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Remember 9/11/01; Support Our Troops

THIS EDITION'S WORDS OF WISDOM:

"*It matters not whether you win or lose. What matters is whether I win or lose.*" (Darren Weinberg)

IN THIS ISSUE:

***ADMINISTRTIVE NOTES*:**

***DUI Search Warrants, per P.C. § 1524(a)(13)*:** Effective as of September 20, 2013, as emergency legislation, there is now statutory authority for obtaining search warrants for a suspect's blood in misdemeanor Driving while Under the Influence (DUI) cases when the an arrestee declines to voluntarily submit to a blood test. Here's this important new subdivision in its entirety: "(13) *When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom*

the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis."

***CASE LAW*:**

***Rape, per P.C. § 261(a)(4)*:**

***People v. Morales* (Jan. 2, 2013) 212 Cal.App.4th 583**

Rule: Pretending to be an unmarried victim's boyfriend, inducing the victim to submit to sexual intercourse, is not rape.

Facts: Defendant attended a party where 18-year-old Jane Doe, Jane's boyfriend (Victor), her brother, and others were also in attendance. Jane drank three to five beers at the party before going back to her home. Jane changed into her pajamas before sitting down with the others to eat some fast food they picked up on the way home. Defendant and others arrived while they were still eating. Jane and Victor eventually went into Jane's bedroom, turned off the lights, and lay down on her bed. They discussed having sex but decided against it because Victor hadn't brought any protection. Jane soon went to sleep and Victor left. Shortly thereafter, defendant entered Jane's darkened bedroom and, after removing Jane's pajama bottom and underwear, began to have sexual intercourse with her. Jane woke to the sensation of having sex, thinking that Victor had changed his mind. But she soon figured out that her partner was not Victor, but defendant. When she tried to push him away, defendant grabbed her thighs and pushed his penis back into her vagina. She finally got him off of her and began to cry and yell, causing defendant to end the assault and leave the room. The police were called. Defendant was found nearby and arrested. He was later charged in state court with rape of an unconscious person, per P.C. § 261(a)(4). During defendant's trial, the prosecutor argued two separate legal theories; i.e., that defendant was guilty because (1) Jane was asleep or unconscious at the time, and (2), if awake, she was not aware of the essential characteristics of the act because defendant deceived her into believing he was her boyfriend. Supporting the prosecution's second theory, the jury was instructed by the court pursuant to CALCRIM No. 1003, which, as given, stated in part that "[a] woman is unconscious of the nature of the act if she is unconscious or asleep or not aware that the act is occurring *or not aware of the essential characteristics of the act because the perpetrator tricked, lied to, or concealed information from her.*" (Italics added) This second theory was proposed in that there was some evidence that Jane Doe might have been awake and, at least initially, favorably responding to his advances under the mistaken belief that defendant was her boyfriend. The jury convicted defendant. He was subsequently sentenced to three years in prison.

Held: The Second District Court of Appeal (Div. 4) reversed. The Court first noted that there was no error in arguing to the jury that defendant was guilty of rape pursuant to P.C. § 261(a)(4)(A), i.e., that Jane Doe was "*unconscious or asleep*." Evidence as presented at trial supported this theory, and could well have been determined by the jury to be what did in fact happen. But it was error to also argue to the jury that defendant was alternatively guilty of rape because Jane Doe was not aware of the essential characteristics of the act because defendant, by perpetrating a "*fraud in fact*," deceived her into believing he was her boyfriend, per P.C. § 261(a)(4)(C). And because the Court couldn't tell which of the two legal theories the jury used in reaching their verdict, the Court "reluctantly" had to reverse. The prosecutor's thinking for arguing the second theory was apparently due to testimony from the defendant that Jane may have been awake at the time he initiated the sexual intercourse. If the jury concluded that Jane had been awake, then the prosecutor encouraged them to convict upon the theory that defendant, aided by the lack of light in the room, pretended to be Jane's boyfriend. The Court, however, found that section 261(a)(4)(C) does not, by its terms, make it a rape to trick a woman into consenting to sexual intercourse by pretending to be someone else other than the victim's husband (pretending to be the victim's husband being a rape under P.C. § 261(a)(5)). In reaching its conclusion, the Court went through a long discussion of the differences between "*fraud in the inducement*" and "*fraud in the fact*," noting that there is a difference of opinion in prior cases as to which category defendant's situation would fall. Historically, when a defendant perpetrates a "*fraud in the inducement*," which leads to sexual intercourse under the victim's mistaken belief as to the identity of the perpetrator, there is no criminal liability in that the victim, albeit mistakenly, did in fact consent. Where considered to be a "*fraud in fact*," the intentional fraud perpetrated on the victim is said to have "*vitiated*" the consent, making it a rape. Amendments to California's rape statute added subdivision (a)(4)(C) to P.C. § 261, which talks about a victim not being "*aware, knowing, perceiving, or cognizant of the essential characteristics of the act*," further notes that this theory of rape applies to "*the perpetrator's fraud in fact.*" As such, where subdivision (C) applies, the victim's apparent consent is "vitiated," making the act a punishable rape. But whether or not one of the "*essential characteristics of the act*" includes the identity of the perpetrator is an undecided issue. Recognizing that the statute is unclear on this issue, the Court invoked well-settled "statutory construction" rules by noting that a defendant must be given the benefit of the doubt when a statute is unclear. As a result, the Court found that because subdivision (C) does not specifically refer to a perpetrator *other than one* who is pretending to be the victim's spouse (as prohibited under subdivision (a)(5)), there is no specific statutory prohibition to what defendant did here. As such, his conviction for rape must be reversed.

