendant claims that, after administering Miranda warnings, the detectives undermined them by promising him that they would not place him under arrest if he admitted to criminal conduct. This claim is unfounded. The detectives told the defendant (truthfully, as it turns out) that whatever he might say during the encounter, he would not be arrested that day. At the outset of the interview (which is neither included in the transcript supplied by the defendant nor mentioned in either party's brief), Detective Eason stated, "You're not being arrested tonight, but I still have to read you your [Miranda] rights" (emphasis added). Later statements were to the same effect-that whatever the defendant might say he would not be arrested on the spot. The detectives did not state or imply that, regardless of the warnings he received, his confession would insulate him from arrest. *Cf. Commonwealth v. Shine*, 398 Mass. 641, 650-651 (1986).

While the detectives engaged in a form of "minimization" (repeatedly stating that people will forgive a person who made a mistake, but will not forgive a liar), and also told the defendant that he should get therapy, these features of the interrogation do not preclude a finding that the defendant's statements were voluntary; rather, they are to be considered as part of the totality of circumstances.

Viewed in that way, we agree with the motion judge that the manner in which the defendant was questioned did not render the defendant's statements involuntary. Significantly, throughout the interrogation, the defendant remained composed and did not seek to terminate the interview; he carefully calibrated his answers, offering explanations (both plausible and implausible) to deflect suspicion; and, despite eventually admitting that he had touched or rubbed the victim's vagina on a number of occasions, he steadfastly denied that he ever penetrated her with his fingers as she alleged.

Regarding the technique of minimizing the moral seriousness of the offense the Supreme Court of Canada stated the following:

• "There is nothing problematic or objectionable about police, when questioning suspects, in downplaying or minimizing the moral culpability of their alleged criminal activity. I find there was nothing improper in these and other similar transcript examples where [the detective] minimized [the accused's] moral responsibility."
R v. Oickle (2000) http://scc-csc.lexum.com/scc-csc/scc- csc/en/item/1801/index.do

Suggestion of reduced charges

Statements indicating that juries were more likely to be lenient if presented with a full confession were not coercive

In *State v. Cox* the Supreme Court of Minnesota held that defendant's confession was not rendered involuntary when police promised they would look into his brother's death in exchange for statement; that law enforcement officers' statements suggesting full confession would be viewed favorably by prosecutor were not coercive; and that officers' statements indicating that

juries in county were more likely to be lenient if presented with full confession were not coercive. From the Supreme Court's opinion:

Cox argues the district court committed reversible error by denying his motion to suppress his confession. Specifically, Cox alleges that (1) police promised that in exchange for his statement they would look into his brother's death; (2) police assured him they could influence the county attorney; and (3) police told him that a "small town Scott County jury" would be more lenient if presented with a full confession.

About 1 hour and 20 minutes into the interview, Cox raised the possibility of making a deal with the officers: if they promised to look into his brother's death, he would tell the officers what happened.

The transcript of the statement demonstrates that Cox's will was not overborne. Indeed, Cox initiated the negotiation that led to Agent Wold's agreement and Cox's inculpatory statement....

We next consider Cox's argument that the statements of Agent Wold and Detective Horner suggesting a full confession would be viewed favorably by a prosecutor were coercive. A suggestion by the police that they can influence prosecutors in favor of a defendant is improper....

Cox points to several statements investigators made during his interview before he confessed as evidence of coercion. For example, police officers stated:
• I wanna know that information so that we can go and tell our bosses that tonight Anthony was very truthful....
• It looks so much better that when the attorneys when they pull all of our reports together and they review your statement or review the recording of this interview tonight and they go wow here is a young man who at least said what he did he's sorry for what he did and he didn't mean it for it to go down that way and he was cooperative and filled in all of the other pieces all I can tell you Anthony is that people that do that (Inaudible) better I think everybody involved in the whole system just go wow....

We conclude that the police statements Cox challenges were not improper in the context in which they were given. The officers stated that a full confession would be impressive and that defendants who make a full confession generally do better in the criminal justice system. But the officers did not promise that if Cox confessed, they would attempt to obtain favorable treatment for him from the prosecutors. Consequently, the police statements in this case are significantly different than the statements we have deemed improper in the past.

Cox further argues his confession was rendered involuntary by the police officers' statements that Scott County juries have a "small town" outlook and are more likely to look favorably on a full confession. He suggests the officers "played on the societal fear of urban crime committed by young black men and how that [is] perceived in small towns." These statements were all made to pressure Cox into implicating Kurr, which ultimately proved fruitless. We conclude that the police statements were not unduly coercive. The statement of how a jury may view certain evidence is simply a prediction. In sum, we conclude that the totality of the circumstances do not

support Cox's argument that his confession to police was involuntary.

Suggesting to the defendant that he might get a better deal if he was "first to the table" and that he should consider the impact it would have on his son if he was in prison were not coercive statements

In *US v. Woodley* the US District Court, E.D. Michigan, upheld the lower court's decision that statements suggesting to the defendant that he might get a better deal if he was "first to the table" and he should consider the impact it would have on his son if he was in prison were not coercive. From the court's opinion:

Woodley argues that his alleged confession was involuntary because the officers used coercive tactics during the interrogation....The video makes clear that the officers did not coerce Woodley through any threatened or physical force. Nor did they verbally abuse him in any way. And the officers provided Woodley with relatively comfortable surroundings. Woodley's claim is thus based on the content of the Officers' statements, not the manner in which they were made. In particular, the officers suggested that Woodley might get a better deal if he was "first to the table," explained that carjacking carried a long prison sentence, urged Woodley to consider the impact on his son if he were to go to prison, and suggested they could link him to other carjackings if he did not cooperate.

Regarding the officers' statements implying that Woodley would get a better deal if he was "first to the table," the Sixth Circuit has noted that "[a] promise of leniency in exchange for cooperation may be a relevant factor in determining whether a confession was involuntary," but "such statements usually are permissible." ... Here, the officers merely suggested to Woodley that if he cooperated, he might be able to obtain a lower sentence if convicted. These statements were not false or illusory.... And all the officers did here was speculate. They said, "usually the first man to the table gets the best deal" (Video at 22:13), and, "First to the table, we could work with that," (Id. at 22:47). These speculative statements did not render Woodley's subsequent confession involuntary.

Nor was it coercive for the officers to suggest to Woodley that he would face a long prison term if convicted. "A truthful and non-coercive statement of the possible penalties which an accused faces may be given to the accused without overbearing one's free will....as long as the statement results from an informed and intelligent appraisal of the risks involved rather than a coercive atmosphere, the statement may be considered to have been voluntarily made." ... Informing Woodley of the potential sentence he was facing was not objectively coercive.

And telling Woodley that he would not have much contact with his son if he were to receive such a prison sentence was not objectively coercive either. Though the officers told Woodley that he would not see his son and that if he were to be imprisoned, someone else might end up raising his son, they did not threaten any legal or economic consequences to Woodley's son.

Over the course of nearly four hours, the officers painted a realistic picture of Woodley's situation and the process that was about to unfold. They did not make any illusory promises, nor did they make any unfounded threats to either Woodley or his son. While these statements may

have upset Woodley, they did not rise to the level of coercive police activity.

Investigator's statement that felony murder would receive a lesser sentence than premeditated murder did not render confession involuntary

In *State v. Turner* the Nebraska Supreme Court held that misinformation by police officers during the defendant's interview that felony murder would receive a lesser sentence than premeditated murder did not overcome defendant's will so as to render his confession involuntary based on purported promises of leniency. From the court's opinion:

"Turner argues that his confession was involuntary because it was induced by an implied promise that he would receive a lesser sentence if he confessed that the shooting was accidental. As evidence of this implied promise, he points to Ficenec's statements that it made "a big difference" how and why the shooting occurred and to Krause's statement that the possible penalty could be 1 to 10 years' imprisonment if the shooting was accidental. He claims that these statements constituted an implied promise of leniency which overcame his will and caused him to confess. He further argues that the officers' statements were deceptive because first degree murder encompasses felony murder-- which does not require a showing of malice, intent, or premeditation.

Turner is correct in his assertion that the officers deceived him during the course of the interview at the parole office. Ficenec's statements as to there being "a big difference" how and why the shooting occurred, and specifically Krause's statement that Turner could get 1 to 10 years' imprisonment if the shooting was accidental, incorrectly indicated that felony murder would receive a lesser sentence than premeditated murder...

... We have previously noted that a deceptive statement regarding possible sentences is only one of several factors to be considered. In *State v. Thomas*, we determined that the defendant's confession was voluntary and not caused by misinformation regarding possible sentences due to the presence of three factors. These factors included that (1) the officers returned to previous themes between the discussion of possible penalties and the defendant's confession, (2) the defendant indicated a knowledge that he could receive life imprisonment for the crime both before and after his confession, and (3) the confession occurred after an officer indicated that he did not know what sentence would be imposed.

... As in Thomas, Turner's confession did not follow the discussion in which the officers misrepresented that a lesser sentence would be imposed for felony murder. Rather, his confession was immediately preceded by the officers' return to the prior theme of Turner not being a bad, evil person; Krause's exhortation to "do the right thing"; and the colloquy regarding Turner's belief in God and the fate of his soul. Thus, the dialog immediately preceding Turner's confession supports the conclusion that his confession was primarily motivated by remorse and a desire to do the right thing--not to receive a lesser sentence.

As to the second factor we identified in Thomas, Turner indicated both before and after his confession that he was aware he could receive a sentence of life imprisonment. Before Turner confessed at the parole office, he stated, "Man, I'm going to get life for this shit." And after he

confessed and was transferred to the police department, Turner stated to Coleman, "I'm about to get like, life." Thus, this factor indicates that Turner did not believe his confession precluded him from receiving life imprisonment.

