What do the Courts say about The Reid Technique?

Over the past 20 years The Reid Technique of Interviewing and Interrogation has become the standard for proper interviewing and interrogation procedures throughout the country. Thousands of law enforcement, government and private sector investigators are trained every year by John E. Reid and Associates, Inc. As a result, in confession cases The Reid Technique is oftentimes described, discussed and examined. Here are a few cases where the courts have addressed The Reid Technique.

Note: The court decisions may or may not contain an accurate description of what we teach as The Reid Technique of Interviewing and Interrogation. In fact, some of them are completely erroneous in the tactics and techniques that they attribute to the Reid Technique. Nevertheless, the decisions offer some valuable insight. Click here for the cases.

The following are excerpts from the case decision and do not represent to complete decision with all footnotes, etc.

State v. Myers
2004 WL 1080013
S.C.,2004.
Decided May 11, 2004

(Excerpts)

FACTS

On Thursday, March 13, 1997, at 3:15 am the fire department responded to an emergency call and found the Mill Inn Tavern on fire. A body was discovered in the bar after the fire was extinguished. The body was that of Teresa Haught (Teresa), Appellant's girlfriend and manager of the bar. Teresa had been hit in the head, and then the bar had been set on fire. During the investigation of the scene, some hairs were found in Teresa's hand.

The police interviewed Appellant three different times: at the scene of the fire (early Thursday morning), and twice at the police station (Friday and Saturday). On Thursday and Friday, Appellant was cooperative and consistently offered to help the police find the killer. During a skillfully conducted interrogation on Friday, the police sought, and obtained, Appellant's agreement that the hair found in Teresa's hand must have come from the head of the person who killed her.

At the meeting on Saturday with Appellant, the police told Appellant that South Carolina Law Enforcement Division (SLED) had matched the hair found in Teresa's hand to the hair that Appellant had given the police for testing. [FN1] At that point, Appellant confessed to killing Teresa. Appellant's confession stated:

On March 13th, 1997 at about 2:00am or so I drove to the Mill Inn to check on my girlfriend, Theresa (sic) Haught. I parked my truck beside her Mercury parked in front of the Mill Inn. I went to the front door and knocked. Teresa came to the door about 5-10 minutes later. It is not uncommon for me to go by and check on her at closing time. There was no one in there or I don't think there was anyone in there. While I was in the bar, I found a pink note on the bar. It was a note signed by Allen White. I think it said that "I'll see you later" and it was signed by him. I thought that they might have had something going. I had seen Allen pinch her and kiss her on the lips. I asked her about the note and she said that it was none of my business. Teresa pushed me by the chin and the chest hard. I told her "don't push me Teresa." She hit me in my chest with her fist. Then, she pushed me up against the bar. I told her not to hit on me. Teresa grabbed the glass wine craft (sic) and she told me to get away. I grabbed the wine craft (sic) from her. Then, she pushed me in the face. I struck her in the center of the head with the wine craft (sic). Both of us went down to the floor. Like a blur, I lost control. I went around the counter behind the bar. I believe I held her for a while on the floor before I went around the counter. I think I struck her twice. I was raged upset, real mad. I couldn't believe what she was saying. She called me a fool. I grabbed "closed on Sunday sign" and some papers. At that state I grabbed anything around. I piled some papers up behind the bar and lit it with a lighter. I remember I wanted to die. I wanted to burn up in there with her. I sat there and closed my eyes and the fire was getting really big. I went out the back door and went to

the right. I went around front and got into my truck. I put a purse behind the seat of my truck. I don't remember what I did with the purse. I drove home. I forgot to mention that I opened the cabinet behind the bar looking for something to burn.

The hair that was found in Teresa's hand was lost when SLED sent the hair to the FBI for DNA analysis, so there is no physical evidence linking Appellant to the crime.

ISSUES

1. Did the trial court err in admitting Appellant's confession?
2. Did the trial court err in admitting into evidence an anger management questionnaire completed by Appellant, in which he acknowledged problems with controlling his emotions?
3. Did the trial judge err in sealing letters from the solicitor to the police department because the letters contained impeachment or exculpatory evidence?
4. Did the trial court err in ruling Dr. Saul Kassin, an expert in social psychology, could not use examples or facts from other states to illustrate his opinion about false confessions?

ANALYSIS

1. Confession

[1] Appellant argues that the confession should have been suppressed because it was the product of police trickery and coercion. The totality of the circumstances does not demonstrate that Appellant's will was overborne by the police. As there is no evidence that the confession was not voluntary we therefore hold that the trial court did not err in admitting Appellant's confession.

Initially, Appellant gave a statement to a police officer on Thursday, at the scene of the fire. Before giving the statement, Appellant was advised of his rights. Appellant did not say anything incriminating in this statement.

On Friday, Appellant met with Officer McHale at the police station. When Appellant arrived at the station, the officers were leaving for lunch and invited Appellant to join them. Appellant declined. After the officers returned, McHale read Appellant his Miranda rights, and Appellant waived his rights. During Friday's interview, McHale used the "**Reid Technique**" of interrogation. [FN2] The **Reid technique** involves nine steps. The first part of the process involves "breaking the suspect down" by asserting the suspect's guilt and not allowing the suspect to deny his or her guilt. The second part of the process involves "development of alternative questions" in which the interrogator gives the suspect a "face-saving or moral-justifying alternative." For example, the interrogator would say "maybe you were provoked" or "maybe it was an accident" or "I know this isn't something that you wanted to do or planned."

Initially, Appellant agreed to take a polygraph examination, but during the interview with McHale, Appellant told McHale that Appellant had been up all night, had 24 beers to drink the night before, and had taken caffeine pills. McHale decided to send Appellant home, and asked Appellant to get a good night's rest before meeting with the police on Saturday. McHale testified that he stopped the interrogation because he wanted to make sure that if the police elicited a confession, it would be admissible in court. Appellant did not make any incriminating statements on Friday.

On Saturday, Officer Clayton took Appellant to breakfast, then Clayton took Appellant to the station for the interrogation. Appellant was again advised of his rights. During this interrogation, the officers spoke with Appellant for about an hour and a half before Lt. Cumbee arrived and asked Appellant to come into his office. Appellant agreed with the police that "the hair that was found in [Teresa's] hand belonged to the person who [murdered her]." After Appellant said this, Lt. Cumbee left the office and when he came back he "told the [Appellant] that [Lt. Cumbee] just received a phone call from SLED and that SLED said the hair that was found in [Teresa's] hand is from, came from [Appellant] ... that it matched." In reality, the police had received the phone call on Friday from SLED stating that the hair matched. [FN3] When Appellant was confronted with this information, he said "I must have did it then." Lt. Cumbee said "Well, don't you think you need to say you're sorry?" Appellant said "I'm sorry, Teresa. I didn't mean to do it. It was an accident." Then, Lt. Cumbee pulled out a photograph of Teresa, and Appellant started rubbing the photograph and saying that he was sorry. Appellant told the police the details of the murder. At this point, the police took Appellant to the park where he said he hid Teresa's purse, however, they were unable to locate the purse. They returned to the police station and Appellant signed the written statement. Appellant was placed under arrest.

After Appellant signed the written statement, Lt. Cumbee asked Appellant if he wanted to speak to Teresa's mother. He said yes, and Teresa's mother was brought into a conference room. There, Appellant told her he was sorry and that he lost control and that he had killed Teresa.

After the arrest, Lt. Cumbee called the media and informed them he had made an arrest, and that the police would be escorting Appellant to the county jail later in the afternoon. When Appellant was escorted out of the station, he told the reporters that he wanted to make a statement. Both Lt. Cumbee and Officer Tetanich testified that they advised Appellant not to talk to the media, but that Appellant told them that "I want to tell the world how sorry I am." Appellant told the reporters that he killed Teresa and that he was sorry for what he had done.

Appellant argues the initial confession was coerced, and therefore the statement to Teresa's mother and the statement to the media were inadmissible as fruit of the poisonous tree. We disagree. A confession is not admissible unless it was voluntarily made. *State v. Von Dohlen,* 322 S.C. 234, 471 S.E.2d 689 (1996) (quoting *State v. Childs,* 299 S.C. 471, 385 S.E.2d 839 (1989)). A determination whether a confession was "given voluntarily requires an examination of the totality of the circumstances." *Von Dohlen,* 471 S.E.2d at 694-95. On appeal, the trial judge's ruling as to the voluntariness of the confession will not be disturbed unless so erroneous as to constitute an abuse of discretion. *Id.* "Both this Court and the United States Supreme Court have recognized that misrepresentations of evidence by police, although a relevant factor, do not render an otherwise voluntary confession inadmissible ... The pertinent inquiry is, as always, whether the defendant's will was 'overborne.' " *Id.*

The trial judge did not abuse his discretion in allowing the confession into evidence. Appellant was advised of his rights three different times. Not one of the interrogations lasted more than a few hours. Appellant was offered food by the police and told he was free to leave the station at any time on Friday. Also, the police made sure that Appellant was well rested and fresh before they interrogated him on Saturday. In addition, when the police told Appellant that the hair found in Teresa's hand matched Appellant's hair, they were communicating the information that they received from SLED. Even if the information were untrue, it is not, alone, enough to render the confession involuntary. *See Von Dohlen,* 471 S.E.2d at 695; *State v. Rabon,* 275 S.C. 459, 272 S.E.2d 634 (1980)("A misrepresentation, while relevant, may be insufficient to render inadmissible an otherwise valid confession"); *State v. Register,* 323 S.C. 471, 476 S.E.2d 153 (1996)(holding defendant's confession was voluntary and admissible when police misrepresented to defendant that he had been seen with the victim the night she was murdered, that his tires and shoe matched impressions found at the murder scene, and that the police had DNA evidence establishing defendant's guilt). Since the initial confession was voluntary, the subsequent statements were properly admitted.

While we find no fruit of the poisonous tree here, we cannot let pass without comment the police conduct in arranging media coverage of Appellant's "perp walk." Such actions were improper and reflect poorly on the professionalism of the department.

Dr. Kassin's testimony

Dr. Kassin is a psychology professor at Williams College and was qualified in this case as an expert in social psychology. Dr. Kassin testified about the psychology of confessions and false or coerced confessions. Appellant alleges that the trial court erred in preventing Dr. Kassin from testifying about specific case studies, in contravention of Rule 702, SCRE, because the testimony would have been helpful to the jury. We have determined there was no error, and affirm the trial court's ruling.