Note: I put off briefing this case for a long time because quite frankly, I have a hard time understanding its reasoning. But understand it or not, this is now the law. Pretending to be an unmarried victim's boyfriend, inducing the victim to submit to sexual intercourse, is not a rape in California. The Court did encourage the Legislature to right this wrong by amending P.C. § 261, making it illegal to induce sexual intercourse by pretending to be a victim's boyfriend. (pg. 587, fn. 3) I'm assuming that the Legislature is working diligently on this problem.

***Surreptitious Audio-Video Recording in a Suspect's Home*:**

United States v. Wahchumwah **(9th Cir. Mar. 4, 2013) 710 F.3rd 862**

Rule: An undercover agent's warrantless use of a concealed audio-video device in a suspect's home into which he has been invited does not violate the Fourth Amendment.

Facts: The United States fish and Wildlife Service began an investigation of defendant based upon anonymous information that he was illegally selling eagle parts in violation of 16 U.S.C § 668(a) (the Bald and Golden Eagle Protection Act) and 16 U.S.C. §§ 2271(a)(1) & 3373(d)(1)(B) (the Lacey Act). Special agent Robert Romero, working undercover, began smoozing up to defendant at a powwow in Missoula, Montana. Agent Romero claimed to have an interest in eagle feathers, showing defendant a Golden Eagle tail he had brought with him. As a result, defendant sold Agent Romero a set of eagle wings for $400. A second purchase involving immature Golden Eagle tail feathers was later consummated. Sometime later, Agent Romero texted defendant asking him if he could stop by his home. Defendant agreed, inviting Agent Romero to come by. Unbeknownst to defendant, Romero was wearing a concealed "buttonhole" audio-video recording device. During the visit, defendant showed Agent Romero a spiral notebook containing a number of eagle plumes. Agent Romero purchased a pair for $100. The entire visit was recorded on Agent Romero's device, leading to a search warrant for defendant's home. Charged in federal court with the sale and offering to sell eagle parts, and conspiracy, defendant's motion to suppress the videotape of Agent Romero's visit was denied. Defendant subsequently appealed from his conviction after a jury trial.

Held: The Ninth Circuit Court of Appeal affirmed. Defendant argued on appeal that the warrantless audio-video recording of the illicit sales transactions inside his home by Agent Romero violated his Fourth Amendment rights. The issue is whether a person who invites another into his home has given up any reasonable expectation of privacy, at least as far as what the invitee sees and hears. The general rule is that one's "expectation of privacy does not extend to '[w]hat a person knowingly exposes to the public, even in his own home . . .'" It is irrelevant that the invitee turns out to be a government agent. It is also irrelevant that the government agent records what he hears and sees via an audio or video recording. Case authority to the effect that it is illegal to install a hidden video camera in a person's home, left to record activities not visible to the staller, does not apply in this case because Agent Romero only recorded what he was present to see. The Court also rejected as irrelevant defendant's arguments that the buttonhole audio-video device worn by Agent Romero was technology not generally available to the public, and is more intrusive than mere audio surveillance. Defendant's final argument was that the recent United States Supreme Court decision of *United States v. Jones* (2012) 132 S.Ct. 945 (the GPS case) precluded the warrantless use of an audio-video device. In rejecting this argument, the Court noted that it wasn't the use of the GPS that *Jones* prohibited, but rather the government's warrantless trespass on Jones's property. And where *Jones* questioned the prolonged use of a GPS (i.e., 28 days), Agent Romero used his recording device for only a few hours. Therefore, Agent Romero did not violate any constitutional