Finally, like the defendant in Thomas, Turner confessed after officers stated that they did not know what sentence would be imposed. In response to Turner's statement, "I'm going to get a hundred years," Ficenec replied, "I can't tell you what the potential penalty could be. I mean I'm not going to bullshit you. Could you potentially get life? Is that a possibility? I mean, I'm not a judge, I'm not a prosecutor." And during the colloquy immediately preceding Turner's confession, Krause stated, "I don't know, okay?" in response to Turner's assertion that he "might be in jail for a long-ass time." Thus, although they incorrectly indicated that felony murder would receive a lesser sentence, the officers made no representations as to what sentence Turner would receive if convicted. This factor supports the conclusion that Turner's confession was not motivated by a belief that he would receive a particular sentence.

Statement to the effect that the defendant had a "chance to reduce the potential charges or sentencing" if he showed remorse and confessed did not render the confession inadmissible

In *US v. Takai* the US District Court, D. Utah, the court found that statements to the effect that the defendant had a "chance to reduce the potential charges or sentencing" if he showed remorse and confessed did not render the confession inadmissible. In their opinion the court stated that, "Defendant's allegations of coercive tactics in the second interview revolve mainly around Agent Quirk and Detective Coats' various statements promising that they would speak to prosecutors to recommend leniency if he ... would come clean and show remorse. The transcript of the interview reveals numerous such statements.

In the interview, Agent Quirk and Detective Coats repeatedly made statements to the effect that there was a "chance to reduce the potential charges or sentencing" if he showed remorse and confessed... The basis of such statements was that the investigators would recommend leniency to the prosecutors. And both Detective Coats and Agent Quirk repeatedly clarified that they did not have the authority to make promises, control the charges, the sentencing, or even whether the case would be filed in state or federal court, though they did encourage Defendant by saying that cooperation might help... This court held in.... that in an interrogation, officers may "speculate that such cooperation will have a positive effect" as long as they do not "go beyond limited assurances." .... The court finds that Agent Quirk and Detective Coats' statements, though to some extent "promises" (but not of leniency; rather, promises to speak to the prosecutors to recommend leniency), were carefully hedged to avoid going "beyond limited assurances."

...Thus, the court finds there was no police misconduct in this interview that would justify looking further into specific characteristics of Defendant that could affect the voluntariness of his confessions where coercive police conduct has been found.

What constitutes a promise of leniency?

In *Ozuna v. Texas* the Court of Appeals of Texas, Austin, found that "For a promise to render a confession invalid, it must be positive, made or sanctioned by someone in authority, and of such an influential nature that it would cause a defendant to speak untruthfully....General offers to help a defendant are not likely to induce an accused to make an untruthful statement, and therefore will not invalidate a confession. Similarly, general statements made to a suspect that a confession may sometimes result in leniency do not render a confession involuntary." .

If you do not tell the truth, "Life has ended" does not constitute a threat

In *People v. Cardenas* the Sixth District Court of Appeal, California, says that it does not constitute a threat. In their opinion the court stated that, "The sergeant's testimony indicated that the remark was neither a threat of harsher punishment if defendant Plancarte did not confess to robbery nor a promise of greater leniency if he did. Rather, the gist of the remark appears to be that, absent the "truth," life as defendant Plancarte knew it would end, which would seem to imply that the police already had a\ convincing case against defendant Plancarte unless the "true" facts put things in a different light. Exaggeration of the strength of the evidence against a defendant during interrogation does not necessarily render a confession involuntary... Mere advice or exhortation by the police that it would be better for the accused to tell the truth, when unaccompanied by either a threat or a promise does not ... make a subsequent confession involuntary.

The detective's statement that "[i]f you admit to things, you make mistakes, you made a bad choice; but if you deny this, in my book, you are a criminal," was merely moral urging...not a promise of leniency

In Garcia v. State the District Court of Appeal of Florida found that "The detective's statement that "[i]f you admit to things, you make mistakes, you made a bad choice; but if you deny this, in my book, you are a criminal," was merely moral urging." They stated that, "The constitution does not bar the use ... of any statements that could be construed as a threat or promise, but only those which constitute outrageous behavior and which in fact induce a confession." There must also be a causal nexus between the improper conduct or questioning and the confession. A confession is not involuntary if officers do nothing more than "encourage or request that person to tell the truth."

"We do not reach the question of whether the detective's promise was "outrageous," because the detective's statements do not constitute or suggest a promise of leniency. The detective's statement that "[i]f you admit to things, you make mistakes, you made a bad choice; but if you deny this, in my book, you are a criminal," was merely moral urging. "Encourag[ing] or request[ing][a] person to tell the truth" does not result in an involuntary confession."

The statements, "I have no intention of putting you in jail tonight" and "If you have a problem, we can help you.... I promise you, I will do everything I can to help you." Were not promises of leniency.

In *State v. Leeson* the Court of Appeals of New Mexico upheld the lower courts decision to admit the defendants confessions. On appeal the defendant had argued that his confession was

involuntary because it was elicited by false or implied promises and threats. In examining this issue the court made the following observations:

“The court quoted Detective Kohler as having stated, “[r]ight now, no matter what happens, no matter what you tell me, and I swear to this, I have no intentions of putting you in jail tonight.” The express promise did not concern long term leniency, only the avoidance of jail that night and provided no incentive or disincentive to make admissions. The district court noted that the detective kept this promise, even though Defendant made certain admissions.

“The district court also concluded that Defendant could have inferred an implied promise to get help for him if he was cooperative. At the hearing on his motion, Defendant pointed to the following statements Detective Kohler made in the first interview as implied promises. “If you have a problem, we can help you.... I promise you, I will do everything I can to help you.... That might be something we can help you with.” We addressed similar statements regarding possible treatment in State v. Lobato, 2006– NMCA–051, ¶ 1, 139 N.M. 431, 134 P.3d 122, where the defendant was charged with criminal sexual penetration of a minor. We agreed that the statements in that case gave the impression that the defendant would get treatment if he confessed, but we did not find any promise that the defendant would get treatment instead of prison time or would get a lesser sentence of imprisonment....We concluded that the defendant's confession was not rendered involuntary by the officer's discussion of possible treatment. We reach the same conclusion here.”

The statement “...you might be charged with one thing you know there's plea agreements and things they can work out a deal” is not a promise of leniency

In *Sims v. State* the Court of Appeals of Indiana upheld the lower court’s opinion that this statement was not a promise of leniency. The full statement that was at issue was the following:

“But ... don't be silly and lie about this I mean because even though you might be charged with one thing you know there's plea agreements and things they can work out a deal with you but don't throw away your entire life because that jury is going to be pi* *ed and that judge is gonna [be] pi* *ed if you go in lying in Court. They're gonna say [he] shows no remorse, he doesn't feel bad about what happened and whether you cry or not I mean that's not ... that's not what remorse is about. But doing the right thing here and telling the truth what happened that's ... that's what you need to do.”

The court found that, “Here, however, Detective Mayhew neither promised Sims his punishment would be mitigated nor misstated the law. Rather, the detective merely told Sims that it was in his best interest to be honest and tell the real story, and that plea agreements and deals were available. The Indiana Supreme Court has consistently held that vague and indefinite statements by the police about it being in the best interest of the defendant for him to tell the real story or cooperate with the police, such as the one in this case, are not sufficient inducements to render a subsequent confession inadmissible.”

Telling the suspect the nature of the charge - capital murder - and that he can help himself by telling the truth does not render the confession inadmissible

In *Smith v. State* (2010) the Court of Criminal Appeals of Texas upheld the admissibility of the defendants' confession even though he was told by the interrogator that "I'll get you the death penalty or you can tell me the truth and help yourself."

The Appeals Court found that, "Rogge's statements, which the appellant deems a threat, "offensive to due process, and [sic] draws a line the police may never cross, not even with a suspect who has been warned and has expressed a willingness to speak to them," do not affirmatively promise that the appellant would not get the death penalty if he confessed. At best, the comments convey the understanding that the appellant would most likely get the death penalty if he were found to be lying; if he told the truth, he would have a chance at a life sentence. When the appellant stated that he was trying to cooperate with Detective Rogge because it was "probably" the only thing that would save him from the death penalty, his statement did not inherently mean that he was being offered a deal with the police for a life sentence. In fact, when the appellant testified at the suppression hearing, he did not even say that Rogge had promised him anything or that he felt coerced to make his statement."

The statement "we are here to listen and then to help you out," is not an implied promise of leniency

In *People v. Vance* the Court of Appeal, First District, California upheld the trial court's opinion that the statement "we are here to listen and then to help you out," was not an implied promise of leniency. The Appeals Court stated that, "While defendant reads an implied promise of leniency into Officer Kelly's statement that "we are here to listen and then to help you out," and Officer Norton's statement that "the court ... wants to know what the real story is and you're the only one that can provide that," our review of the videotape reveals that the only benefits promised by the officers was the peace of mind defendant and others would have after he did the right thing and gave his side of the story. That is not coercion.
The court's decision went on to point out that "Mere advice or exhortation by the police that it would be better for the accused to tell the truth, when unaccompanied by either a threat or a promise, does not ... make a subsequent confession involuntary"; *People v. Jimenez* (1978) 21 Cal.3d 595, 611-612, 147 Cal.Rptr. 172, 580 P.2d 672 [" '[when] the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct,' the subsequent statement will not be considered involuntarily made"]; *People v. Andersen* (1980) 101 Cal.App.3d 563, 578, 161 Cal.Rptr.707.) The brief and bland references upon which defendant has seized do not push this case over the forbidden line of promised threats or vowed leniency (see *People v. Ray* (1996) 13 Cal.4th 313, 340, 52 Cal.Rptr.2d 296, 914 P.2d 846), certainly not within the context of an interview that lasted more than three hours."