In the *Jackson v. Denno* hearing, Dr. Kassin testified about the facts of particular cases in Connecticut [FN4] and Indiana [FN5] in which people confessed to crimes, but later were exonerated. Before Dr. Kassin testified before the jury, the solicitor objected to Dr. Kassin testifying about "cases that don't involve this particular case" because they were irrelevant. The trial judge stated "Just object to the things you want ... let's try to keep it as much as you can to something that fits the facts of this case generally."

Dr. Kassin testified that he reviewed the videotape of the interview that Officer McHale

conducted of Appellant on Friday, and that he was concerned that the techniques used by McHale could lead to a coerced confession. Dr. Kassin testified in great detail about coerced confessions. However, on redirect when he was asked to give "anecdotal examples of false confession" the judge stated "I'm not going to allow it unless you got a case exactly like this." Dr. Kassin went on to say "there's a case in Indiana that's very similar. There's a case in Connecticut ..." The solicitor objected again.

Despite these objections, the record reflects that in fact Dr. Kassin was allowed to testify about specific cases of false confession. For example, Dr. Kassin testified that there were incidences of people confessing to a "shaken baby" case when the child died of other causes. He testified that sometimes someone confesses to a murder and some time later the victim turns up alive, so no crime was ever committed. Dr. Kassin testified about the "Innocence Project" in which DNA testing has exonerated people convicted of crimes and that 22% of the people had given false confessions. Finally, Dr. Kassin testified that people can give very detailed false confessions. For example, a man accused of killing his mother gave a reason for killing her as well as the thoughts that were going through his head as he killed her. His confession was a documented false confession.

A trial court's ruling "to exclude or admit expert testimony will not be disturbed on appeal absent a clear abuse of discretion." *Mizell v. Glover,* 351 S.C. 392, 570 S.E.2d 176 (2002). Dr. Kassin did testify about specific cases, he just did not use names or say in which state the crime happened. In addition, the Indiana case was so dissimilar that there was no evidentiary value. *See* footnote 5 *supra.* Although the Connecticut case was similar, the trial court did not abuse its discretion in excluding the information. Dr. Kassin was able to testify at length about false and coerced confessions, and he was able to touch briefly on the Connecticut case. However, assuming error in limiting testimony about the Connecticut case, Appellant cannot show prejudice in light of Dr. Kassin's other testimony. *See State v. Johnson,* 334 S.C. 78, 512 S.E.2d 795 (1999)(exclusion of evidence is harmless where cumulative).

CONCLUSION

We **AFFIRM** the trial court's rulings.

People v. Gonzalez
Cal.App. 2 Dist.,2003.
Dec. 19, 2003.

The use of the **Reid interrogation techniques** by the detectives and Youngblood undoubtedly pressured appellant to admit his involvement and suggested more appealing scenarios to which he would have less difficulty admitting, that is, he only intended to scare the officers and/or he did not think they were in the car when he fired at it. They also may have resorted to deceptive exaggeration in telling appellant about the strength of their case against him and the accuracy of the polygraph machine. However, they did not make any threats or promises, express or implied. They essentially advised him it would be better to tell the truth and accurately represented that appellant should reveal any mitigating facts at that time, rather than later, to enhance his credibility regarding such mitigation and permit the police to act accordingly. These were merely benefits that flow naturally and logically from a truthful and honest course of conduct. The police neither promised appellant leniency if he admitted the crime nor threatened to charge him or treat him more severely if he did not. (Cf. *People v. Neal, supra,* 31 Cal.4th at pp. 72-74.) The tactics and statements used by the police were not inherently likely to induce appellant to falsely confess or admit involvement.

State v. Gardner
80 P.3d 1262
Mont.,2003.

Issue 5

¶ 48 **Did the District Court err in allowing testimony by a police officer who stated that, according to his use of the Reid Technique, Gardner was lying in his interviews?**

Standard of Review

¶ 50 Gardner alleges that the District Court committed reversible error in allowing Detective Steffins to testify that, according to the "**Reid Technique,**" Gardner was lying in his interviews. During direct examination by the State, Steffins testified that the **Reid Technique,** a **technique** used for interviewing criminal suspects, demonstrates that a person who is lying will "soften" over time, give qualified answers, transfer blame to others, appeal to a higher (divine) authority, and try to avoid getting "boxed in" with an answer.

¶ 51 On the first day of trial, Steffins described his observations of Gardner during two interviews he conducted of him. Steffins stated that Gardner gave qualified answers, was evasive, shifted blame, tried to justify incriminatory actions through loss of memory while conversely saying he had an excellent memory, made a statement of denial akin to swearing on a stack of Bibles, tried to keep from getting boxed in on specific dates, and "softened" at the end of the interview by saying he just did not remember when or where the alleged inappropriate contact happened.

¶ 53 On the third day of trial, defense counsel called Steffins during its case-in-chief and challenged him regarding his training, interview techniques, and assessment of Gardner. Defense counsel then asserted Steffins' training, which consisted of only twenty-four hours of instruction in the use of the **Reid Technique,** did not qualify him to make "extreme psychological judgments" about Gardner, thus rendering his observations of Gardner and his conclusion that Gardner was lying, inadmissible opinion testimony, and moved to strike all of Steffins' testimony on grounds he did not meet the qualifications necessary for an expert witness *****1271*** in the area of psychology. The court denied the motion to strike, stating that although Steffins was not an expert in psychology, Steffins could base his opinion on his training and the interviews he had done over the years as a police officer, and that the credibility and weight of the officer's testimony would be a jury question.

¶ 55 We agree….

State v. Ulch

Court of Appeals of Ohio, Sixth District, Lucas County.
STATE of Ohio, Appellee,
v.
Merle ULCH, III, Appellant.
No. L-00-1355.
April 19, 2002.

Defendant was convicted in the Court of Common Pleas, Lucas County, of child endangerment. Defendant appealed. The Court of Appeals, Pietrykowski, P.J., held that: (1) trial court did not commit prejudicial error by determining that child victim was incompetent to testify as a witness without a competency hearing, and (2) testimony of detective, in which detective stated how she used lying techniques to encourage defendant to make a statement, did not violate defendant's right to due process and did not cause jury to lose its way in convicting defendant.
Affirmed.

DECISION AND JUDGMENT ENTRY

In his second assignment of error, appellant challenges the testimony of Detective Bliss and asserts that in relying on this testimony to convict him, the jury lost its way. Essentially, what appellant is attacking through this assignment of error is Detective Bliss's use of the **Reid Technique** in obtaining appellant's confession.

****3*** Detective Bliss testified at the trial below that on February 16, 2000, appellant arrived at the Sylvania Police Department to talk about Danielle's injuries. Detective Bliss stated that appellant was not under arrest and that when he arrived he appeared calm but somewhat sad. Initially, appellant told Bliss that Danielle had been jumping on his waterbed and had fallen off. Appellant further told Bliss that when Danielle fell off of the bed, a table and lamp fell on top of her. Appellant then said that he put ice on Danielle's head and laid her down on his lap.

Then, when Sherri returned home, she took Danielle to the hospital. Appellant, however, then told Bliss that Danielle may have sustained injuries outside of the bedroom. Appellant told Bliss that although Danielle's head injury occurred when she fell off of the bed, her other injuries may have occurred when he was roughhousing with her. As part of that roughhousing, appellant admitted that he hit Danielle in the stomach. At this point during the interview, appellant began to cry and Bliss initiated what is known as the **Reid Technique** to encourage appellant to talk. Bliss explained that the **Reid Technique** is an interviewing **technique** in which the interviewer establishes a common ground between herself and the subject to create a relationship. Using this technique, Bliss told appellant that she had done things to her own child that she was not proud of. She also told appellant that Danielle exhibited bruising that included knuckle marks in the chest area and that marks on her forehead indicated that she had been hit by an adult male's hand. These statements were false, but Bliss testified that as part of the **Reid Technique,** once a suspect indicates that he is interested in taking responsibility for an offense, the interviewer introduces evidence, whether real or imagined, pointing in the suspect's direction. Bliss testified that she made these statements to appellant after he indicated that he wanted to take responsibility for Danielle's injuries. Appellant then told Bliss that he was unable to tell her what happened but that he would write it down.

On cross-examination, Detective Bliss admitted that, consistent with the **Reid Technique,** she lied to appellant in an attempt to get him to talk to her and that when he tried to deny any wrongdoing she cut him off and would not allow him to deny wrongdoing. She also testified that although it was okay to lie to a suspect she was not lying in court.

In *State v. Beauregard* (Dec. 1, 1995), Lucas App. No. L-94-359, unreported, we addressed a situation in which a criminal defendant was tricked into making incriminating statements by a childhood friend who was a police informant. In finding no due process violation, we stated:

"Those who commit criminal acts have an inherent desire to conceal these acts from the authorities. To this end, criminals will lie, deceive, divert, disguise, and conceal. Law enforcement is confronted with the task of unmasking these ploys. Therefore, while a coercion of confession is forbidden by the law, ' * * * mere strategic deception by taking advantage of a suspect's misplaced trust * * * ' remains a viable and acceptable tactic. *Illinois v. Perkins* [(1990), 496 U.S. 292,] 298, 110 S.Ct. 2394, 110 L.Ed.2d 243; see, also, *Alexander v. Connecticut* (2 C.A.1990), 917 F.2d 747, 750-751."

While the situation in the present case involves police questioning, rather than the use of a police informant, we fail to see how Detective Bliss's use of lying techniques to encourage appellant to make a statement violated his right to due process or caused the jury to "lose its way" in convicting appellant. Finally, the record is clear that appellant's trial counsel thoroughly cross- examined Detective Bliss and presented the jury with ample evidence of the detective's use of falsehoods in obtaining appellant's statement. It was clearly within the province of the jury to determine which witnesses were worthy of belief.

State v. Cobb

Court of Appeals of Kansas.
STATE of Kansas, Appellee/Cross-Appellant,
v.
Artis Termain COBB, Appellant/Cross-Appellee.
Nos. 85,309, 85,445.
April 12, 2002.

Defendant was convicted in the Geary District Court, Steven L. Hornbaker, J., of voluntary manslaughter and involuntary manslaughter. He appealed. The Court of Appeals, Beier, P.J., held that: (1) evidence supported finding that defendant's statements to agents were voluntary; (2) voluntary manslaughter conviction could stand even absent evidence of sudden quarrel or heat of passion; and (3) expert testimony on phenomenon of false confessions invaded province of jury.
Affirmed.