prohibitions in his warrantless use of an audio-video device in defendant's home.

Note: In an era when courts are getting more and more critical of the government's use of modern technology, such as thermal imaging devices (*Kyllo v. United States* (2001) 533 U.S. 27.) and GPS devices (*United States v. Jones*, *supra*.), this case is a refreshing reminder that we don't need to return to the stone age to catch and prosecute bad people. The thing to remember, as pointed out by the Ninth Circuit, is that it is not so much the device that is used, but how it is used, with a consideration of whether the suspect's "reasonable expectation of privacy" is being violated when we use it. For instance, had Agent Romero left his recording device in defendant's home to continue recording what was happening after he'd left, then we'd have a problem. (See *United States v. Nerber* (9th Cir. 2000) 222 F.3rd 597, 604, fn. 5.) But that's not what happened here. Good case.

***Privileged Official Information, per E.C. § 1040(b)*:**

In re Marcos B. **(Mar. 7, 2013) 214 Cal.App.4th 299**

Rule: It is the prosecution's burden to prove that official information, such as the surveillance point in a narcotics case, is privileged pursuant to E.C. § 1040(b). Even if privileged, such information must be revealed when it is material and uncorroborated.

Facts: Santa Ana Police Officer Corey Slayton was patrolling on foot and in full uniform in the area of 1700 South Evergreen Street in Santa Ana, a high-narcotics area, at approximately 6:15 p.m. Upon walking down an alley parallel to Evergreen, Officer Slayton noticed three males standing on the west side of the street; 15-year-old Marcos B., another minor and an adult. As Officer Slayton watched, a Hispanic male approached the three and removed some currency from his pocket. He handed it to the minor who handed it to the adult who handed it to defendant. Defendant then walked to the east side of the street to a white PVC drainage pipe and removed a large plastic baggie that appeared to contain numerous smaller baggies. Defendant removed one of the baggies and replaced the larger baggie back into the pipe. Returning across the street, defendant handed the baggie to the adult suspect who handed it to the other minor who handed it to the purchaser. From Officer Slayton's perspective, the baggie appeared to contain a white crystalline powder. After the Hispanic male left, a White male approached the subjects and the whole procedure was repeated. Following this second transaction, Officer Slayton approached the subjects as a second officer, who had been in radio contact with Officer Slayton, approached them from another direction. The three subjects were detained. Officer Slayton walked over to the pipe and retrieved the large baggie he'd seen defendant put there. Forty-seven small baggies, later determined to contain crack cocaine, heroin, and methamphetamine, were recovered. Defendant was found to have $120 in $20 bills on him. Charged in Juvenile Court with a number of drug-related offenses, defense counsel cross-examined Officer Slayton about his observations of the drug transactions. When asked what direction he'd come from as he approached the three suspects, Officer Slaton demurred, explaining that he "would rather not say where I was coming from." The prosecutor then objected to this line of questioning on the basis that the information was privileged "official information" under Evidence Code § 1040,

and requested an in camera hearing. Over defense counsel's continuing objections, the court held an in camera hearing from which defendant and his attorney were excluded. After the hearing, the magistrate upheld the claim of privilege, ruling that Officer Slayton's "surveillance point or post is not material for purposes of section 1042." Counsel was specifically precluded from asking the officer about the exact location where he was standing at the time he made his observations. Upon the close of testimony, the magistrate adjudged defendant to be a ward of the court, per W&I § 602, for having violated the alleged drug-related offenses. Defendant appealed, asking the appellate court to review the transcript of the in camera hearing and to ascertain whether the Juvenile Court magistrate abused his discretion in determining that Officer Slayton's surveillance point qualified as privileged information under E.C. § 1040.