"We are here to help you, we are the only ones who can help you." Is not a promise of leniency

In *Redd v. State* the Court of Appeals of Texas, Houston, upheld the trial court's decision to admit the defendant's statements into evidence. On appeal the defendant claimed that his "will was overborne by false promises and threats" – specifically claiming that the investigators told him

that "(1) he would not get life in prison if he cooperated; (2) they were there to help him; and (3) they were the only ones who could help him."

The Appeals court ruled that the "Appellant does not specify the exact promises made by Elizondo and Dew that he assails. General statements by an officer that he is there to help defendant and is the only one who can help defendant do not indicate the "if-then" relationship required to establish a promise."

Also, the court wrote that "Specifically, appellant argues that he was induced to confess by the following statement made by Elizondo: "I guarantee that you're not going to do life [in prison] like he is. Or whoever"..... Elizondo's "guarantee" was part of a larger statement in which Elizondo attempted to persuade appellant to tell his "side of the story" before Isler was detained and blamed everything on appellant."

Statements like "try to get something going"; I want to help you put your "best foot forward" do not constitute promises of leniency. Statements like "being the guy that's not being completely honest" and being the "odd-man out" and "left out in the cold," do not imply a threat or dire consequences.

In *People v. Atencio* the Court of Appeal, Third District, California found that the trial court properly admitted the defendant's confession, stating that, "Having examined the interviews, we discern no implied threats or promises of leniency. As defendant points out, detectives told him they were "trying to get something going" for him and trying to "help" him to put his "best foot forward" by providing a statement that honestly explained "why all this bad shit happened" and showed "some remorse" for Rapp's death. However, this cannot be construed as an implied promise of leniency. In the context of the interview, the detectives were doing nothing more than exhorting defendant to tell the truth and permissibly offering to help him explain his side of the story to the district attorney. (See *People v. Ramos*, supra, 121 Cal.App.4th at p. 1204 ["no improper promise of leniency" where the detective "promised only to present evidence of [defendant's] cooperation to the district attorney"].) The detectives "did not suggest they could influence the decisions of the district attorney," but simply informed defendant that providing an honest account of events might be beneficial in an unspecified way. (*People v. Carrington*, supra, 47 Cal.4th at p. 174.) Indeed, immediately before he confessed to the murder plot, the detectives specifically told him the district attorney would be responsible for charging him and there probably was not a lot of "movement," "if any," as far as which crimes would be charged against him. Consequently, offering to help him explain his side of the story to the district attorney cannot be construed as an implied promise of leniency.

"Defendant also faults the detectives for warning him against "being the guy that's not being completely honest" and being the "odd-man-out" and "left out in the cold," and for telling him the only way he could help himself was to tell them what happened. According to defendant, these statements constituted a threat that he was in a hopeless situation and would suffer dire consequences unless he confessed. He also complains the statements were repeated after he was told Krauter and Medina had confessed to the murder plot. Thus, he suggests, "the threat that [he] would be 'left out in the cold' if he did not confess to the murder plan like the others ha[d] done was meant to imply that all of the other participants who freely admitted participation in the

murder plot would be receiving a more favorable outcome, and that he would be denied a similar benefit because of his refusal to admit the plan to commit murder."

"On the contrary, far from threatening defendant, the detectives were simply explaining the natural consequences that would flow from his lying to them, should his co-conspirators suffer a crisis of conscience and confess. We have no doubt that, when those words of the detectives were repeated after they informed defendant that Krauter and Medina had confessed, the words carried greater weight in defendant's mind and likely led to the confession that followed immediately. But the fact that a strategy was effective does not make it unconstitutional. "No constitutional principle forbids the suggestion by authorities that it is worse for a defendant to lie in light of overwhelming incriminating evidence." (*People v. Carrington*, supra, 47 Cal.4th at p. 174.) This is all that the detectives did in this case. They did not, as defendant claims, imply that Krauter and Medina would receive a more favorable outcome because they confessed, or that defendant would be denied a favorable outcome unless he also confessed."

Court rejects the claim that a coercive environment was created when the investigators mentioned the gravity of the offense and the possibility of a lengthy prison sentence and then told the suspect that if he cooperated, he might benefit

In *US v. Dominguez-Gabriel* the United States District Court, S.D. New York, upheld the trial court's decision to admit the defendant's incriminating statements even though he claimed that the agents created a coercive environment when they mentioned the gravity of the offense and the possibility of a lengthy prison sentence and then told him that if he cooperated he might benefit. From the court's opinion:

"Finally, the Defendant complains that the agents created a coercive environment when they mentioned the gravity of the offense and the possibility of a lengthy prison sentence and then told him that if he cooperated he might benefit. But the Second Circuit has made clear that simply stating that cooperation may help a defendant facing a lengthy sentence is not enough to render a statement subsequently made involuntary. United States v. Gaines, 295 F.3d 293, 299 (2d Cir.2002); United States v. Ruggles, 70 F.3d 262, 265 (2d Cir.1995) ("Certainly, statements to the effect that it would be to a suspect's benefit to cooperate are not improperly coercive."). And when the agents told the Defendant that he had been arrested on a serious offense for which he might face a lengthy jail sentence, they were simply informing him of the facts of his situation. See United States v. Tutino, 883 F.2d 1125, 1138 (2d Cir.1989) (holding that once a suspect "had been advised of his rights, the agents were free to discuss with him the evidence against him and the reasons why he should cooperate"); Green v. Scully, 850 F.2d 894, 903-04 (2d Cir.1988) (holding that police officials' references to the electric chair, while improper, did not render a confession involuntary); United States v. Pomares, 499 F.2d 1220, 1222 (2d Cir.1974) (holding that "[i]t was quite proper in the course of such discussion to mention the situation which Pomares faced," including informing the defendant he faced heavy penalties for drug smuggling).

Even taken together, none of these circumstances rise to the level of coercion or suggest that the Defendant's "will was overborne."

The interrogator's implication of leniency in exchange for cooperation is not coercive

In *Lewis v. Commonwealth* the Court of Appeals of Virginia, Richmond the court upheld the admission of the defendant's confession. Specifically, they stated that "according to Lewis' argument, he was coerced to confess because Detective Byrd implied that Lewis would benefit by cooperating, he implied that cooperating would help Lewis see his child, he implied that Lewis' continued cooperation could earn leniency in sentencing, and he told Lewis that a videotape showed "everything."

Detective Byrd implied on several occasions that cooperating might help him obtain some leniency in the future. We held in Washington that the officer's implication of leniency in exchange for cooperation is not coercive. 43 Va.App. at 304, 597 S.E.2d at 262 (The officer's statement was not an actual promise of leniency, and the officer never claimed to have the power to affect the decision of the Commonwealth's Attorney's office.). Here, Detective Byrd never guaranteed Lewis that, by cooperating, he would receive any benefit. The detective did not make any promises to Lewis, and he never indicated that he had authority to dispense leniency in prosecution, sentencing, or visitation rights while in prison. Therefore, according to Washington, Detective Byrd's implication that cooperation might help Lewis in the future is not coercive. Moreover, Detective Byrd's implications that cooperating would help Lewis see his child and gain leniency in sentencing is similarly not coercive."

Telling the suspect that if he tells the truth it could be in his benefit to do so and exaggerating the strength of the evidence against him does not render a confession involuntary

In *People v. Garcia* the Court of Appeal, Second District, Division 2, California the court upholds the admissibility of the defendant's confession. In this case the court found that "The record negates appellant's contention that the officers made an implied promise of leniency in charging or punishing appellant. During the interview, one of the officers explained to appellant that he could be tried as a juvenile or as an adult, but added: " I can't make you any promises and I wouldn't do that but we need to know the truth and we need to know what you were thinking in your heart." (Italics added.) When appellant asked the officers what would happen to him, the officers told him: "You're going to be charged with the murder." They went on to tell him that although they would present his case to the juvenile system, someone other than the officers would make a decision whether he would be tried as an adult. In our view, there was no express or implied promise of leniency.

The officers certainly urged appellant to tell the truth and represented to appellant that it could be in his benefit to do so. These exhortations, however, were within the permissible bounds of telling appellant that it would be in his advantage to be truthful because the officers did not attach a promise of leniency with the exhortations. (Jimenez, supra, 21 Cal.3d at p. 611 ["mere advice or exhortation by the police that it would be better for the accused to tell the truth when unaccompanied by either a threat or a promise does not render a subsequent confession involuntary"]; *People v. Hill* (1967) 66 Cal.2d 536, 549["[w]hen the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct, we can perceive nothing improper in such police activity"]; In re Anthony J., supra, 107 Cal.App.3d at p. 969 [15-year-old defendant's confession held voluntary where officers told

defendant that if he told the truth, the officers would tell the court that defendant was cooperative and would play the taped confession to the court " 'to show how cooperative the minor had been' "].)

It is true, as appellant points out, that the officers in this case exaggerated the nature of the eyewitness testimony against appellant. During the interrogation, the officers told appellant that witnesses had identified appellant as walking up to the victim, shooting the victim, running toward a van driven by his brother and leaving in that van. In fact, the two eyewitnesses for the prosecution testified only that the person they saw running after the gunshots shared the same physical build as appellant. "Numerous California decisions confirm that deception does not necessarily invalidate a confession." (*People v. Thompson* (1990) 50 Cal.3d 134, 167.) Courts have upheld the admission of a confession where the officer's " 'deception was not of a type reasonably likely to procure an untrue statement.' [Citations.]" (Ibid., citing In re Walker (1974) 10 Cal.3d 764 [upholding confession where officers deceptively told defendant that he would die before he reached the hospital]; *People v. Watkins* (1970) 6 Cal.App.3d 119 [upholding confession where officers deceptively told defendant that his fingerprints were found on the getaway car].)

In our view, the deceptions employed by the officers in this case were not of the type reasonably likely to procure an untrue statement from appellant."