2. On the record of this case, substantial competent evidence supports the district court's decision that defendant's statements to investigating agents were voluntary. Although the

agents misled defendant about the strength of the evidence against him and made repeated references to defendant's religious faith and its support for confession, defendant's statements were the product of his own free will.

5. A district court's refusal to allow an expert to testify about the inconsistencies between the defendant's description of the crime, the crime scene, and the physical evidence is not an abuse of discretion when the inconsistencies are not beyond the normal experience and qualification of lay jurors.

8. Expert testimony on the phenomenon of false confessions and the propensity of certain interrogation techniques to produce them invades the province of the jury and should not be admitted. Cross-examination and argument are sufficient to make the same points and protect the defendant.

***861** The State filed a pretrial motion in limine to prevent the defense from using expert testimony regarding the tendency of certain police interrogation techniques to produce false confessions. At the hearing on the motion, Dr. Richard Leo testified about his expertise in criminology and social psychology and his specialty in police investigative behavior and "extreme influence in decision making." Leo said he had participated in five or six police **interrogation** training seminars, including classes by **Reid** and Associates; he had taught police officers **interrogation** methods; he had written several articles in the field; and he was on the editorial board of the Law and Society Review. In his opinion, he said, he and Dr. Richard Ofshe are considered leading authorities in the field of police interrogation.

Leo also testified about the acceptance of "extreme influence in decision making" as a legitimate field of study. He said it had been recognized since 1908, and several indicators showed its acceptance level, including the amount of reputable research in academic journals, the presence of high-level textbooks or encyclopedias about the field, and the institutionalization of the area of study in university settings. Leo further explained that no dispute existed in the academic literature or among police about the existence of false confessions but that the subject was outside common experience or common knowledge of laypersons.

Leo also testified that research has shown certain techniques of investigation are more likely to produce a false confession than other techniques. For example, techniques that maximize the suspect's involvement in the crime, suggesting that a failure to confess ***553** will cause him or her to be seen in a worse light and lead to maximum punishment, can produce false confessions. Minimization, a technique in which the questioner suggests to the suspect that the suspect had a lower level of culpability, perhaps because of self defense or a mistake, can also have that effect, he said, as can exhaustion, sleep deprivation, and extended questioning. Leo admitted on cross-examination that there are no statistics showing how often false confessions actually occur.

The district court ruled that Leo could not testify at trial regarding voluntariness, as that issue had already been disposed of. He could, however, testify about the phenomenon of false confessions and the correlation between them and certain interrogation techniques.

The Trial

At trial, Leo testified that the police in this case used **Reid** and Associates **techniques** in interrogating Cobb--such as telling him they knew he committed the crime, confronting him with irrefutable evidence of his guilt, suggesting that they wanted to help him, suggesting the gang initiation scenario, appealing to Cobb's moral and religious sense, using maximization and minimization, leading him to believe that they would meet with the district attorney, and repeatedly asking Cobb to remember what happened and to help himself out. Leo explained that some of the techniques used by the interrogators in this case have contributed to false confessions.

Analysis

Suppression of Statements Because of Agents' Lies and Religious References

[1] [2] Cobb first argues that his incriminating statements from the August 1997 and July 1999 interviews should have been suppressed because they were involuntary products of

both the agents' lies and their improper appeals to his religious faith.
"When a trial court conducts a full hearing on the admissibility of an extrajudicial statement by an accused, determines the statement was freely, voluntarily, and intelligently given, and admits the statement into evidence at the trial, an appellate court accepts that determination if there is substantial competent evidence to support the trial court's determination. [Citation omitted.] After a trial court has determined the confession was voluntary, an appellate court will not reweigh the evidence. [Citation omitted.]" *State v. Lane,* 262 Kan. 373, 382-83, 940 P.2d 422 (1997).

In *State v. Wakefield,* 267 Kan. 116, 977 P.2d 941 (1999), the defendant appealed the district court's refusal to suppress statements ***557** he made during an interrogation in which officers falsely represented that they had information and evidence implicating the defendant in a murder. The Kansas Supreme Court used the following factors to determine whether the confession was voluntary under the totality of the circumstances: "(1) the duration and manner of interrogation; (2) the accused's ability upon request to communicate with the outside world; (3) the accused's age, intellect, and background; and (4) the fairness of the officers in conducting the interrogation." 267 Kan. at 126, 977 P.2d 941.

The *Wakefield* court noted that the questioning officer in *Frazier v. Cupp,* 394 U.S. 731, 739, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969), falsely told the defendant that his cousin had already confessed. Despite this falsehood, the United States Supreme Court found the misrepresentation was insufficient under the totality of the circumstances to make an otherwise voluntary confession inadmissible. 267 Kan. at 128, 977 P.2d 941.

The *Wakefield* court found the officers' conduct in that case followed from the State's interest in conducting a thorough and accurate investigation, and such tactics did not make a confession involuntary so long as the statements were otherwise the product of the defendant's own free will. Given the lack of threatening behavior or unfulfilled promises by the officers, the court concluded the misrepresentations did not make the defendant's confession involuntary. 267 Kan. at 127-28, 977 P.2d 941.

[3] Applying the *Wakefield* factors to this case, we conclude the manner and the duration of the interrogations did not make Cobb's statements involuntary. He was given several breaks during the August 1997 interrogation, and the July 1999 interrogation ***864** lasted only 4 hours. Cobb did not complain that he was physically threatened by or that he had received any unfulfilled promises from the agents. He never requested to communicate with the outside world, and, as the district court noted, he was an adult of average intellect who had been in the United States Army and who had previous experience with the criminal justice system. All of the first three factors weigh in favor of voluntariness.

As for the officers' fairness, although the agents in this case did misrepresent the strength of the evidence they already possessed, ***558** we believe it is unlikely these misrepresentations overbore Cobb's will under the totality of the circumstances. At times, he was the party who urged the continuation of the conversations. We hold that substantial competent evidence supports the district court's ruling that the misrepresentations did not render Cobb's statements involuntary.

The agents' manipulation of Cobb through repeated references to his religious beliefs during the July 1999 interview is somewhat more troubling because of the lack of controlling precedent. The agents initiated the topic, although Cobb was all too eager to continue the theme.

No Kansas cases have dealt specifically with whether an interrogator may use religion to appeal to a suspect to make a statement. Cobb relies primarily upon *Carley v. State,* 739 So.2d 1046 (Miss.App.1999), in arguing that the religious tone rendered his resulting statements involuntary.

In *Carley,* a 14-year-old boy with a mental disability admitted to shooting his parents after officers made repeated references to the Lord and told him the only way he could obtain religious salvation and see his parents again was by telling the truth about his sins. Under the totality of those circumstances, the court concluded Carley's will was overborne and his confession involuntary. The officers' invocation of the deity, their references to Heaven and Hell, and their promises of leniency and religious salvation went too far. 739 So.2d at 1054.

Castleberry v. Alford, 666 F.2d 1338 (10th Cir.1981), had the opposite result in a situation where the defendant was an adult. As police officers drove Castleberry to the station for questioning, they took him for a visit with one of their ministers. The evidence as to exactly how this came to pass was disputed. After Castleberry met privately with the minister, where he prayed and listened to biblical passages about confession and forgiveness, he stated for the first time that he had killed his wife and children.
The Tenth Circuit Court of Appeals upheld the state court's determination that Castleberry's confession was voluntary. The court considered Castleberry's mental capabilities, including his age, his average intelligence, his level of education, and his clean ***559** record. The court also found there was no particular misconduct on the part of the officers, and the visit to the minister was not objectionable in and of itself. 666 F.2d at 1341-43.

We view Cobb's case as a close one. Although he was older and more intelligent than the defendant in *Carley,* the references to religion during his last interview can best be described as constant and pervasive. The agents made the most of their knowledge of his professed faith, gleaned from the August 1997 contact, and Cobb's obvious religious fervor made him vulnerable to coercion when he was urged to consider the effect his failure to confess would have on his salvation.

We cannot, however, conclude that Cobb's incriminating statements were involuntary. He was an adult, and, even when compared to the defendant in *Castleberry,* somewhat older and more experienced. Also, as mentioned, he joined into the religious discussion enthusiastically and urged the agents to continue talking to him rather than place him under arrest. In the end, we view the situation as comparable to one in which a police officer is aware that a suspect feels most comfortable when talking to a person who shares his or her opinions on politics. The officer would be permitted to feign agreement with and enthusiasm for the defendant's position and to try to make cooperation in the investigation consistent with the defendant's world view. This tactic would not make resulting incriminating statements involuntary if the suspect was mature and of normal intelligence. We are reluctant to arrive ****865** at any holding to the contrary in this case and thereby suggest that persons of deep religious faith should be presumed to be more gullible and easily manipulated than those with deeply held secular beliefs or opinions.
We also note that, even if we were to conclude the agents' emphasis on religion was so coercive as to make Cobb's July 1999 statements involuntary, the district court's failure to suppress them would be harmless. Cobb had already placed himself at the scene, at least as an aider and abettor in Kasey's rape and homicide. On the evidence in this case, he would have been found guilty even if his last incriminating statement had not been admitted.

Admission of False Confession Expert Testimony

The State's first contention in its cross-appeal is that the district court abused its discretion by permitting Leo to testify as a defense expert on the phenomenon of false confessions. This is an issue of statewide importance, it says, because "Dr. Leo will be a regular visitor to Kansas courtrooms when a confession is offered in a major case if testimony of this nature is allowed." We agree that our review of this reserved question is appropriate. See *State v. Golston,* 269 Kan. 345, 346, 7 P.3d 1132 (2000).

[11] [12] ***565** After a hearing, the district court found Leo's testimony was admissible under the *Frye* test.

"The admissibility of expert testimony is subject to K.S.A. 60-456(b). The *Frye* test, ****868** *Frye v. United States,* 293 F. 1013 (D.C.Cir.1923), however, acts as a qualification to the 60-456(b) statutory standard. *Frye* is applied in circumstances where a new or experimental scientific technique is employed by an expert witness.
"*Frye* requires that before expert scientific opinion may be received into evidence, the basis of the opinion must be shown to be generally accepted as reliable within the expert's particular scientific field. If a new scientific technique's validity has not been generally accepted or is only regarded as an experimental technique, then expert testimony based upon the technique should not be admitted." *Kuhn v. Sandoz Pharmaceuticals Corp.,* 270 Kan. 443, Syl. ¶¶ 2, 3, 14 P.3d 1170 (2000).
Although the admission of expert testimony is generally governed by an abuse of discretion standard, the Kansas Supreme Court has held that a district court's *Frye* ruling should be

reviewed de novo "because the outcome of a *Frye* holding transcends individual cases such that applying less than a de novo standard could lead to inconsistent treatment of similarly situated claims." *State v. Shively*, 268 Kan. 573, 576, 999 P.2d 952 (2000).