Held: The Fourth District Court of Appeal (Div. 3) reversed. Evidence Code § 1040 allows a claim of privilege for "official information" whenever (among other reasons) the "disclosure of the information is against the public interest," at least so long as "there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice." (E.C. § 1040(b)(2)) The party claiming the privilege (typically, the People) has the burden of showing that the sought-after information is in fact privileged. But it is the court's burden to insure that the defendant's "due process" (i.e., "fair trial") rights aren't violated in the process. The Juvenile Court magistrate failed to follow the correct procedures in this case. What should have happened was for the magistrate, when the privilege was first asserted by the People, to ask defendant to make a prima facie showing supporting the necessity of disclosure. If the defendant does so, then the court should have ordered an in camera hearing, attended only by the party claiming the privilege; i.e., the People and the officer. The defendant should have been given the opportunity to propose questions to be asked at this hearing, which was not done. At the hearing, the People should have revealed to the magistrate the location from where Officer Slayton's observations had been made with an offer of proof as to why it was necessary to prevent disclosure of this location (e.g., a continuing investigation, potential danger to someone allowing officers to use the location, etc.). This also was not done. Had the People succeeded in meeting its in camera burden, which it did not, then the defense should have been allowed to present evidence as to the materiality of information and how it might deprive defendant of a fair trial by suppressing it. Based upon the insufficient showing on the part of the People in this case, the Appellate Court concluded that "as a matter of law," the need to preserve the confidentiality of the surveillance location was not proved. As such, the magistrate abused his discretion by upholding the claim of privilege. Also, the Appellate Court ruled that Officer Slayton's location when he observed defendant's illegal acts is in fact "material," overruling the magistrate on this issue as well. A percipient witness's credibility is typically material, unless it is unquestioned or at least sufficiently corroborated. In this case, Officer Slayton's eyewitness testimony was the only direct evidence of defendant's guilt. There was no evidence presented to the effect that the second officer involved saw any of defendant's illegal acts himself. No contraband was found on defendant. While the $120 retrieved from defendant's person was some corroboration, there are any number of other innocent explanations as to why he might have had such money on him. The entire case against defendant, therefore, hinged on

Officer Slayton's credibility. Knowing exactly where Officer Slayton was when he watched defendant's illegal acts would have provided defense counsel with the opportunity to test the officer's credibility. By not revealing to defense counsel the information the People claimed to be privileged deprived defendant of a fair trial. The Court, therefore, reversed the magistrate's true finding.

Note: Unless you do a lot of narcotics cases, where the "official information" privilege most often rears its ugly head, this may be a whole new issue to you. In my 30 years of prosecuting (and 6½ years as a cop), I've had to deal with it only a couple of times. But when it does become an issue, whether you're a prosecutor, a cop, a defense attorney, or a judge, it is really important you know how to handle it. The Court here noted that it was only through the tenacity of the Marco's defense attorney that the issue was properly preserved for appeal. So what, as a prosecutor or the investigating officer, do you do when the court finds the information privileged yet material, and thus discoverable? The solution, such as it is, that we've always used in my experience is to put it to the officer; *reveal the information or allow the court to dismiss the case*. It's the officer's (presumably after consulting with his or her supervisor) choice.

***Miranda*; *Custody*:**
***Miranda*; *Offers of Leniency*:**
***Miranda*; *Coercion/Voluntariness*:**

People v. Linton **(June 27, 2013) 56 Cal.4th 1146**

Rule: (1) A criminal suspect is not in custody for purposes of *Miranda* unless and until he has been formally arrested, or there exists a restraint on freedom of movement of the degree associated with a formal arrest. (2) An offer of leniency will poison a later confession only if there is a causal connection between the offer and the confession. (3) A confession will be held to be voluntary unless the suspect's will to resist is overborne through coercion applied by law enforcement.