"I'm going to help you to get out of here, I'm going to help you with the detective....” was not a promise of leniency

In *Briones v. State* the Appellant claimed he confessed because the interrogator promised to help him, and that he (appellant) thought the interrogator would help him go free. The interrogator did make the following statements to the defendant: ""I'm going to help you to get out of here, I'm going to help you with the detective.... [W]ith the truth, everything will come out right.... [A]t one point in your life, you need to trust someone.... I'm giving you my word as a man.... You need to speak with me and tell me everything, and we'll solve all of this." A short time thereafter, Colunga added: "I will call the detective, call her here. You and I will talk to her and we'll explain to her why.... You have a disease.... But we need to help you." The Court of Appeals found that "These generalized statements of help and comment on the power of truth, however, do not constitute the kind of "if-then ... deal, bargain, agreement, exchange, or contingency" that is of such a nature to cause a suspect to speak untruthfully."

References to suspect’s family members

Police statements that the defendant’s nephew would be released if the defendant “did the right thing” [confessed] and that the police “should have brought your sister down too” were not coercive

In Commonwealth v. Winstead the Circuit Court of Virginia, Fourth Judicial Circuit, found that statements suggesting the release of the defendant’s nephew if he “did the right thing” and confessed, as well as a statement that the police “should have brought your sister down” to the police station were not coercive. From the court’s opinion:

Defendant argues that his written confession must be excluded because he did not give it freely and voluntarily. Specifically, Defendant asserts that the interrogating officers coerced Defendant into signing the confession by (1) forcing Defendant to observe his nephew confined in a holding cell, (2) implying that they would release the nephew if Defendant confessed, and (3) commenting about Defendant's sister that they "should have brought her in" to the station. Defendant claims that, as a result of this conduct, his will was overborne and he felt coerced into signing the confession.

Virginia law recognizes that "a confession may be involuntary and hence inadmissible when induced by threats to prosecute members of the confessor's family."... However, "a confession is not per se invalid merely because the confessor implicates himself in an effort to secure the best possible disposition of a charge pending against a relative or friend ... it must also be shown that the ... relative was improperly detained or threatened as the means whereby the confession was involuntarily extracted." ... As with other arguments as to voluntariness, the inquiry is "whether the defendant's will was overborne at the time he confessed." ... If the defendant's "will was overborne," his or her resulting confession is inadmissible.

In the case at bar, Defendant claims that officers coerced him into confessing by (1) detaining his nephew Jerrell, (2) having Defendant observe Jerrell confined in a holding cell, (3) telling Defendant "if you do the right thing, Jerrell will get to go home," (4) stating to Defendant "you'd be surprised how many people let their family members get arrested," and (5) remarking that the police "should've brought your sister down, too." Defendant argues that these statements constitute implied threats to prosecute Defendant's family members if he did not confess, thereby rendering his subsequent written confession involuntary.

Because both Hammer and Hill involved threats made by officers to investigate or prosecute an arrestee's family member, these decisions govern the Court's analysis. These cases stand for the general proposition that a confession is not rendered involuntary by an officer's statement implying that the police would investigate or prosecute a member of the defendant's family if that threat could be lawfully carried out and is not accompanied by baseless threats or other deprivations that could overcome the defendant's will.

On balance, in view of the circumstances of Defendant's detention and questioning, Defendant's individual characteristics, and the fact that the police could have carried out their alleged threats, the Court holds that Defendant's confession was not involuntary.

Court rejects defendant's claim that he confessed because his family members were threatened with arrest

In *Ortega v. Sherman* the US District Court, C.D. California upheld the lower courts rejection of the defendant's claims that he confessed due to police "threats, promises of leniency, and deception." From the District Court's opinion:

Los Angeles County Superior Court jury found Petitioner guilty of first degree special circumstances murder. The jury also found that Petitioner personally discharged a firearm.

Thereafter, Petitioner was sentenced to life without the possibility of parole, plus a consecutive 25-year-to-life term for the firearm enhancement.

... Petitioner maintains that the investigating detectives employed three impermissibly coercive tactics that caused him to incriminate himself: threats, promises of leniency, and deception.

First, Petitioner contends that the detectives used threats against his family to persuade him to provide incriminating statements about the shooting. In particular, he complains that the detectives effectively told Petitioner that his brother would face murder charges unless Petitioner admitted that he fired two shots at the victim. Petitioner also complains that the detectives threatened to arrest his mother unless he was forthcoming about the shooting and his motives for targeting the victim.

Second, Petitioner maintains that the detectives effectively promised him leniency if he was forthcoming about the shooting. In particular, Petitioner notes that the detectives stated that Petitioner would appear to be a cold-blooded killer unless he explained why he had shot the victim. According to Petitioner, this statement amounted to a promise that he could avoid being charged with premeditated murder if he explained his motivation for targeting the victim. Simultaneously, Petitioner construes the statement as a threat that he would, in fact, be charged with premeditated murder if he did not explain why he had targeted and shot the victim.

Finally, Petitioner alleges that the detectives coerced him to confess by falsely stating that they knew Petitioner's father and, thereafter, using Petitioner's patently obvious feelings towards his father in order to persuade Petitioner to admit why he had shot the victim. This tactic was impermissibly coercive, according to Petitioner, because he was uniquely vulnerable to it, and the detectives used his vulnerability in an effort to gain his confidence. Petitioner notes that the tactic was highly successful, as the record shows that he cited the purported fact that one of the detectives knew his father as the reason why he ultimately elected to be truthful about the shooting.

The California Court of Appeal rejected Petitioner's coercion claim. In doing so, the court of appeal applied the proper legal standard for analyzing federal law challenges to purportedly coerced confessions.

Here, the court of appeal reasonably concluded that Petitioner's custodial statements were voluntary. Each of Petitioner's allegations of coercion is addressed in turn below.

1. Threats to Family Members
   Threats involving an accused's family members can render a resulting confession involuntary..... Nevertheless, there is no clearly established federal law for the proposition that threats or promises relating to one's family warrant special attention.... Rather, on habeas review, such threats “may be considered as part of the totality of the circumstances” in determining whether the suspect's will was overborne.
   Here, the detectives' purported threats to arrest Petitioner's brother and mother did not render any aspect of Petitioner's confession coerced. Like the police in Hufstetler, who had reason to believe that the defendant's girlfriend participated in the robbery, the

detectives here had good reason to believe that Petitioner's brother was involved in the murder. Indeed, the detectives laid out the evidence that they had amassed against Petitioner and his brother. Moreover, Petitioner's account of the shooting – that he fired only one shot – left only the possibility that his brother fired the second shot. As such, the detectives could not have committed any misconduct by accurately noting the predicament of Petitioner's brother.

2. Promises of Leniency

Inducements generally serve to invalidate a confession.... Not all promises by police, however, impact the voluntariness of a resulting confession. Rather, the "promise must be sufficiently compelling to overbear the suspect's will in light of all attendant circumstances."... Thus, in Guerrero, the Ninth Circuit held that an officer's promise both to inform the prosecutor about a suspect's cooperation and to recommend leniency was insufficient to render the suspect's resulting confession involuntary.

Here, a review of the record shows that the detectives made no promises of leniency to Petitioner. Although the detectives repeatedly referred to Petitioner as a cold-blooded killer, those references were not made in the context of a promise for leniency. Rather, they were made in an effort to persuade Petitioner to explain his motive for shooting the victim, rather than insisting that he had no reason for doing so. In particular, the detective indicated that, if Petitioner's explanation were accepted – that is, if there were no motive for the shooting – then Petitioner was essentially claiming to be a cold-blooded killer. Construing that statement as a promise of leniency strains credulity. Regardless, no reasonable person would interpret the detective's statements, when considered in the context that they were made, either as promises of leniency or threats of enhanced charges. Thus, they do not amount to coercion.

3. Deceiving Petitioner about Knowing His Father

Police deception alone will not render a confession involuntary.... Thus, police generally can lie to a suspect about, for example, the extent of the evidence against the suspect or feign friendship with the suspect without fear of rendering the resulting confession involuntary.

Here, the detectives' references to Petitioner's father are no exception to this general rule. At most, the detectives misled Petitioner as to whether they knew Petitioner's father and whether they believed that his father was an honest man. Although these statements were false, they constitute the type of trickery that courts have repeatedly found to be permissible. Moreover, Petitioner has alleged no facts that would support a conclusion that his will was overborne simply by the fact that the detectives knew his father or that they believed his father to be an honest man. Regardless, the detectives invoked Petitioner's father in an effort to appeal to Petitioner's sense of honesty; consequently, there is no reason to believe that the references to Petitioner's father resulted in, or were likely to result in, a false confession.

In short, the detectives made no statements that rendered Petitioner's confession involuntary. Consequently, the court of appeal's rejection of Petitioner's challenge to the admissibility of his pre-trial statements was neither an unreasonable application of, nor

contrary to, clearly established federal law as determined by the Supreme Court. Petitioner, therefore, is not entitled to habeas relief with respect to this claim.

Reference to the possible prosecution of his son did not render the confession inadmissible

In *US v. Goldtooth* the US District Court, D. Arizona, rejected the defendant's claim that the interrogating officers preyed on his family emotions and thereby coerced him to confess. From the court's opinion:

Defendant and his son were arrested on August 11, 2011, in connection with the robbery for which they were originally stopped. Defendant was interviewed two days later, on August 13, 2011, regarding the murder of Virgil Teller. He was interviewed by FBI Special Agent Matt Shelley and Navajo Criminal Investigator Mike Henderson.

During the interview Agent Shelley recounted information he had obtained, including information concerning disputes within a gang to which Defendant and Virgil Teller belonged. He also mentioned Defendant's son, saying: "I know Gage got some cuts on his hand the same night."... The officer then said: "I mean, anything you can do to enlighten me, get yourself out of a mess--you know what I mean? Because it's not looking too good ... right now."