Cobb argues that *In re B.M.B.*, 264 Kan. 417, 420-21, 955 P.2d 1302 (1998), supports admission of Leo's testimony. In that case, the district court permitted a defense expert to testify at a motion for new trial about the appropriateness of the questioning of a 10-year-old boy during a police interview. The expert said the techniques used in the interview were wholly inappropriate for use with children. Further, a substantial number of children would have agreed to what was being suggested to them because of the level of coercion and pressure present in the interview, regardless of whether they were guilty. We get little guidance from this case, however, because the issue of whether this testimony was properly admitted before a jury was not the focus of the appeal.

[13] State and federal courts are split on whether to admit expert testimony on false confessions. See Major James R. Agar, II, *The Admissibility of False Confession Expert Testimony,* Army Law. 26, 35-37 (Aug.1999). We note particularly *State v. Davis,* 32 S.W.3d 603 (Mo.App.2000), in which the defendant appealed the district court's exclusion of expert testimony by Leo on interrogation techniques, ***566** false confessions, and coercive persuasion. The Missouri Court of Appeals recognized that this was an issue of first impression in Missouri, ultimately affirming. 32 S.W.3d at 607-08, 612. Along the way, it observed that *United States v. Hall,* 93 F.3d 1337 (7th Cir.1996), had allowed expert testimony on coercive police interrogation and the incidence of false confessions under the *Daubert* standard. See *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). However, it also observed that in *State v. Ritt,* 599 N.W.2d 802 (Minn.1999), the Minnesota Supreme Court had excluded such testimony, apparently under the *Frye* test.

The *Davis* court found Leo's offer of proof regarding a suspect's thought process when interrogated under circumstances similar to the defendant's was particularized to the circumstances of the case and was not generic credibility testimony. The court concluded the testimony invaded the jury's province to make a credibility determination about the defendant's statement. 32 S.W.3d at 608.

The *Davis* court likened the situation to that in a Missouri Supreme Court eyewitness identification case, in which the court affirmed the district court's exclusion of expert testimony about the unreliability of cross-racial identification. See *State v. Lawhorn,* 762 S.W.2d 820, 822-23 (Mo.1988). In that case, the court determined the information was within the jury's common knowledge and the reliability of the identification could be challenged through cross-examination.

"Adapting the reasoning of the Supreme Court [in *State v. Lawhorn*] to this case, the fact that police interrogation may be persuasive or coercive does not leave defendant without protection if the trial court denies expert testimony on this topic. Cross-examination is an adequate tool to expose police conduct, and closing argument gives the defendant a forum to further develop his theory that interrogation techniques are coercive. The jury is capable of understanding the reasons why a ****869** statement may be unreliable; therefore, the introduction of expert testimony would be 'a superfluous attempt to put the gloss of expertise, like a bit of frosting, upon inferences which lay persons were equally capable of drawing from the evidence.' [Citations omitted.]
"The defendant had a full opportunity to cross-examine the police officers that interrogated him about their techniques. The jury heard testimony regarding the conditions of defendant's interrogation, the length of time defendant was interrogated, the receipt and waiver of *Miranda* rights, and the content of the police ***567** questions and defendant's statements. It was reasonable for the trial court to conclude that the jury could decide the issue of the statement's reliability using its common knowledge. Consequently, the jury would not be aided by Dr. Leo's testimony." *Davis,* 32 S.W.3d at 609.

We find the reasoning of *Davis* and the Kansas cases regarding eyewitness identifications persuasive. The type of testimony given by Leo in this case invades the province of the jury and should not be admitted. Cross- examination and argument are sufficient to make the same points and protect the defendant. Cobb got more protection than future defendants will

be entitled to claim.

Affirmed.

State v. Isola

1999 WL 1081269
Wash.App. Div. 1,1999.
Nov. 29, 1999.

Appeal from Superior Court of Snohomish County, Docket No. 97-1-00759-8, judgment or order under review, date filed 04/06/1998; Ronald L. Castleberry, Judge.
James R. Dixon, Nielsen Broman & Assoc., Seattle, WA, for Appellant(s).
Seth A. Fine, Snohomish Co. Prosecutor's Office, and Constance M. Crawley, Snohomish Co. Courthouse, Everett, WA, for Respondent(s).

UNPUBLISHED OPINION

***1** Darrell Isola was convicted following a jury trial of first degree rape of a child and first degree child molestation. He appeals on three grounds. First, Isola asserts that the search warrant was invalid because the fact that his daughter denied the victim's allegations was omitted from the warrant application. Second, he assigns error to the testimonial reference to inadmissible child hearsay. Finally, Isola contends that it was error not to allow him to present evidence that he has a reputation for succumbing to authority in confrontational situations to explain why he confessed. We affirm his convictions because (1) the warrant established probable cause even with the omitted information, (2) the trial court did not abuse its discretion in allowing the reference to child hearsay because the answer did not contain any statements made by the victim, and (3) the character evidence was properly refused.

FACTS

…. The warrant was issued, and Detective Payne and Detective Heitzman arrested Isola on his way to work. The detectives brought Isola to the police station and questioned him using the "**Reid" technique.** That technique is designed to elicit confessions by telling the accused that he committed the crime and then giving him a moral reason for his behavior, thereby making it more palatable for him to admit to his crime. Another **Reid technique** is to create a worse situation than actually suspected to make the probable situation less distasteful to the accused in comparison. Both detectives used the **Reid technique** when questioning Isola for a period of about two hours and periodically changed their demeanors from confrontational to friendly.

***2** Isola stated that he did not feel he could oppose the detectives. Isola eventually confessed to touching TT on her vaginal area after he saw her laughing and looking at her vagina and at him. Although Isola did not mention bedwetting in his statement, he maintained that he touched TT only to see whether she had wet the bed. Isola testified that he wrote the statement in order to explain TT's confusion over a nonsexual touch.
Following the interview, Detectives Heitzman and Malkow searched Isola's home and found videotapes, three of which were pornographic.

The defense presented three witnesses who would testify that Isola's reputation was one of truthfulness and of succumbing to authority in confrontational situations. The trial court allowed the truthfulness character evidence but not his succumbing character evidence because the trial court found that the testimony amounted to an expert opinion and would confuse the jury.

DISCUSSION

Character Evidence

Isola contends that the trial court erred in not admitting testimony from a former employer and former co-worker concerning his reputation for succumbing to authority in confrontational situations.

ER 404(a)(1) permits the accused to present evidence of a pertinent character trait, and ER 405(a) confines that evidence to reputation. The term "pertinent" as used in ER 404(a)(1) means that "[t]he evidence must be directed toward a trait of character which is pertinent to rebut the nature of the charge against the defendant." ER 404(a)(1) cmt.
In ruling that the character evidence of Isola's reputation for succumbing to authority was inadmissible, the trial court based its ruling on two grounds. The first was that the trial judge believed such testimony would come close to rendering an expert opinion of Isola's character. The trial judge also determined that the character evidence's probative value was outweighed by potential confusion to the jury.

Here, the character evidence of succumbing to authority is not pertinent to rebut any element of the crimes of rape or child molestation, nor does it refute the nature of the charges. The typical use of character evidence is to demonstrate a peaceful or truthful nature and thereby rebut a charge that includes aggression or deceit. In this case, Isola sought to introduce the character evidence to attack the credibility of his confession rather than to rebut the State's charges against him. Because Isola argues only that the character evidence was admissible under ER 404(a)(1), we hold that the evidence is not proper character evidence and affirm the trial court's ruling on that basis.

State v. Schofield

1999 WL 1033547

Wash. App. Div. 2,1999.

UNPUBLISHED OPINION

***1** William Herbert Schofield, Jr. appeals his conviction of second degree murder, arguing his confession was involuntary because of psychological coercion. We affirm.

FACTS

On February 18, 1997, the beaten body of 13-year-old Adam Lackney was found in a park dumpster. After the initial investigation led to Schofield, the police arrived outside his apartment building at about 8:30 p.m. on the same day the body was discovered. They did not enter until an hour later. The detectives then asked Schofield if he would accompany them to the sheriff's office to discuss Lackney's disappearance.
At the sheriff's office, Schofield declined offers of food and drink. His initial interview began at 9:47 p.m. In that interview, Schofield admitted he drank beer the evening before with Adam Lackney.

A little less than an hour later, Schofield was permitted to go to the restroom unescorted. When he returned from this break, he was advised of his Miranda [FN1] rights. Schofield had been read Miranda rights at least twice before in his lifetime and, on one occasion, had invoked his rights. On this occasion, Schofield stated he understood his rights and was willing to talk. He did not sign a written waiver. Schofield also understood he was in a custodial interrogation and was not free to leave.

At about midnight, one of the interrogating detectives noticed blood on the defendant's clothing and shoes. With Schofield's permission, a shoe was taken and tested positive for blood.

At 1:50 a.m., now the 19th of February, a second break from the interrogation was taken. The interview resumed at 3:10 a.m. At this time, Schofield admitted he felt nervous and uncertain about what was going to happen, but he continued to talk with the officers. Another break was taken at 4:45 a.m.; questioning resumed at 5:10 a.m. This first session concluded at 6:35 a.m. Up to this point, Schofield had not admitted involvement in Adam Lackney's death, although he had been told Lackney was dead.

A second session, with new detectives, began immediately after the first. The new detectives discussed the blood on Schofield's clothing and demonstrated the spray of blood using a soda can and paper punch holes. Schofield then admitted to being at the crime scene, but not to committing the murder. The detectives told him no one would believe his story.

Throughout the interview, the interrogators proposed different scenarios to Schofield of how Lackney might have died that night and how Schofield might have been involved in the death. At about 8:23 a.m., after having no success in obtaining a confession, the detectives told Schofield they were prepared to end the interview in a few minutes. At about 8:30 a.m., Schofield first admitted to involvement in Lackney's death. At 9:12 a.m., Schofield gave a tape-recorded confession preceded by a re-advisement of his Miranda rights.