Facts: On November 29, 1994, Linda Middleton returned to her San Jacinto home to find her 12-year-old daughter, Melissa, dead in the master bedroom. Melissa had been strangled to death. Melissa's pants were found unbuttoned and unzipped, but otherwise there was no indication that she had been sexually assaulted. One night about a month earlier, at around 2:00 a.m., Melissa had come into her parents' bedroom, crying and complaining that a nude male had come into her room and choked her while lying on top of her in her bed. Melissa's father checked the house but couldn't find anyone or any signs of a forced entry. Melissa said she couldn't identify the man because it all occurred in the dark. The Middletons determined that Melissa must have had a nightmare. The 20-year-old defendant lived next door with his parents. He had previously taken care of the Middleton's pets while they were away and still had a key to their house. San Jacinto Police Detectives Michael Lynn and Glenn Stotz responded and initiated an investigation. It was found that there were no signs of a forced entry and that the house did not appear to have been burglarized. Canvassing the neighborhood, Detective Stotz first went to the defendant's home and contacted him at the door. Defendant denied any knowledge of the

murder. Later, learning from another neighbor that it might have been defendant who had accosted Melissa in October, both Detectives Stotz and Lynn returned to defendant's home. Talking to defendant at the door again, defendant continued to deny knowing anything about the murder. But when asked about the previous assault on Melissa, defendant said that he'd apparently been sleepwalking one night some weeks earlier, waking to find himself in his own front yard with no shirt or socks. The detectives noted that defendant had scratch and gouge marks on his lower right forearm that he attributed to his cat. (Debris recovered from under Melissa's fingernails was later found to match defendant's DNA.) He seemed nervous, was shaking, and had sweaty palms. Later that evening, Detective Stotz again returned to defendant's home, this time in the company of Deputy District Attorney William Mitchell. The three of them retreated to defendant's bedroom to talk. Defendant was told he was not under arrest and didn't have to talk to them. He was not handcuffed or otherwise restrained. Defendant was not read his *Miranda* rights. In the next half hour, defendant admitted to knowing more facts about Melissa's murder than had yet been released by the police (e.g., that she'd been strangled with a cord, and was found in the master bedroom). During the course of this interview, Detective Stotz, while attempting to obtain from defendant some admissions concerning his sexual interest in Melissa, specifically asked defendant why, if Melissa didn't like him as he'd claimed, would she tell her friends that she and defendant had "*messed around*?" When defendant continued to deny ever having any intimate relations with Melissa, Detective Stotz told defendant that "*you're not gonna get in trouble for that, y' know, we just wanna know [that]*." When defendant asked Stotz: "*Why wouldn't I get in trouble for that*?" Stotz replied: "*Well, because, frankly, because she's no longer living, y' know. Nothing would happen to you if—if you had kissed her or grabbed her or touched her or even had sex with her. Y' know, at this point she's—she's no longer the victim wouldn't be her (sic). She's no longer with us. So nothing would happen to you. We just need to know because—okay*." DDA Mitchell added his part by telling defendant: "*What we're interested in, the murder, of course, we don't care about anything else that happened, if you and Melissa, she stopped coming over here, 'kay, that's something that's water under the bridge now. We're looking for only the murderer*, . . ." Defendant continued to deny any culpability in the murder or the October sexual assault. The next morning, the detectives picked defendant up at his house and took him to the police station for further questioning; a procedure that defendant had agreed to the evening before. On the way to the police station, an emotional and crying defendant broke down and volunteered: "*I'm sorry I wasted your time. I wanted to turn myself in last night, but I couldn't do it in front of my parents. . . . "I wasn't sure I could admit it . . . Yeah. I'll tell you everything*." At the police station, as the tape recorder was being set up, defendant asked whether he could get the death penalty for what he did. He was then advised of his *Miranda* rights and waived them both verbally and in writing. He subsequently confessed to the murder and admitted to assaulting Melissa in October although he continued to deny any sexual intent in either case. Later, he changed his story, admitting to having entered the Middleton's home to look for money. When pressed further on the matter, defendant eventually admitted unzipping Melissa's shorts during the struggle and to having thought about having sex with her, but that he had changed his mind. He also finally admitted to trying to rape Melissa during the October assault. Defendant was convicted of first degree murder with a true finding on the special

circumstance allegations that the murder was committed during the commission of a first degree burglary, a forcible lewd act with a child under the age of 14 years, and the attempted commission of rape The jury also convicted defendant of three offenses relating to a October assault on Melissa; i.e., residential burglary, attempted rape, and a forcible lewd act on a child under the age of 14 years. The jury returned a verdict of death**.** Appeal to the California Supreme Court was automatic.