At this point in the conversation, Defendant asked "[w]here's my son?" ... Agent Shelley responded that Gage was in custody in the same facility, but that Shelley had not yet spoken to him. Agent Shelley then said: "Seem like a guy that looks after your son, right? I mean, I know you guys bang together a little bit." ... A few moments later, the agent said: "But, it seems to me that, you know--seems to me you're kind of protective of your son."... Defendant responded: "Yeah, pretty much." ... Agent Shelley then said: "I'll be quite frank with you, you know, things are kind of looking at him like not so good. And I know he--you don't--you've been in. You don't want him to go in I'm sure. Am I right?"... Defendant said "Yeah."

Agent Shelley stated that a collection of evidence had occurred at Teller's house, including the collection of blood. He noted that not all of the blood was Teller's. He said: "I need to know about it. You know, if it's self-defense or whatever, or if, you know, it just started out as a melee, and just got out of hand, whatever, I just need to know." ... The officer said: "You're in a tough spot. Am I right?"

Defendant asked for a drink of water, and the officers provided it to him. Defendant then said: "My son didn't have nothing to do with it." ... Defendant proceeded to explain that he, his son, and Tsosie went to Teller's house to ask Teller about an altercation that occurred the day before with other gang members. Defendant said he was not going with any ill intent. He said Teller's door was partially open, and when Gage pushed it completely open, Teller swung a machete at Gage, hitting him in the hand and cutting it severely. Defendant noted that he was already intoxicated when he saw Teller "trying to hurt my son[.]"... "I just got out of hand, you know." ... Defendant proceeded to explain that he lost control and stabbed Teller with the knife. After providing the additional detail, Defendant said: "Like I said, my son didn't have nothing to do with it, you know."

Defendant argues that the interrogating officers preyed on his family emotions and thereby coerced him to confess. Defendant relies on three cases.

In Lynumn v. Illinois, 372 U.S. 528, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963), the Supreme Court reversed a defendant's conviction on the ground that her confession was coerced. The Supreme Court provided this explanation: It is thus abundantly clear that the [defendant's] oral confession was made only after the police had told her that state financial aid for her infant children would be cut off and her children taken from her if she did not "cooperate." These threats were made while she was encircled in her apartment by three police officers and a twice convicted felon who had purportedly "set her up." There was no friend or adviser to whom she might turn. She had no previous experience with the criminal law, and had no reason not to believe that the police had ample power to carry out their threats.

In *Haynes v. Washington*, 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed.2d 513 (1963), the Supreme Court reversed the defendant's conviction because his written confession was coerced. The defendant was held for approximately 16 hours while being denied any opportunity to call his wife or attorney. Interrogating officers told the defendant that he would continue to be held with no ability to contact his family or lawyer until he confessed in writing. The Supreme Court explained: The [defendant] at first resisted making a written statement and gave in only after consistent denials of his requests to call his wife, and the conditioning of such outside contact on his accession to police demands. Confronted with the express threat of continued incommunicado detention and induced by the promise of communication with and access to family, Haynes understandably chose to make and sign the damning written statement[.]

In *United States v. Tingle*, 658 F.2d 1332 (9th Cir.1981), the Ninth Circuit reversed the defendant's conviction because her confession was coerced. The Defendant was held in the back of a police car and questioned by two officers for an hour... . The Ninth Circuit provided this explanation: In this case, the threat was not as explicit nor as extreme, but the coercive purpose and effect are indistinguishable from that in Lynumn. Agent Sibley recited a virtual litany of maximum penalties for the crime of which Tingle was suspected, totaling 40 years imprisonment. He expressly stated, in a manner that could only be interpreted in light of the lengthy sentences he had described, that Tingle would not see her two-year-old son "for a while." Referring specifically to her child, Sibley warned her that she had "a lot at stake." Sibley also told Tingle that it would be in her best interests to cooperate and that her cooperation would be communicated to the prosecutor. He also told her that if she failed to cooperate he would inform the prosecutor that she was stubborn or hard-headed.

The interrogations in *Lynumn*, *Haynes*, and *Tingle* each included an appeal to family sentiments in an otherwise coercive environment. They do not mean every reference to a suspect's family during interrogation renders a subsequent confession involuntary. As the Ninth Circuit has explained, "in extreme cases, appealing to a defendant's moral obligation to his or her family as leverage to coerce is unconstitutional."... The Ninth Circuit further explained that references to family members could, in appropriate circumstances, be considered a permissible interrogation technique: "Detective Cardwell simply reminded Ortiz of his obligation to his family to tell the truth and that his children were counting on him to do the right thing. These permissible psychological appeals to his conscience, although possibly making him emotional during the

interview, do not demonstrate that his will was overborn."

After considering the totality of the circumstances in this case, the Court concludes that Defendant's will was not overborn by the interrogation techniques of the officers. The Court bases this conclusion both on Defendant's characteristics and the details of the interview.

Defendant was 39 years old at the time of the interview. He had a GED degree, was articulate, and had substantial experience in the criminal justice system, including many previous misdemeanor convictions and at least one prior felony conviction. The interview transcript and tape suggest that Defendant fully understood the nature of the interview and the questions that were asked.... Defendant listened to and read the Miranda warnings, consented to be interviewed, and signed a waiver of rights form. Questioning by the two officers was not loud, oppressive, or overbearing; it was conversational and friendly.

The discussion of Defendant's son was not an irrelevant appeal to family emotions. His son, Gage, had been arrested with Defendant, in a vehicle where the apparent murder weapon was carried, and had a severe cut on his hand. Defendant admitted that he "banged" with his son, an apparent reference to gang activity, and was drinking and intoxicated with him on the night in question. Discussion of Gage's possible involvement in the murder was thus a relevant and logical line of inquiry, as were questions about Tsosie's possible involvement.

The officers did not threaten Defendant. They did not make promises of leniency toward Gage. They did imply that Gage was a suspect in the murder--a true statement given the facts from the night of the traffic stop--and did appeal to Defendant's interest in protecting his son. But the Court views this line of questioning, in light of all the surrounding facts, as akin to the family-related questions in Ortiz, which the Ninth Circuit found to be a "permissible psychological appeals to [Defendant's] conscience." ... Indeed, a discussion of Gage's involvement was a more relevant and natural topic of inquiry than the mention of family in Ortiz.

Although it is true that the discussion of Defendant's son appears to have been a turning point in the interrogation, this fact is consistent with a desire on Defendant's part to take responsibility for a crime Defendant committed. Defendant not only made clear that his son was not involved in the stabbing, but also that Tsosie was not involved. This suggests that Defendant's confession was an acceptance of his responsibility for the murder, not simply a capitulation to coercive family-related questions. A review of the entire interrogation leaves the Court firmly convinced that Defendant's will not was overborn. This case is distinguishable from the circumstances in Lynumn where officers specifically threatened that financial aid would be cut off to the suspect's children and she would not see them again unless she cooperated. The suspect was questioned while encircled in her apartment by three police officers and a twice-convicted felon who had set up the purported drug buy, and she was inexperienced in the criminal law and had no reason to disbelieve the threats.

This case is also distinguishable from Haynes, where officers specifically held the defendant incommunicado and told him that he would be permitted to contact his family and lawyer only after he confessed. As the Supreme Court noted, the tactics of secret and incommunicado

interrogation were "devices adapted and used to extort confessions from suspects."

This case is also distinguishable from Tingle. The officers in Tingle recited maximum penalties for the crimes being faced by the suspect, totaling 40 years, and then told her she would not see her two-year-old child "for a while." They suggested it would be in her best interests to cooperate and that her cooperation would be communicated to the prosecutor. The interrogation occurred while the suspect was sitting in a police car with two officers. The environment was sufficiently pressurized to cause the suspect to begin sobbing and shaking.

Comparable coercion and pressure were not brought to bear on Defendant in this case. The interview was calm, Defendant was experienced in the criminal justice system, he knowingly waived his rights, no threats were made, and the discussion of his son was a relevant and logical outgrowth of his son's involvement on the night in question. By more than a preponderance of the evidence, the Court finds that Defendant's confession was voluntary.

The propriety of utilizing a suspect's family member during an interrogation

In *US v. Hufstetler* the US Court of Appeals, First District, examined the issue whether the officers' references to the defendant's girlfriend during the interrogation were inappropriate and, if so, whether such statements overpowered his will. From the court's opinion:

"As he sees it, his interrogators immediately sensed his concern for Craig and then repeatedly referenced her incarceration in order to force his hand. It was only after the officers successfully convinced Hufstetler that Craig's freedom hinged on his willingness to talk, he says, that he finally confessed. He thus insists that the officers infringed upon his constitutional rights.

Over time, there have been several developments in the law applicable to addressing the propriety of utilizing a suspect's family member during an interrogation, as Hufstetler alleges occurred here. Admittedly, the applicability of the decision in any one case to another can be difficult given the fact-intensive nature of the totality-of-the-circumstances inquiry. As a body though, the cases do provide guideposts to aid us in determining whether police conduct in this context crosses the line. We thus begin by laying out a mosaic of cases on this topic before plotting Hufstetler's plea in that panoply of law.

One cluster of cases implies that the use of a family member uniquely tugs at a suspect's emotions and thus can have an undue impact. Particularly notable here are two Supreme Court decisions. The first, Lynumn, involved officers informing a defendant that her failure to cooperate would result in her losing financial aid for, and custody of, her children.... The Court noted that the defendant had no reason to question the officers' capacity to carry out those threats.... Accordingly, the court deemed the tactics improper and ordered the confession suppressed.

A few months later in *Haynes v. Washington*, 373 U.S. 503 (1963), the Court reiterated this point. There, interviewing officers repeatedly told a suspect that he would be unable to call or see his wife until he wrote out a confession.... Those threats occurred over a number of days and the defendant "gave in only after consistent denials of his requests to call his wife, and the

conditioning of such outside contact upon his accession to police demands." .... The Court deemed this improper and, when weighed against the defendant's susceptibility to coercive tactics, found the confession to be involuntary.