Schofield's physical and emotional condition during the interrogation was disputed at the CrR 3.5 [FN2] hearing. The detectives testified to evaluating his condition throughout the night. He appeared melancholy, but calm and unemotional. He was not physically ill or intoxicated. There were no signs of confusion or lack of understanding. He continued to decline food and drink. Schofield never stated that he was fatigued or did not understand, and he did not ask how long the interview would last.

***2** The detectives testified that they conducted the interrogation without promising leniency or threatening to charge Schofield with aggravated murder and without referring to the death penalty or life in prison. Upon Schofield's request, the degrees of homicide were explained, but there was no reference to the penalties for each.
Schofield contradicted this testimony. He claimed he was exhausted and scared, and he could not understand what was going on. He said the police threatened to end the interview and charge him with premeditated first-degree murder because they disbelieved his story. Schofield also claimed the police talked about penalties to the various types of homicide and threatened him with more punishment if he did not confess. The trial court found the detectives' testimony credible.

In addition to Schofield's testimony at the hearing, a sociologist, Richard A. Leo, Ph.D. [FN3] testified for the defense regarding the interrogation technique employed by the police and his opinion of its effect on the voluntariness of Schofield's confession.

FN3. Dr. Leo holds doctorates in law and sociology.

Dr. Leo identified the detectives' tactics as the **Reid interrogation** method. [FN4] The **Reid technique** has nine basic principles. A **Reid interrogation** begins with direct confrontation with the suspect of his guilt. During the interview, the interrogators propose different themes or scenarios for how the crime may have been committed. These alternative themes may minimize or maximize the suspect's involvement in the event. Throughout the interview, denials are prevented and objections overcome. At all times, the suspect's attention is maintained and mood capitalized upon. Once a confession is obtained, the details are fleshed out and the entire confession is recorded.

FN4. The **Reid** method of **interrogation** takes its name from one of the authors of a textbook: Fred Inbau, et al., Criminal **Interrogation** and Confessions (3d ed.1985). The Reid method is taught to law enforcement personnel throughout the country.

Dr. Leo focused on the Reid principle of proposing maximum or minimum alternatives for the suspect's involvement in the crime. He claimed that use of this technique could be a threat of harm or a promise of leniency in exchange for confession because of the implication that the various alternatives entail different degrees of culpability and punishment. This, he averred is inherently coercive.

In preparing to testify, Dr. Leo read a statement by Schofield. But he did not examine Schofield nor listen to the tape of his confession. Dr. Leo admitted he was unqualified to render an opinion as to the defendant's psychological state at the time he confessed. Nonetheless, Dr. Leo concluded:
Based on the materials that I've reviewed, as well as the testimony I've heard, and specifically on this minimization-maximization technique and specifically on the self-defense and accident scenarios, it's my opinion that the motivators, the incentives that elicited from Mr. Schofield the confession statement were based on promises of leniency and threats of

harm, and therefore the statement was elicited involuntarily.
Dr. Leo's opinion would not change whether the detectives' or Schofield's version of the interrogation was accepted as true.

*3 The trial court found Dr. Leo qualified as an expert on the **interrogation technique** used and found the police did indeed use the **Reid technique.** But the court did not accept Dr. Leo's conclusion that the interrogation was inherently coercive. The trial court found that Dr. Leo was not qualified to testify about the presence of coercion in a specific situation, although he could explain facts and circumstances that may lead to a coerced confession.

The trial court concluded that the interrogation did not overbear Schofield's free will and make his testimony involuntary. Schofield failed to present any evidence of his mental condition that would raise special concerns about the voluntariness of the confession, although he was a high school dropout who had been a special education student. The court considered the length of the interview, but it found that the offers of food, drink, and breaks mitigated that factor. Finally, given the defendant's demeanor throughout the interview, the court concluded the statement was voluntary and admissible. Schofield appeals.

ANALYSIS

Schofield contends that his confession was involuntary because it was obtained after a 12-hour interrogation that included implicit or explicit threats of punishment and promises of leniency.

If there is substantial evidence that a confession was voluntary, that determination by the trial court will not be altered on appeal. *State v. Broadaway,* 133 Wash.2d 118, 131, 942 P.2d 363 (1997); *State v. Ng,* 110 Wash.2d 32, 37, 750 P.2d 632 (1988). A voluntary confession is the product of a rational intellect and free will. *State v. Rupe,* 101 Wash.2d 664, 679, 683 P.2d 571 (1984). The question is whether the defendant's will to resist was overborne, bringing about a confession not freely self-determined. *State v. Cushing,* 68 Wash.App. 388, 392, 842 P.2d 1035, review denied, 121 Wash.2d 1021, 854 P.2d 1084 (1993).
Involuntary confessions must be suppressed. See *Colorado v. Connelly,* 479 U.S. 157, 163, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986).
The circumstances of an interrogation must be evaluated to determine if a confession was voluntary. *Broadaway,* 133 Wash.2d at 132, 942 P.2d 363. The condition of the defendant and the conduct of the police are the primary considerations. *Broadaway,* 133 Wash.2d at 132, 942 P.2d 363; *Rupe,* 101 Wash.2d at 679, 683 P.2d 571 (citations omitted). A defendant's age, weakened physical or emotional state, intelligence, and experience with the police are factors in assessing his or her condition. See *Rupe,* 101 Wash.2d at 679, 683 P.2d 571; *Cushing,* 68 Wash.App. at 392, 842 P.2d 1035. The duration and environment of the interrogation may also affect the defendant's condition. See *State v. Riley,* 19 Wash.App. 289, 295-296, 576 P.2d 1311, review denied, 90 Wn.2d 1013 (1978).

*4 In assessing the conduct of the police, a court must consider any promises or misrepresentations made by the interrogating officers. *Broadaway,* 133 Wash.2d at 132, 942 P.2d 363. But direct or implied promises do not necessarily render a confession involuntary. *Broadaway,* 133 Wash.2d at 132, 942 P.2d 363.

Schofield's testimony conflicts with the detectives' testimony regarding his physical and mental condition and the detectives' conduct. Schofield assigns error to the trial court's resolution of these factual questions against him. On review, the detectives' testimony provides substantial evidence to support the trial court findings and the findings are binding on appeal. *State v. Hill,* 123 Wash.2d 641, 647, 870 P.2d 313 (1994).
But this testimony does not completely resolve the issue of voluntariness. According to the defense expert, even if the detectives' version of the interview were accepted, the confession would remain involuntary. As explained above, Dr. Leo testified that the **Reid technique** as applied in this case contained implicit and coercive threats and promises. Schofield asserts that most, if not all, **Reid-** type **interrogations** result in involuntary confessions because maximization--minimization theme development is an integral part of the **Reid** method. [FN5]
We disagree. Even assuming that **Reid interrogations** involve implicit threats and promises, all other circumstances of the **interrogation** must still be assessed to determine if the confession was voluntary. See *Broadaway,* 133 Wash.2d at 132, 942 P.2d 363 (citing *Arizona*

v. Fulminante, 499 U.S. 279, 285, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991)).

FN5. Dr. Leo stated that some Reid themes, "blame the victim", for instance, are not inherently coercive because they do not "communicate the promise of leniency or threat of harm" if the suspect agrees or disagrees. He contrasted such acceptable themes with "inherently coercive" themes like accident, cold-blooded premeditation, and self-defense. Given his theory of implicit threats or promises, his distinction seems untenable: surely a "blame the victim" theme implies a promise of leniency.

Here, when all of the circumstances are considered, there is substantial evidence that the confession was voluntary. Schofield was an adult, without mental problems raising special concerns. He had been interviewed by the police on prior occasions and understood his rights. Although the interview was lengthy, Schofield was offered food, drink, and breaks. Furthermore, he appeared calm, lucid, and not excessively fatigued during the course of the interview.

Under the facts of this case, and even assuming, without holding, that there were implicit threats or promises, the **Reid interrogation** did not render Schofield's confession involuntary. Therefore, the trial court did not err in denying Schofield's motion to suppress the confession. Affirmed.

State v. Ritt

599 N.W.2d 802

Minn.,1999.

Aug. 5, 1999. (Approx. 12 pages)

Defendant was convicted in the District Court, Dakota County, Robert F. Carolan, J., of two counts of first-degree murder, two counts of second-degree murder, one count of third-degree murder, and one count of first-degree arson, and she appealed. The Supreme Court, Stringer, J., held that: (1) defendant's statement to police officer was not coerced; (2) exclusion of expert testimony regarding police interrogation techniques was not abuse of discretion; and (3) evidence of test burn conducted under substantially similar circumstances to fire in which defendant's daughter died was admissible.
Affirmed.

***803** Syllabus by the Court

Under the totality of the circumstances, neither the method of interrogation nor the physical surroundings were so coercive as to render the suspect's statement to law enforcement involuntary and inadmissible.

When the jury had ample opportunity to observe and evaluate the veracity of a witness' statement, the trial court did not abuse its discretion in excluding expert testimony regarding police interrogation techniques.

Evidence of a test burn was admissible where it was conducted under circumstances substantially similar to those existing in the case at issue.

OPINION

Twenty-three-month-old Hannah Ritt died in her crib when a fire occurred in her home on March 25, 1997. Death was caused by toxic fumes released from the burning of an acrylic afghan. Six days later Hannah's mother, appellant Kelly Jean Ritt, spoke with Detective James Rgnonti of the Hastings Police Department and admitted tossing an afghan from Hannah's crib toward a daybed in the room and not moving it when it landed partially on a space heater on the floor. Ritt denied "wanting" to cause a fire or kill Hannah but admitted "hoping" that Hannah would die. Ritt was arrested and subsequently indicted on two counts of first-degree murder, [FN1] two counts of second-degree murder, [FN2] one count of third-degree murder [FN3], one count of second-degree manslaughter, [FN4] and one count of first-degree arson. [FN5] She was convicted of all charges except manslaughter following a month-long jury trial in Dakota County in which 48 witnesses testified. Ritt asserts three issues on

appeal: (1) that her statement to Rgnonti was involuntary and inadmissible because she was subjected to "psychological interrogation"; (2) that the trial court erred in excluding expert testimony describing police interrogation practices; and (3) that the trial court erred in admitting a videotaped "test burn" involving an afghan and a space heater similar to those involved in the fire in Hannah's room. We affirm Ritt's conviction.

Following her interview Ritt was read her Miranda rights and agreed to give a formal statement to Rgnonti about the night of the fire. She repeated the substance of her earlier interview stating that she removed the afghan from Hannah and threw it toward the daybed and thought it had landed partially on the heater. She stated that later when she heard the smoke alarm she thought "Look what I did now." Ritt continued to draw a distinction between what she wanted to happen and what she hoped might happen: for example, she stated that she did not intend for Hannah to die, yet she "hoped" that God would take her. Ritt eventually stated that she was sure part of the afghan landed on the heater but that she did not see it and could not understand how a space heater could cause a fire. At the end of the statement Ritt stated that she had given the statement freely and that she was not coerced. The videotape continued to record Rgnonti and his supervisor telling Ritt that they were going to charge her with Hannah's death and allowing her to call her husband to come down to the police station.

Rgnonti was subjected to a lengthy cross-examination by defense counsel about his training in interrogation and the techniques he used during Ritt's interview. Rgnonti stated that he had attended a Continuing Legal Education seminar on the Inbau, **Reid &** Buckley **technique ("Reid technique")** of **interrogation** in 1993 and attended a refresher course in December of 1996. Rgnonti disagreed with defense counsel's assertion that the second course was "advanced" however, stating that it was "very similar" to the first and included the same videotapes.

Ritt's first claim on appeal is that the trial court erred when it denied her pretrial motion to suppress the statement she gave to Rgnonti because it was involuntary and hence inadmissible. Ritt argues that Rgnonti improperly used her grieving and guilt as well as her lack of sleep to coerce her into agreeing with a scenario suggested by Rgnonti. In its order denying the motion to suppress, the trial court commented that Ritt "appeared [in the videotape] to be very alert and was able to carry on a detailed conversation with Rgnonti without any indication of mental or physical impairment" and also noted that Ritt disagreed adamantly with Rgnonti on certain points. The trial court also remarked that Ritt was given soft drinks and allowed to smoke throughout the interview.

Ritt argues that her interview and formal statement were the product of a technique of psychological interrogation that can and does induce innocent people to confess. She asserts that the **Reid technique** of **interrogation** systematically alters the suspect's perception of reality through an elaborate web of implicit threats and promises until the suspect believes that confession is the best alternative, even though he or she is innocent of the crime.

We review the voluntariness of a confession de novo as a question of law based on "all factual findings that are not clearly erroneous." *State v. Anderson,* 396 N.W.2d 564, 565 (Minn.1986). The voluntariness of a statement or confession depends on the totality of the circumstances. *See State v. Patricelli,* 357 N.W.2d 89, 92 (Minn.1984); *State v. Jungbauer,* 348 N.W.2d 344, 346 (Minn.1984). Relevant factors include the defendant's "age, maturity, intelligence, education and experience," as well as the defendant's ability to comprehend. *Jungbauer,* 348 N.W.2d at 346 (citing *State v. Linder,* 268 N.W.2d 734, 735-36 (Minn.1978)). The nature of the interrogation is also relevant, including its length and surrounding circumstances, and whether the defendant was denied any physical need or access to friends. *See id.* (citing *Linder,* 268 N.W.2d at 735-36). A statement is involuntary if police actions were so coercive, manipulative and overpowering as to "deprive[ ] [a suspect] of his ability to make an unconstrained and wholly autonomous decision to speak as he did." *State v. Pilcher,* 472 N.W.2d 327, 333 (Minn.1991). We look with disfavor upon both implied and express promises made during an interrogation by police but such promises do not automatically render a confession involuntary. *See State v. Thaggard,* 527 N.W.2d 804, 808-11 (Minn.1995); *Jungbauer,* 348 N.W.2d at 346.

***809** In *Thaggard* we examined the issue of police deception during **interrogation** referencing the **Reid technique** and the Model Code of Pre- Arraignment Procedure (1975). *Thaggard,* 527 N.W.2d at 808-810. The court disapproved of the conduct of a police officer who promised the defendant that he would probably be given drug treatment if he confessed "up front what

happened," but held the resulting confession to be voluntary because the defendant understood the *Miranda* warning, "had prior experience with the criminal justice system * * *; was interrogated early in the afternoon for a relatively short period of time; the interrogation was conducted by only one officer; [the] defendant was permitted to take a break and use the bathroom," and there was no indication of any intoxication, threats, or physical intimidation *Id.* at 807, 810-12. We stated:

> The key factor, however, is the fact that there is no indication that [the] defendant was led to believe that he would not be prosecuted for the rape if he confessed. The record indicates that [the] defendant may have been led to expect that he would receive treatment but he was not led to expect that the treatment would be instead of prosecution and punishment.

Id. at 812.

In *Pilcher* the defendant alleged that statements admitted in evidence "were the product of police coercion." 472 N.W.2d at 330. The interrogation was conducted in the kitchen of the law enforcement center by two officers and the interrogating officers techniques included a "sympathetic approach," confronting the defendant with evidence against him, and informing him of possible punishments. *Id.* at 333-34. We held that the confession was not involuntary despite the defendant's emotional breakdown:

> While an emotionally distressed defendant should be allowed to become composed before making a confession, this concern arises where an accused's emotional state threatens the accused's ability to freely and voluntarily make inculpatory statements. Pilcher's emotional breakdown does not detract from the coherence and responsiveness he displayed throughout the interrogation where, despite his "emotional breakdown," Pilcher repeated the fiction of there being a "big Mexican guy" in the car. That he adhered to this woven tapestry of lies shows that Pilcher's will was not overborne.

Id. at 334 (citations omitted). The court concluded that the defendant "understood the shadow of suspicion in which he stood and was not deprived of his ability to make an unconstrained and wholly autonomous decision to speak as he did." *Id.*

The defendant in *State v. Slowinski,* 450 N.W.2d 107 (Minn.1990), alleged that a statement admitted at trial was involuntary because of promises of leniency as well as psychological coercion. *See id.* at 111. We disagreed, pointing to the circumstances surrounding the interrogation: it was videotaped and made available to the court; it lasted approximately four hours with intermittent breaks; the defendant was read his Miranda rights at the outset and was allowed to smoke, drink soft drinks, use the restroom, and call his wife; the defendant indicated that he was willing to talk; and the defendant was "lucid and appeared to understand what was at stake in the investigation." *Id.* Although the police may have improperly suggested that they would advocate for psychiatric help and could influence the charges against the defendant, we held that the statements of the police, "though improper, were not the kind of statements that would make an innocent man confess." *Id.* at 112 (citing *Jungbauer,* 348 N.W.2d at 346-47).

Reviewing carefully the totality of the circumstances surrounding Rgnonti's interview of Ritt, we conclude that her statement was not coerced. Ritt came to the interview following a session with her counselor but she herself had scheduled the time of the interview. It was held in ***810** Rgnonti's office and he was not armed or in uniform. Ritt was not initially informed of her *Miranda* rights but she was told that she was not under arrest and would be free to leave after the conversation. She was allowed to smoke freely even though the law enforcement center was a no-smoking facility, and Rgnonti left the room to get her a soft drink when she asked for one. Ritt gave no indication of being overly tired or under the influence of any medication and never indicated to Rgnonti that she was under any particular stress. She did not cry or break down emotionally, and when she spontaneously asked Rgnonti if she would still have been considered a suspect if she had cried, he told her yes.

Ritt appeared to have the ability to accurately verbalize her feelings and made sure that Rgnonti did not overstate what she said. She disagreed with Rgnonti on certain points and repeatedly denied intentionally placing the blanket on the space heater in order to cause a fire. She asked a number of questions about her status as a suspect and wondered out loud whether the insurance company would pay for the damage caused by the fire. Following her formal statement Ritt was asked if she had spoken of her own free will. She answered yes. Ritt was allowed to call her husband, who came to the police station and was informed of Ritt's statement and arrest.

The test for an involuntary statement is whether police conduct would have overborne the will of an innocent person. *See* *Jungbauer,* 348 N.W.2d at 347. Although the interrogation may have been unpleasant for Ritt, there is little indication that her will was overborne, particularly since she continued throughout the interview and formal statement to deny any intent to place the blanket over the heater to cause a fire. Under the totality of the circumstances we are satisfied that Ritt's will was not overborne and hold that her interview and statement were voluntary and admissible as evidence against her.

Ritt next argues that the trial court erred when it excluded the testimony of Dr. Ralph Underwager about the reliability and effect of the **Reid technique** of **interrogation** . The defense submitted an offer of proof to the court and proposed to have Underwager take the jury through the videotape of Ritt's interview with Rgnonti to point out the use of specific interview techniques to illustrate how Rgnonti coerced Ritt into adopting certain statements. The court suppressed Underwager's testimony, stating:

[I]n this case the court makes a finding that the testimony would exceed the bounds of Rule 702, expert testimony. And under Rule 403 there's an extreme danger that it could confuse the jury. It appears to this court that this purported expertise does nothing more at this time than offer the gratuitous opinion of an expert with respect to the credibility of certain evidence that may be admitted here. And the jury would be in the best position to review all the video and the testimony - and the witnesses will be subject to cross-examination - on their own, without the assistance of an expert to make that [de]termination of credibility and does not * * * need an expert to do that.

Ritt argues that the jury could understand the dynamics of the interview and formal statement only if the underlying interrogation technique was explained.

[15]

Ritt points to ***812** *Crane v. Kentucky,* 476 U.S. 683, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986), for the principle that a defendant has a right to present "competent reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant's claim of innocence." *Id.* at 690, 106 S.Ct. 2142. The circumstances here are far different from those in *Crane,* however. In *Crane,* the trial court excluded evidence regarding the physical surroundings and circumstances of a confession by a 16- year old defendant alleged by the defense to have been "badgered" into confessing by as many as six police officers surrounding him during a lengthy unrecorded confinement in a windowless room. *See* *id.* at 685-86, 106 S.Ct. 2142. The state's case against the defendant rested almost entirely on the unrecorded confession. *See* *id.* at 685, 106 S.Ct. 2142. Here, Ritt's admission to Rgnonti that she hoped that Hannah would die was corroborated by several witnesses who testified that Ritt expressed the same hope to them. Further, Ritt's entire interview and formal statement were videotaped and the jury could observe the surrounding physical environment and circumstances.