Hufstetler points us to a number of cases from the Ninth Circuit which he believes best capture the import of those Supreme Court opinions. The first is *United States v. Tingle*, 658 F.2d 1332 (9th Cir.1981). In that case, the Ninth Circuit evaluated an interrogation in which the suspect was told that she had "a lot at stake" with respect to her child.... The court used the occasion to broadly state that it is impermissible to "deliberately prey upon the maternal instinct and inculcate fear in a mother that she will not see her child in order to elicit cooperation."

In 2011, that court restated this proposition in *Brown v. Horell*, 644 F.3d 969 (9th Cir.2011)--a case that Hufstetler largely clings to here. The Ninth Circuit reviewed an interrogation during which an officer noted that the suspect's ability to see or be with his child was entirely contingent on his cooperation with the police.... They "expressly conditioned [the suspect's] ability to be with his child on his compliance with her questioning." Id. Although the petitioner's ultimate claims were denied under relevant habeas standards, the court still classified such threats as coercive....

At a minimum, these cases illustrate that we must be on alert when an officer utilizes a family member as a tool during an interrogation. Nonetheless, cases from this circuit provide examples of situations where the discussion of a family member was deemed acceptable. The parties emphasize two.

The first is *United States v. Jackson*, 918 F.2d 236 (1st Cir.1990). There, a defendant was arrested for gun and drug offenses but only admitted to possessing the drugs. In an effort to entice the suspect to talk, the investigating officer informed him that his sister was under arrest for the gun violation, and thus his confession could assist her..... On appeal, Jackson argued that the use of the sister in that way was unduly coercive, but we concluded that the statement was neither a direct threat nor promise. .... Moreover, we found that "there [was] no evidence that an especially close relationship existed between Jackson and his sister, or that Jackson was unusually susceptible to psychological coercion on that account or any other." ... Accordingly, we affirmed the district court's decision that the confession was voluntary.

Recently, we reached a similar result in *United States v. Jacques*, 744 F.3d 804 (1st Cir.2014). In that case, interrogating officers remarked "on the failing health of Jacques's elderly father, suggesting that continued resistance might deprive Jacques of crucial years with his family."... . In response to an involuntariness challenge, we stated that "statements that a defendant's refusal to cooperate may lead to an extended separation from his or her loved ones may contribute to a finding that the defendant's confession was coerced ... [h]owever, the mere fact that a defendant is placed under some psychological pressure by agents does not necessarily render a confession involuntary."... We ultimately concluded that the subsequent confession was voluntary because there was only a single reference to the family member, the suspect's demeanor during the interrogation did not manifest any notable psychological or emotional anxiety, and there was no evidence that he was particularly susceptible to coercion.

Thus, while Lynumn and its progeny counsel us to be particularly cognizant of the risk of coercion when reviewing interrogations where officers invoke references to a family member, our cases also emphasize that discussion of a family member, on its own, is not per se coercive. Instead, we must closely examine the specific manner in which the officer discussed the relative and weigh such references against the defendant's susceptibility to coercion.

When evaluating the propriety of police tactics we consider "the totality of the circumstances," which may include the "length and nature of the questioning," the existence of any explicit or implicit threats, and any deprivation of a suspect's essential needs. ... A promise or threat need not be explicit, but can also result from "[s]ubtle psychological coercion ." ...

Hufstetler accuses the officers of making improper threats or promises. To flesh out this argument, he cites portions of the transcript which, in his view, show the officers conditioning Craig's release on his willingness to confess. Most notably, he quotes: "I certainly don't want to see those kids be without their mother;" "[T]here's obviously different outcomes for [Craig], depending on what it is in the details;" and, "[Y]ou can save her a buck by saying that you didn't tell her what you were gonna go do, but you're not doing that." He thus believes that the officers deliberately preyed on his emotions to force a confession from him.

After carefully reviewing the transcript and listening to the interrogation, we can discern no improper threat or promise. At the outset, we note that the officers had probable cause to hold Craig. In such a circumstance where the referenced relative is both a family member and a co-suspect, probable cause for holding that individual helps to place the officers' statements in context. Without more, an officer's truthful description of the family member's predicament is permissible since it merely constitutes an attempt to both accurately depict the situation to the suspect and to elicit more information about the family member's culpability.

Court rejects the suggestion that a loss of visitation rights was coercive

In *Holland v.* Rivard the US District Court, E.D. Michigan, upheld the lower court's decision to admit the defendant's incriminating statements. From the court's opinion:

The Michigan Court of Appeals rejected the petitioner's claim that a promise induced his confession and found it to be made voluntarily:

The existence of a promise is just one of the circumstances to consider in examining whether, under the totality of the circumstances, the statement was made voluntarily.... Raupp testified that defendant first introduced the topic of speaking with his family, although defendant claims that Raupp brought it up. We find no basis to upset the trial court's determination that Raupp's testimony was more credible on this issue.... Considering that Raupp had no knowledge of defendant's other crimes before defendant told him, Raupp had no reason to promise defendant anything in order to obtain a confession. In fact, Raupp was unaware that there was even a possibility of obtaining a confession or confessions. In addition, Raupp did not have the authority to grant defendant's request to see his family. To the extent that there was any promise, it was

merely Raupp's promise to pass along defendant's request to see family to Raupp's supervisors. Accordingly, the record does not support a finding that defendant was induced or coerced into making the incriminating statements, and the trial court did not err in holding that defendant's incriminating statements were not improperly induced by a promise.

The Supreme Court has held that a combination of threats and promises may be sufficient to overbear an interviewee's will and constitute impermissible coercion.... The circumstances in *Lynumn* are distinguishable from those presented in this case. In *Lynumn*, the defendant was interrogated in her apartment while surrounded by three police officers and a police informant. The officers threatened that if she did not cooperate, state financial aid for her infant children would be cut off and the children would be taken from her. In this case, the petitioner was not facing threats to the physical and financial well-being of his minor children, or, for that matter, of his mother and fiancee. His desire to prepare his loved ones for his planned confession does not render the confession involuntary or the police conduct coercive. Individuals confess for a host of reasons. Law enforcement officers are not required to attempt to parse out or identify an individual's motivations for testifying.... Here, there is no indication that the petitioner was threatened in any way. Access to loved ones may certainly be reasonably restricted during incarceration. There is no indication that police threatened the petitioner with any loss of visitation unrelated to the fact of his imprisonment.

Invocation of defendant's children as a method to get a confession ruled not coercive

In *State v. Arriaga-Luna* the Supreme Court of Utah reversed the lower court's decision that the defendant's confession was coerced because of the interrogating officers' "invocation of Mr. Arriaga-Luna's children as a method to get a confession." From their opinion the Supreme Court stated the following:

"As the U.S. Supreme Court has long held, "certain interrogation techniques, either in isolation or as applied to the unique character of a particular suspect, are so offensive to a civilized system of justice that they must be condemned," and confessions resulting from them are inadmissible.... Threats or promises render a confession involuntary if, in light of the totality of the circumstances, they overcome a defendant's free will.

In *Lynumn v. Illinois* ... and *United States v. Tingle*... the defendants' confessions were held to have been coerced because the interrogating officers made threats regarding the defendants' children. The police officers in Lynumn encircled a single mother and told her that she would not see her children again unless she admitted to being a drug dealer.... The officers also told Lynumn that her children's government assistance would be withdrawn unless she confessed.... The U.S. Supreme Court held that the threats regarding Lynumn's children, viewed in light of her lack of experience with criminal law and lack of counsel, overcame her free will and produced an involuntary confession....

In *Tingle*, the Ninth Circuit held more broadly that "[w]hen law enforcement officers deliberately prey upon the maternal instinct and inculcate fear in a mother that she will not see her child in order to elicit 'cooperation,' they exert ... 'improper influence' "...police interrogated a young mother who was suspected of bank robbery and told her that she "would not see [her] child for a

while if she went to prison."

Although we recognize that the intense loyalty and emotion present in most parent-child relationships does provide an opportunity for coercion, we do not adopt any per se rule regarding the effect of references to a defendant's children on the voluntariness of a confession. The ultimate test in any case involving the voluntariness of a confession is whether the defendant's will has been overcome under the totality of the circumstances.

The detectives appealed to Mr. Arriaga-Luna's love for his daughters in three primary ways. First, during the initial interview Detective Arenaz told Mr. Arriaga-Luna, "You're not gonna see [your children]. You're ... you're gonna be locked in prison the rest of your life." We have held that officers may not threaten a harsher punishment if a defendant does not confess or promise a lighter punishment if the defendant does confess.... Here, Detective Arenaz made the statements while attempting to coax Mr. Arriaga-Luna to implicate his brother or say that the killing was accidental--not while persuading him to confess to murder. Furthermore, these statements were not improper threats because Mr. Arriaga-Luna in fact faced prison time if found guilty of murder, and separation from one's children is a natural consequence of being in prison. Detective Arenaz did not suggest that Mr. Arriaga-Luna would be able to see his children only if he confessed.

Mr. Arriaga-Luna argues that Detective Arenaz's statement was a veiled, indirect threat that he must cooperate in order to see his children. We recognize that implicit threats can constitute psychological coercion and overcome a defendant's free will. However, here, he context of the detective's statement clarifies that the statements were not implicit threats but rather factual communications that if Mr. Arriaga-Luna implicated his brother and his brother was found to be the sole murderer, Mr. Arriaga-Luna would not "be locked in prison for the rest of [his] life." Similarly, if the killing were entirely accidental, Mr. Arriaga-Luna would likely be set free. We also note that Mr. Arriaga-Luna did not confess during this interview, which suggests that the officer's statements did not overcome his free will....

In the second interrogation two days later, Detective Hamideh employed the false-friend technique. Among other things, Detective Hamideh told Mr. Arriaga-Luna, "But yes, I can bring resources there so that [your daughters] can be educated and break the cycle here."