This court has been very reluctant to allow experts to testify about matters that are generally for the jury's determination and are susceptible to cross- examination. As in *Bixler,* the jury here had sufficient information to evaluate Ritt's claim that the **Reid technique** is coercive enough to make an ordinary innocent person confess. Under the circumstances, the jury had ample opportunity to evaluate the veracity of Ritt's statements to Rgnonti and the trial court did not err in concluding that expert testimony was unlikely to add either precision or depth to their evaluation. We conclude that the trial court was within its discretion in excluding the expert testimony of Dr. Underwager.

In summary, we hold that Ritt's statement to Rgnonti was voluntary and the trial court did not err in admitting it. Further, the trial court acted within its discretion when it excluded the defense's expert testimony on interrogation practices and admitted the state's evidence of a test burn using an accelerant.

Affirmed.

State v. Gentry

1997 WL 570941

Minn.App.,1997.

Sept. 16, 1997.

UNPUBLISHED OPINION

*1 Appellant Brian Henley Gentry challenges his conviction of second-degree unintentional murder under Minn.Stat. § 609.19(2) (1994), claiming: (1) there was insufficient evidence to support his conviction; (2) the district court erred in denying his request for a jury instruction on circumstantial evidence; (3) the prosecutor's violation of discovery rules requires a new trial; (4) the district court erred in denying his motion to suppress the statements he made to police officers; and (5) the district court erred in departing upward from the presumptive sentencing guidelines. We affirm.

DECISION

IV.

*4 The reviewing court is not bound by the district court's determination of whether the defendant's statement was voluntary; rather, its duty is to independently determine based on all the factual findings that are not clearly erroneous, whether or not the statement was voluntary. *State v. Thaggard,* 527 N.W.2d 804, 807 (Minn.1995).

Appellant argues the officers applied the **Reid interrogation techniques** in questioning him, and therefore his statement was not voluntarily given. We disagree. For a confession obtained from a defendant during a custodial interrogation to be admissible, the state must prove by a preponderance of the evidence that the defendant knowingly, intelligently, and voluntarily waived his rights and that the confession was freely and voluntarily given. *State v. Williams,* 535 N.W.2d 277, 286 (Minn.1995). In *State v. Linder,* 268 N.W.2d 734, 735 (Minn.1978), the court stated:

In an ordinary case if the prosecutor shows that the [*Miranda*] warning was given and that the defendant stated he understood his rights and then gave a statement, the state will be deemed to have met its burden of proof, unless there is other evidence indicating that there was no knowing, intelligent, and voluntary waiver.

However, if there is other such evidence, then the trial court must make a subjective factual inquiry to determine whether under the totality of the circumstances the waiver was knowing, intelligent, and voluntary. This is the same kind of inquiry basically that is made to determine whether a statement is "voluntary" within the meaning of the traditional voluntariness requirement. Factors to be considered include age, maturity, intelligence, education, experience, ability to comprehend, lack of or adequacy of warnings, length and legality of detention, nature of interrogation, physical deprivations, limits on access to counsel and friends, and others.

Here, the police officers gave appellant *Miranda* warnings prior to questioning. Appellant stated he understood his rights and thereafter voluntarily gave a statement. Although the questioning lasted approximately five hours, appellant had a break during which he was not guarded, had access to a telephone, and was provided food and drinks. At no time during the interrogation did appellant request that the questioning be stopped. No threats or promises were made to appellant for the purpose of eliciting incriminating statements. We conclude the district court did not err in ruling that the statement was voluntary.

U.S. v. Schake

30 M.J. 314

CMA,1990.

Decided Aug. 27, 1990.

Accused, an Army Specialist Four, was convicted by general court-martial, Ferdinand D. Clervi, J., of aggravated arson, and he appealed. The United States Army Court of Military Review affirmed in an unpublished opinion, and further review was sought. The United States Court of Military Appeals, Sullivan, J., held that: (1) custodial interrogation without *Miranda* warnings and without acceding to accused's request for counsel did not require suppression of subsequent confession, and (2) any "presumptive taint" arising out of interview without Article 31 warnings was rebutted by evidence.

Affirmed.

On May 4, 1988, appellant was tried by a military judge sitting alone as a general court-martial at Darmstadt, Federal Republic of Germany. In accordance with his pleas, he was found guilty of conspiracy to commit false swearing and fraud; willful damage to military property, false swearing; and two specifications of larceny, in violation of Articles 81, 108, 134 and 121, Uniform Code of Military Justice, 10 USC §§ 881, 908, 934, and 921, respectively. Contrary to his pleas, he was found guilty of aggravated arson, in violation of Article 126, UCMJ, 10 USC § 926. He was sentenced to a bad-conduct discharge, confinement for 4 years, total forfeitures, and reduction to the lowest enlisted grade. The convening authority, acting pursuant to a pretrial agreement, approved the sentence as adjudged except for confinement exceeding 3 years. The Court of Military Review affirmed the findings and sentence in an unpublished opinion dated February 15, 1989.
We granted review of the following two issues of law:

I

WHETHER APPELLANT'S CONFESSION SHOULD HAVE BEEN SUPPRESSED BECAUSE IT WAS TAKEN IN VIOLATION OF UCMJ ARTICLE 31(b).

I I

WHETHER APPELLANT'S CONFESSION SHOULD HAVE BEEN SUPPRESSED BECAUSE IT WAS TAKEN IN VIOLATION OF *EDWARDS V. ARIZONA* AND THE FIFTH AMENDMENT.

We hold that appellant's confession of September 24, 1987, was not taken in violation of the Fifth Amendment and *Edwards v. Arizona,* 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), or Article 31, UCMJ, 10 USC § 831, and *United States v. Ravenel,* 26 MJ 344 (CMA 1988) (Everett, C.J.). *Cf. United States v. Applewhite,* 23 MJ 196 (CMA 1987); *see generally United States v. Lee,* 25 MJ 457, 460-61 (CMA 1988).

The military judge made the following findings concerning appellant's suppression motion:
The court finds the following facts: In September 1987 the Air Force OSI, Office of Special Investigations, conducted Behavior Analysis Interviews in an effort to determine who set fire to the Bitburg Air Base. A number of people to be interviewed was narrowed to approximately 295, to include Specialist Schake. Prior to the 18th of September, Specialist Schake was interviewed briefly, about 10 minutes. On the 18th of September, Specialist Schake was again interviewed. This time by Agent Collins. This was not a custodial interrogation, within the sense of *United States against Miranda, Tempia.* [[[[FN1]] Since one, Agent Collins was interviewing about 35 people in an effort to gain more information about who set the fires. Two, there existed no hard evidence linking anyone to the fires. And three, Specialist Schake was not a suspect, within the meaning of Article 31(b) of the Uniform Code of Military Justice.

FN1. *See United States v. Tempia,* 16 USCMA 629, 37 CMR 249 (1967).

During this interview the accused requested to see a lawyer. The accused was at that time being represented by Captain Wee on unrelated charges. The accused was not provided counsel. Subsequently, the accused was offered a polygraph exam. On 24 September, Specialist Schake was interviewed by Agents Taylor and Collins. Advised of his rights pursuant to Appellate Exhibit VII and IX, and waived those rights, and consented to the polygraph. He subsequently incriminated himself in regard to one of ***316** the arson charges, Specification IV, of Additional Charge II.

In my view under Article 31, of the UCMJ, the accused has an absolute right to remain silent, and need not incriminate himself. During a custodial interrogation the accused has a right to have counsel present. However, in my view he has no right to counsel in a noncustodial interrogation. Since the accused asked for counsel in a noncustodial setting, in my opinion, the requirements of the *United States against Applewhite,* at 23 MJ 196, and the pertinent cases cited therein, are not applicable to this case. Under the unique circumstances of this case, Agent Collins could again approach the accused concerning a polygraph prior to counsel being made available to him. Therefore the motion to suppress is denied.

In view of the above, our preliminary concern is the Behavioral Analysis Interviews [FN3] of appellant conducted by the military criminal investigators on and before September 18,

1987. *Jacquin v. Stenzil,* 886 F.2d 506, 508 (2d Cir.1989), *cert. denied,* 497 U.S. 1003, 110 S.Ct. 3236, 111 L.Ed.2d 747 (1990). This investigatory technique is clearly a form of police interrogation, especially when it entails direct questioning about an interviewee's involvement in a crime. *See generally* F. Inbau, J. **Reid,** and J. Buckley, *Criminal* ***Interrogation*** *and Confessions* (hereafter cited as Inbau) 236- 37, 302 (3d ed. 1986). Moreover, it can be employed in circumstances which may justify its characterization as custodial interrogation for purposes of *Miranda.* Inbau, *supra* at 60. [FN4] Finally, even absent custodial circumstances, if the interviewing investigator suspects or reasonably should suspect the interviewee of a crime, then rights warnings under Article 31 are required. *See* ****318*** *United States v. Lee,* 25 MJ at 460-61; *United States v. Morris,* 13 MJ 297, 298 (CMA 1982) (Fletcher, J.).

FN3. F. Inbau, J. **Reid,** and J. Buckley, *Criminal* ***Interrogation*** *and Confessions* (hereafter Inbau) (3d ed. 1986), states:

Subsequent to the above-described initial procedures, the interrogator should embark upon a *behavioral analysis interview,* which consists of asking: 1) standard investigative questions, such as the suspect's relationship with the victim, his whereabouts prior to and at the time of the crime, as well as thereafter, the nature of their last visit and other relevant matters; and 2) selected questions designed to evoke *verbal and nonverbal* responses that will be helpful in making a tentative determination as to whether the suspect is lying or telling the truth.

THE BEHAVIORAL ANALYSIS INTERVIEW

Although standard investigative questions are for the primary purpose of obtaining information rather than to evoke responses for behavior analysis, the responses should nevertheless be given analytical consideration. In other words, the interrogator should look for clues of truth or deception from the very outset of the interview. This should be done in accordance with the guidelines presented in the first section of this chapter regarding the need for acute observations. *The core of behavior analysis, however, is the asking of noninvestigative questions that are specifically designed to evoke behavioral responses.*

Id. at 62-63 (emphasis in 2d para. added).

FN4. A key concern for civilian criminal investigators is the procedure by which they arrange for a suspect to be available for interrogation. *See* Inbau, *supra* at 211. The military criminal investigators relied on the commander's purported authority to order his soldiers to cooperate in the investigation.

In any event, assuming appellant was subjected to custodial interrogation on September 18, 1987, we nonetheless hold that his later confession on September 24, 1987, was not barred by *Edwards v. Arizona, supra.*

In deciding that suppression is not necessary, we first note that appellant was released from the police station and allowed unrestricted freedom of movement from September 18 until September 24, 1987. This 6-day break in continuous custody dissolved appellant's *Edwards* claim.