When defendants are concerned for the safety and welfare of their families, law enforcement can inform defendants of public and charitable resources. However, officers should limit themselves to factual statements and not imply that aid for defendants' families is contingent on a confession. Here, Detective Hamideh strayed close to the line by making a personal offer to help Mr. Arriaga-Luna when he said "I can bring resources." However, it is clear from the full transcript that the officer made the statement about resources in response to Mr. Arriaga-Luna's inquiry about what would happen to his daughters, and not in exchange for a confession.

Detective Hamideh also urged Mr. Arriaga-Luna to "give [your daughters] hope that yes, I did what I did.... And I am going to take the time, until--until that point.... And after that

point--'Girls. We are going to be together.' But free." Detective Hamideh also told Mr. Arriaga-Luna, "I think that their daddy--their daddy can say, 'Yes. I did make a mistake. But I have my dignity because I told the truth.' " Thus, the detective urged him to confess to earn the respect of his daughters.

Such appeals to a defendant's sense of morality and responsibility are usually non-coercive..... The totality of the circumstances show that Mr. Arriaga-Luna's free will was not overborne. Accordingly, the trial court erred in granting Mr. Arriaga-Luna's motion to suppress his confession. We reverse and remand for further proceedings consistent with this opinion.

The interrogator's statement to the defendant that he would get help for the defendant so that he could retain custody of his children does not represent a promise that would nullify the confession – detailed discussion of acceptable investigator statements and approaches

In the case of *State v. Farnsworth* the Supreme Court of Minnesota overruled the District Court that found that such a statement would render the confession inadmissible.
The Supreme Court stated:

Farnsworth argues that Schmitz's promise to get Farnsworth help so that Farnsworth could retain custody of his children was so coercive that even an innocent person would falsely admit to having sexually abused his children. Farnsworth emphasizes that shortly after Schmitz promised him "help," he admitted that all of B.P.'s accusations were true without knowing what the accusations were, and he argues that his willingness to do so illustrates the coercive nature of the interview. The state argues that Schmitz's comments were not so inherently coercive that an innocent person would confess to the crime of child sex abuse. The state further contends that Schmitz's statements were well within the parameters of acceptable officer behavior established by this court...
The district court concluded that while many of the relevant factors outlined in Jungbauer suggested that the confession was voluntary, Schmitz's statement that he was trying to get Farnsworth "the best help [he could] so you can have your kids still" was so inherently coercive that it would cause an innocent person to confess, and that the confession was involuntary. After reviewing the relevant factors, we conclude that Farnsworth's statement was voluntary and the district court erred in ordering suppression...

We next conclude that the nature of the interrogation was not so coercive as to render the confession involuntary. It is true that Schmitz did offer Farnsworth help. But we have recognized that "the police must also be allowed to encourage suspects to talk." State v. Merrill, 274 N.W.2d 99, 108 (Minn.1978). Moreover, we have acknowledged that the use of an empathic approach when interviewing the suspect does not alone make a confession involuntary. Pilcher, 472 N.W.2d at 333. In the context of the interview, many of Schmitz's statements to Farnsworth, such as "Honesty is the best thing. * * * I thought ** * I'll bring him in Monday and listen to his story and try to get you some help because that's what you need," and "we are gonna talk about what happened, why it happened, where it happened, when it happened and then we are gonna get you some help," can be construed as efforts to encourage conversation. We do not believe that Schmitz's statements, together with the other circumstances surrounding the interview, were so

coercive, manipulative, or overpowering as to deprive Farnsworth of his ability to make an unconstrained and wholly autonomous decision to speak. Schmitz's statements contained no explicit or implied promises. Rather, Schmitz's statement implied that people who commit child sex abuse need and should receive help. The nature of the questioning does not suggest that Farnsworth was led to believe that Schmitz occupied something other than an adversarial role as a questioner. In fact, Farnsworth's own statements, indicating that he was going to jail and going to lose custody of his children, illustrate Farnsworth's understanding of Schmitz's role in the interview. See Pilcher, 472 N.W.2d at 333-34 (concluding that the use of a sympathetic approach does not alone render a confession involuntary where the defendant exhibited a wariness of police tactics).

We have held that offers of help do not make a statement involuntary as long as the police have not implied that a confession may be given in lieu of criminal prosecution. See State v. Thaggard, 527 N.W.2d 804, 812 (Minn.1995); State v. Slowinski, 450 N.W.2d 107, 111-12 (Minn.1990). In Slowinski, we concluded that, even though the arresting officers had improperly suggested that they had influence with the county attorney to argue for psychiatric help, the defendant's confession was voluntary because the officers did not promise the defendant that he would receive psychiatric help instead of being sent to prison. 450 N.W.2d at 112. Similarly, in Thaggard, we upheld the voluntariness of a confession because even though the defendant thought he might receive drug treatment, he understood the Miranda warnings and knew that what he said could be used against him, and the defendant was never told, nor did the officer imply, that he would not be prosecuted if he gave a statement. 527 N.W.2d at 811-12. In contrast, in State v. Biron, we concluded that the confession was involuntary where the defendant was expressly told that if he *375 cooperated the police would have his case brought before juvenile court, but that if he did not, they would not consider seeking juvenile court proceedings. 266 Minn. 272, 277-78, 282, 123 N.W.2d 392, 396, 399 (1963).

We conclude that in this case Schmitz's actions were more similar to those of the officers in Slowinski and Thaggard than Biron. Schmitz's statements contained no explicit or implied promises that Farnsworth would not be prosecuted if he confessed, and Schmitz in no way indicated that he had special influence with the district court. Moreover, nothing in Schmitz's statement that he was trying to get Farnsworth "the best help [he could] so you can have your kids still" indicated that if Farnsworth did not confess he would certainly lose custody of his children, whereas if he did confess, he would be able to retain custody. In fact, none of Schmitz's statements amounted to "persuasive arguments calculated to induce a confession." Biron, 266 Minn. at 282, 123 N.W.2d at 399. Rather, Schmitz's general offers of help seemed to be efforts to encourage Schmitz to talk-a tactic that we found permissible in Merrill.

A statement to the defendant that his children would be removed from the house unless he cooperated with the investigation did not render the confession inadmissible

In *Stanton v. Commonwealth* the Supreme Court of Kentucky found that such a statement in the particular circumstances was not problematic. The court stated the following:

"In sum, the Fourteenth Amendment prohibits interrogation tactics calculated to overbear a suspect's will and to produce confessions involuntary in the sense that the suspect's capacity to

choose has been distorted and critically impaired. The United States Supreme Court has held that threats to deprive a parent of his or her child unless the parent "cooperates" with investigators can run afoul of that prohibition. Here, however, unlike the cases in which a parent suspect has been threatened with an ultimate and speculative loss of a child and has been given to understand that "cooperation" will avert that loss, Stanton was merely informed that as matters stood the sexual abuse allegations against him would require those involved in the investigation to seek a court order separating his children from further contact with him, pending the investigation. This warning was not a speculative threat of ultimate loss of Stanton's children, but an accurate statement of what was apt to happen next in such cases, and as such it did not amount to overreaching by the state agents involved and did not pressure Stanton to such an extent as to impair his capacity to choose. Simply put, his admissions were not coerced by improper conduct."

Court rejects defendant's claim that his confession should have been suppressed because he confessed in exchange for a promise of a family visit

In *State v. Maciel* the Court of Appeals of Arizona affirmed the trial court's decision to admit the defendant's confession, even though he claimed that he confessed in return for a promise of a family visit. In making their decision the court stated that, "We find *State v. McVay*, 127 Ariz.18, 617 P.2d 1134 (1980), dispositive of defendant's arguments.

In McVay, our supreme court found two factors that undermined the defendant's argument in that case that his confession was coerced by the investigating officers' promise of his removal from an isolation cell. 127 Ariz. at 20, 617 P.2d at 1136. First, the court held that, when an alleged promise is couched in terms of a "mere possibility or an opinion," it cannot be deemed a sufficient "promise" so as to render a confession involuntary. Second, the court concluded that when the defendant initiates the "deal" or "promise" that was solicited in exchange for the confession, that "promise" cannot be viewed as interfering with the defendant's "exercise of a free volition in giving the confession." Id. at 20-21, 617 P.2d at 1136-37. Those factors apply to undermine defendant's arguments in the present case as well.

Here, the evidence shows that defendant initiated the "deal" when he, unprompted, informed M.B. that he wanted to confess to a murder in exchange for a family visit. Defendant did not dispute that he initiated the deal in his motion to suppress. Having chosen to initiate a deal, "freely and voluntarily," defendant cannot now maintain that in accepting the deal he was the victim of coercive influences."

A statement to the defendant that "if his girlfriend was charged, and if she stayed in jail, there was a possibility that social services could take her children away" was not coercive

In *State v. Brock* (2010) the Court of Appeals of Wisconsin upheld the admission of the defendant's confession, even though he was told that "if his girlfriend was charged, and if she stayed in jail, there was a possibility that social services could take her children away." In their opinion the Appeals Court stated that:

"Brock argues that *Lynumn v. Illinois*, 372 U.S. 528 (1963), requires suppression of his statement. Lynumn held that threats that a mother's children would be taken away from her unless she "cooperated" "must be deemed not voluntary, but coerced." Id., 372 U.S. at 534. Lynumn is inapposite because in that case the defendant was threatened with the loss of her children if she did not confess. Id., 372 U.S at 530-534, 544. Here, however, Panasiuk told Brock that if his girlfriend was charged, and if she stayed in jail, there was a possibility that social services could take her children away. Under established law, absent a showing that such a scenario was impossible or feigned, the explanation of what could happen to a third person does not make the defendant's confession coerced."