The decision of the United States Army Court of Military Review is affirmed.

Deviation from the basic components of The Reid Technique can cause problems as illustrated in the following case in which the officer described himself as an advocate for the suspect (something he acknowledged in his testimony was not part of The Reid Technique) and offering promises of leniency (telling the suspect he will not be arrested if he tells the truth – something we teach not to do).

State v. Gevan
Minn.App.,2002.
Sept. 3, 2002.

UNPUBLISHED OPINION

***1** On appeal from an order suppressing respondent's statement to police, the state argues that the district court clearly erred in ruling that the officer's extension of the **Reid technique** by minimizing the alleged offense and overemphasizing the officer's role as an advocate for respondent made the statement involuntary. Because we conclude that the officer improperly indicated that he would advocate for the respondent and that a confession would not result in criminal punishment, we affirm.

FACTS

After a nine year old described her uncle's sexual misconduct, the child's mother reported the incident to the XXX Police Department. Detective XXX of the XXX Police Department interviewed the child, who described two incidents alleged to have occurred about four years prior, when the child was about five years old. According to the child, once or twice, while changing her, respondent Joshua Robert Gevan had touched her in "wrong places" and touched her "privates" with his hands on the inside of her underwear. She thought the touching lasted about five minutes. She also told law enforcement officials that, at a different time, Gevan had touched her with his "pee-pee" when her underwear was off and she was sitting on the bathroom counter.

[the officer] then phoned Gevan and arranged an interview. Gevan came to the XXX Police Department a few days later, and the detective interviewed him about the incidents. The interview was conducted in a room with the doors closed, but [the officer] immediately pointed out that the doors were not locked and that Gevan could leave at any time. A Miranda warning was not given.

[the officer] began the 80-minute videotaped interview by reminding Gevan that there had been an allegation of improper touching. Gevan initially and repeatedly denied ever inappropriately touching any child. [the officer] indicated that he knew that Gevan had committed the crime and repeatedly minimized the allegation by explicitly contrasting the alleged crime with much more serious crimes. The detective made a point of differentiating to Gevan, people like Gevan, who may have made a "youthful mistake," from people who were repeat offenders or predatory, indicating that he was concerned about the latter category. [the officer] repeatedly and explicitly told Gevan that he would not be arrested if he told the officer what happened. He also repeatedly told Gevan that he would act as Gevan's advocate.

Ultimately, Gevan stated that, when he was 18 years old and babysitting his niece, he had touched her sexually. The niece he admitted touching was the same niece who complained to her mother. Gevan's description of the incident was similar to that described by the niece, with the exception that Gevan denied using his penis in any way. Gevan admitted touching only the niece's breasts and outer vaginal area, and stated that the one or two incidents were less than one minute in duration.

[the officer] told Gevan's sister about Gevan's statements. Gevan was subsequently charged with criminal sexual conduct in the first and second degrees in violation of Minn.Stat. § § 609.342, subd. 1(a), 609.343, subd. 1(g) (2000).

***2** At the *Rasmussen* hearing, Gevan challenged the admissibility of his statement to the Police. The district court suppressed Gevan's statements to [the officer], finding that while Gevan's interview was noncustodial, his statements were nonetheless involuntary because [the officer] had improperly misrepresented his role in the criminal investigation by indicating that he was an advocate for Gevan and that he was not going to "make a big deal" out of whatever Gevan told him. The court found that [the officer]'s interview technique shocked the conscience of the court. This appeal followed.

DECISION

The state argues that the district court erred by suppressing evidence of the confession. In reviewing a pretrial order suppressing evidence where the facts are undisputed and the district court's decision is a question of law, we "may independently review the facts and determine, as a matter of law, whether the evidence need be suppressed." *State v. Othoudt,* 482 N.W.2d 218, 221 (Minn.1992) (citations omitted).

If the state appeals a pretrial suppression order in a felony case, it "must 'clearly and unequivocally' show both that the trial court's order will have a 'critical impact' on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Scott,* 584 N.W.2d 412, 416 (Minn.1998) (citing *State v. Zanter,* 535 N.W.2d 624, 630 (Minn.1995)). A decision on the critical impact of the suppression order must precede determination of whether the order was made in error. *Id.*

Critical Impact

Critical impact is not only evident where the lack of the suppressed evidence completely destroys the state's case, but also "where the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *State v. Kim,* 398 N.W.2d 544, 551 (Minn.1987). Here, Gevan does not challenge the state's assertion that the suppression of Gevan's confession will have a critical impact on it's ability to prosecute this case successfully. Without the confession, the state only has the victim's statements as a nine-year-old about events that occurred when she was five. *See State v. Ronnebaum,* 449 N.W.2d 722, 724 (Minn.1990) (holding that suppression of confession in child sex abuse case will normally have critical impact).

Clear Error

Where, as here, the claim is made that a confession was involuntary, the district court must make a subjective factual inquiry into all the circumstances surrounding the giving of the statement. *State v. Hardimon,* 310 N.W.2d 564, 567 (Minn.1981). On appeal, this court determines the voluntariness of the statement on the facts as found. *Id.*
Voluntariness is determined by examining the "effect that the totality of the circumstances had upon the will of the defendant and whether the defendant's will was overborne when he confessed." State v. Pilcher, 472 N.W.2d 327, 333 (Minn.1991). This determination is made upon consideration of all relevant factors including (1) the suspect's age, maturity, intelligence, education, and experience with the criminal-justice system; (2) the length and legality of the detention, the nature of the interrogation, the physical deprivations involved, and the limits on access to counsel and friends; and (3) the statements of the interrogator, specifically whether they would convince an innocent person to confess**.** *Id.; State v. Ritt,* 599 N.W.2d 802, 808 (Minn.1999); *State v. Slowinski,* 450 N.W.2d 107, 111 (Minn.1990). In a pretrial suppression hearing where the defendant seeks to suppress a confession as involuntary, the state has the burden of proving that a confession is voluntary. *State v. Thaggard,* 527 N.W.2d 804, 807 (Minn.1995).

***3** The record reflects that at the time of the interview, Gevan was 25 years old, employed and had minimal prior experience with the criminal-justice system. The record does not specifically address Gevan's education or maturity. The interrogation was an hour and a half and no Miranda warning was given; Gevan was told that he could leave at any time.

Thus, the question of the voluntariness of the confession comes down to the tactics used by [the officer], and the odds that they, when used against this defendant, might have produced a false confession. [the officer] testified that the **interrogation** method he used was a combination of the "**Reid technique**" of **interrogation** [FN1] and some of his own tactics. He also testified that the **Reid technique** manual does not promote use of the word "advocate" in **interrogations,** and that, even though he perceives himself to be an advocate of sorts, he knows that is not his role in the criminal-justice system.

FN1. The **Reid technique** is a method of **interrogation** first catalogued in detail in Inbau and **Reid,** *Criminal* ***Interrogation*** *and Confession* (1962). *State v. Thaggard,* 527 N.W.2d 804, 808 (Minn.1995). Common elements of the **Reid technique** are the officer (1) maintaining privacy with the defendant; (2) positing guilt of the suspect as fact with questions that seek to understand why the crime was committed; (3) minimizing the moral seriousness of the crime;

(4) exhibiting confidence in the ability to get a confession; and (5) blaming the victim or society at large. *See* *Miranda v. Arizona,* 384 U.S. 436, 449-50 & nn. 9-10, 12-13, 86 S.Ct. 1602, 1614-15 nn. 9-10, 12-13 (1966).

These tactics are designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already--that he is guilty. Explanations to the contrary are dismissed and discouraged.

Id. at 450, 86 S.Ct. at 1615. The investigator then looks for signs that indicate that the defendant actually committed the crime. After *Miranda,* the authors of *Criminal Interrogation and Confessions* revised the book, not to advocate different techniques, but to advocate first obtaining a *Miranda* waiver. *Thaggard,* 527 N.W.2d at 808 (Minn.1995).

While deceit and trickery are not condoned police practices, confessions obtained with this technique are admissible so long as the specific practices used do not "shock the conscience" or risk inducing a false confession. *Slowinski,* 450 N.W.2d at 112. We agree with the district court's conclusion that [the officer]'s use of the word "advocate" and the particularly aggressive application of the **Reid technique** " shocks the conscience" of the court. It is evident that "advocate" was used to imply that [the officer] would try to prevent a serious criminal charge against Gevan. [the officer] repeatedly described the accusations as not serious and characterized his interest in them as solely to see if Gevan had committed more serious crimes. [the officer] repeatedly and unequivocally stated that Gevan would not be arrested and that Gevan would escape any substantial criminal punishment so long as Gevan told him the truth and the truth was nothing more than the allegation.

But even if the use of the word "advocate" had been limited to offering to speak with Gevan's sister on Gevan's behalf, this would nevertheless have improperly suggested that [the officer]'s role was something other than adversarial. *See* *Pilcher,* 472 N.W.2d at 333 (noting that, in that case, the transcript did not suggest that the defendant "falsely believed [the interrogator] represented something other than an adversarial role as the questioner").

A key fact in determining the voluntariness of a confession is whether the suspect was aware that he was being investigated for a serious crime. *Thaggard,* 527 N.W.2d at 812. *See, e.g., Pilcher,* 472 N.W.2d at 333 (confession of defendant admissible where he was aware that he was arrested for, and was prime suspect in, a homicide investigation). Gevan's confession reveals that he did not appreciate, in any way, that he was being investigated for a serious crime. The record reveals that a young, impressionable defendant distraught over the family consequences of the accusation was never put on notice as to the seriousness of the crime. [the officer] not only minimized the moral seriousness of the crime, but also he severely distorted the potential legal consequences. [the officer] told him that he would not be arrested for the crime. In such a situation, there is a significant possibility that Gevan confessed in consideration of the offer of advocacy.

***4** *Citing* *State v. Ritt,* 599 N.W.2d at 810, the state argues that, regardless of [the officer]'s tactics, the fact that Gevan disagreed with specific points regarding the allegation shows that the police conduct would not have overborne the will of an innocent person. But here, the points of disagreement all pertained to the severity of the crime, not just to the details as to how it was carried out. Such clarifications are entirely consistent with Gevan trying to admit to what he reasonably believed would not result in serious criminal prosecution to a person representing himself as his advocate.

The district court did not err in suppressing the confession.

Affirmed.