"If you don't tell the truth you will go to jail and lose your family" – not a threat

In *People v. Montes* the California Court of Appeal, Second District, upheld the trial court's decision to admit the defendant's confession. On appeal the defendant claimed that his confession was coerced as a result of police threats and promises.

"Throughout the interview, the detectives encouraged Montes to tell the truth. Otherwise, they warned him he could face a significant prison sentence and lose his family. Among other things, they told him:

"Your wife will meet somebody else, somebody else will be at Christmas with your daughters, there will be someone buying them gifts calling them Mija, and sitting on their lap and being there for her Quincenera, and taking the rest of it, they'll be calling him daddy, and you'll be in Pelican Bay, which is about eight-nine hours drive north."

"But here's the deal. Here's what happens on my job now. Tomorrow I go down to see the District Attorney and I tell the District Attorney, okay, I picked up Jorge last night, uh I would say Jorge is a hard head, didn't want to talk to me, which if [sic] your right I agree. Jorge doesn't want to talk to me, um, so do what you got to do. And what they're going to do is they'll research the case and what, what that scenario I just went down with you. I'll say, well I talked to Jorge, I don't think Jorge is the shooter, I already told you I don't think you're the shooter, okay? I think out of the people in that car you were the least culpable of anybody.... I think Jorge got suckered into something and he's kind of fucked. But I talked to Jorge, we explained everything, he told me exactly what happened, we need to work with Jorge. Now, I can't make any promises. No promises. I'll get you a promise. Actually right now I'll get on the stand and say I don't think you're the shooter. That's what I'm going to do.... But what I want to do is I want you to tell me what happened out there, of why you were there. I'd much rather have you come to court and say, okay, I was there, I drove the car, blah, blah, blah, blah, blah, but I didn't do this shit because I didn't know this shit was going to happen. I think you got suckered into this.... Now, what happened is, there are different kind of charges here. You can go to jail for attempt (sic) murder, (unintelligible) gun, which is a big charge, they can basically charge you with an ADW, they can make you an accessory, um they can do this, I can't do this ... or the D.A. can say you know what? I'd rather have Jorge as a witness, make him a witness. Okay? And, and use you there. But that's a deal that they would have to work out between you and your attorney. That's between them, I can't do that. I can only feed them the information on what to do here."

The Court of Appeal found that "Indeed, our review of the record shows that neither the detectives nor the polygraph examiner made any promises of leniency. To the contrary, Detective Smith repeatedly told Montes that he could not make any promises and that it was up to the district attorney to decide whether to make Montes a witness or to prosecute him. The only promise the detectives made was to pass any information they gleaned from Montes to the district attorney. The record also fails to show any threats by the detectives that the district attorney would learn of his refusal to cooperate which would result in some further harm to his case. We find no error in the trial court's decision to allow the jury to hear Montes' admissions."

Statement by interrogating officers that Child Protective Services would have to remove defendant's son from her house unless they could determine exactly what happened to her infant daughter was not coercive

In *People v. Sanabria* (2008) the Supreme Court, Appellate Division, Second Department, New York found that the statement by interrogating officers that Child Protective Services would have to remove defendant's son from her house unless they could determine exactly what happened to her infant daughter was not untrue or so fundamentally unfair as to deny defendant due process or raise danger that she would falsely confess, and thus did not render defendant's confession involuntary, where defendant was in custody for grievously abusing her daughter, and Child Protective Services already had obtained from Family Court order of protection directing defendant to stay away from her home and her children.

Dr. Richard Leo testimony that threatening to arrest a suspect's girlfriend or to have the suspect's child removed in order to gain access to the suspect's residence would qualify as coercive threats was rejected by the court

In *People v. Muratalla* (2007) Dr. Richard Leo suggested that the defendant's consent to search may have been given as the result of improper police questioning techniques. The Court of Appeals decision stated that "Leo opined that threatening to arrest a suspect's girlfriend or to have the suspect's child removed in order to gain access to the suspect's residence would qualify as coercive threats. Such threats, if used to gain consent, would also affect the suspect's subsequent perceptions about whether the suspect should make statements during an interrogation."

The trial court found that "under the totality of circumstances, Muratalla's consent to search was voluntary. The court found that assuming the officers had discussed the possibility of having DCFS take custody of the children and had handcuffed Dorame in Muratalla's presence, such conduct did not induce Muratalla "to do something that he otherwise might not have done." The court noted that it would have found Muratalla's consent to have been involuntary had the officers said to Muratalla that his son would be removed by DCFS and his girlfriend would be arrested unless he agreed to the search of his residence. But in the absence of such a direct threat by the officers, the trial court concluded that Muratalla's consent was obtained without police coercion." The Court of Appeals, 2nd District, California affirmed the trial court's decision.

... the Court must express its strong concern that the search and interrogation methods used in this case barely fall within the borders of what is legally acceptable

In *US v. Bhatt* the US District Court, N.D. Georgia, expressed concern about the investigator's interrogation tactics, stating that they "barely fall within the borders of what is legally acceptable." From the District Court's opinion:

Twelve to thirteen agents armed in tactical gear arrived at Defendant Bhatt's doorstep at the crack of dawn, with some agents displaying their weapons, to conduct an investigatory search and related interrogations. Defendant and his family members were asleep when the law enforcement team arrived at their doorstep and began loudly knocking on the door... They clearly were implementing a "shock and awe" strategy to obtain the maximum information feasible in connection with an investigatory search.

The Defendant and his father were handcuffed at the onset of the search for ten to fifteen minutes while their wives stood by outside and the house was cleared.... Both Defendant and his father were solely wearing boxers, because they had just been woken from sleep. Within 27 minutes of the agents knocking on the door, they proceeded to interrogate Defendant and his father separately, without providing them an opportunity to clothe. The interview of Defendant took place on the house porch and lasted all told almost three hours, including two short breaks. The entire search and interrogation process lasted almost four hours. The agents never told Mr. Bhatt that he was free to leave the home and choose not to be interviewed. They never told him they could accompany him to his bedroom so he could properly clothe himself. The agents tag teamed Bhatt's interrogation by adding the lead investigator, Mr. Ashley, to the two-person interrogation team for the last segment of the interrogation that lasted approximately 50 minutes.... Further, he advised Bhatt that if he failed to cooperate, that Ashley would tell the U.S. Attorney of his lack of cooperation and that this would impact the decision to prosecute and how to handle the case. The focus of the voluntariness inquiry is on whether the defendant was coerced by the government into making the statement: "The relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception."

Among the factors the Court should consider are the defendant's intelligence, the length of his detention, the nature of the interrogation, the use of any physical force against him, or the use of any promises or inducements by police...

When the Court evaluates these factors, including Defendant's professional background, his age and the circumstances of the search and interrogation, it ultimately reaches the same conclusion made by the Magistrate Judge. However, the Court remains more concerned about the collective impact of the variety of tactics used in this case to place coercive psychological pressure on Bhatt. These include: (1) the "shock and awe" intrusive dawn wake-up arrival delivered by a troop of twelve to thirteen armed law enforcement officers; (2) the lead agents' (who included a female agent) obvious intentional undermining of Defendant's sense of independence and orientation, by virtue of their proceeding to interview Bhatt for hours on end after while in his boxers, just after he had been abruptly woken by their team; (3) the agents' failure to make clear that Defendant was free to leave and not submit to an interview; (4) Agent

Ashley's extended and somewhat strained representations regarding the benefits of cooperation and the risks of prosecution as well as his capacity to assist Defendant in communicating with the judge on the case via a letter; and (5) the length of the interrogation that was conducted for hours immediately following the Defendant's being woken and placed in handcuffs initially.

While the Court finds Agent Ashley went overboard in his statements, he did not deliver these in a coercive manner. Nor was Bhatt's interview as a whole conducted in an overtly threatening manner by the agents. The Court therefore concurs with the Magistrate Judge's finding that the Defendant's statement here was given on a voluntary basis in view of applicable law, but it views the agents' conduct of the interview as part of a pattern of pushing the limits. The Court remains deeply disturbed by the coercive power dynamics created by the officers' lengthy interview of the Defendant while he vulnerably stood in his boxers for hours after the shock of being woken by a large team of armed officers. These tactics, tolerated in Peck but expanded still further here, will not likely be approved by this judge if stretched any further.

"the very outer limit as to what tactics law enforcement may employ when performing a custodial interrogation"

In *Martin v. State* the Supreme Court of Florida addressed the defendant's claim that this confession was coerced by the detectives who he claimed "relied upon the following six coercive tactics to induce his confession: The police (1) threatened him with the spectre of death row; (2) deluded him as to what he could expect for himself and from a jury if he confessed; (3) deceived him as to the amount of time he had to cooperate with law enforcement; (4) promised their favorable testimony and use of their influence during his trial if he cooperated; (5) promised to arrange a visit for him with his girlfriend if he cooperated; and (6) exploited his religious beliefs by relying on a version of the "Christian burial" interrogation technique."

The Supreme Court ruled that "When considering the facts, relevant standard of review, and totality of the circumstances, we do not agree with Martin that the detectives coerced his confession. Nevertheless, some of the techniques the detectives employed walked the line that separates permissible from impermissible interview tactics, and we, as a result, note that this case presents the very outer limit as to what tactics law enforcement may employ when performing a custodial interrogation."

The Supreme Court concluded, "The interviewing detectives engaged in a variety of tactics to elicit information from Martin. Given the specific factual circumstances addressed in this case, however, we do not agree with Martin's contention that the interviewing detectives coerced his confession, thus rendering it inadmissible. Law enforcement must be afforded some leeway in how they conduct interrogations to ensure public safety and to further... their objective of locating a missing person who might still be alive. The interview here cannot be characterized as so coercive as to render Martin's confession involuntary. Although some of the tactics and techniques used by the detectives may have been less than ideal, West and Wolcott did not directly threaten, deceive, or delude Martin into confessing. Therefore, we affirm the trial court's denial of Martin's motion to suppress."