Held: The California Supreme Court unanimously affirmed. On appeal, among other issues, defendant challenged the admissibility of his statement made to the police at various stages of the investigation. (1) *The bedroom interview*: First, defendant argued that the interview in his bedroom by Detective Stotz and DDA Mitchell on the evening of the murder was custodial and done without having been advised of his *Miranda* rights. The Court found that under the circumstances, defendant was not in custody at this time and that no *Miranda* admonishment or waiver was necessary. A criminal suspect is not in custody for purposes of *Miranda* unless and until "he has been formally arrested, or there exists a restraint on freedom of movement of the degree associated with a formal arrest." Also, it is a rule that there is no custody unless, "under the totality of the circumstances, the suspect's freedom of action is curtailed to a degree associated with formal arrest." In this case, defendant was interviewed on this occasion in his own bedroom for only 30 minutes. He was told that he was not under arrest and that he was not obligated to speak with them. The detective and DDA were not dressed in a manner that asserted official authority. There was no evidence that either was armed, or if armed, that any weapons were visible. There was also no evidence that they blocked defendant's exit from the bedroom or that he was restrained in any way. Also, the nature of their questioning did not appear to have been aggressive or particularly confrontational. Under these circumstances, *Miranda* is inapplicable because defendant was not in custody.
(2) *Offers of Leniency*: Defendant next argued that his later confession made at the police station should have been suppressed because it was the product of an "offer of leniency" made to him during the previous bedroom interview. Specifically, defendant complained that he was told by Detective Stotz and DDA Mitchell on the previous evening that he would not get into trouble for admitting the prior assault on Melissa or to having a sexual interest in her. Defendant's eventual admissions he made about wanting to rape Melissa were in fact used as a basis for some of the special circumstances, making him eligible for the death penalty. Defendant argued that these promises of leniency, as described above, vitiated his later waiver of his *Miranda* rights. The Court disagreed. In order for an offer of leniency to poison a later waiver and confession, it must be shown that the offer was the motivating cause of the defendant's confession; i.e., there must be a "*causal connection*" between the offer of leniency and the later waiver and confession. In this case, defendant had already admitted to having woken up in his front yard while only partially dressed on the October night Melissa was assaulted in her bedroom. Then, the morning after Melissa's murder, when he was picked up at his house, defendant expressed his desire to confess without even being asked, telling the detectives that he'd wanted to confess before but didn't want to do it in front of his parents, and that he just wasn't sure that he could admit it. At the police station, defendant demonstrated his understanding of the seriousness of the potential charges against him by asking whether he was going to be getting the death penalty. When advised of his rights, he was

specifically told, and acknowledged that he understood, that *anything* he said could be used against him in court. It was also noted that during his subsequent confession, when the topic of his potential liability for his prior assault on Melissa came up, Detective Stotz again said; "*Well because like I told you last night, that's water under the bridge*." When told this, defendant acknowledged his understanding that his admissions concerning the assault on Melissa in October could be used against him by responding; "*That's until today*." The Court found, therefore, that when considering the "totality of the circumstances, defendant understood at the time of his *Miranda* waiver that he had not been promised any escape from the criminal consequences of the October assault. He knew that any offers of leniency were no longer valid if he had murdered Melissa.

(3) *Coercion/Voluntariness*: Lastly, defendant argued that the combination of factors (i.e., the offers of leniency, the length and nature of the interrogation, and his own "personal characteristics") constituted coercion, making his confession involuntary and requiring that it be suppressed. Again, the Court disagreed. A confession may be found involuntary if extracted by threats or violence, obtained by direct or implied promises, or secured by the exertion of improper influence. A statement is involuntary if it is not the product of "a rational intellect and free will." The test for determining whether a confession is voluntary is whether the defendant's "will was overborne at the time he confessed." Also, it must be shown that the alleged coercion was something the officers themselves did, and that the officers' coercive actions were the "motivating factor" in causing defendant's confession. The overall length of the interrogation in this case, however, was only two and a quarter hours long, with multiple breaks between sessions. This was not excessive by any means. Also, the interrogation wasn't done in a high-pressure manner at any time. Lastly, the defendant's personal and psychological characteristics (i.e., 20 years old but looked to be 15, lived with his parents, unemployed, no driver's license, learning disabilities, no experience in the criminal justice system, suffering from depression, anxiety, and headaches, possible attention deficit disorder, and a history of methamphetamine and marijuana use) were not factors caused by the police, nor were they exploited by them. These circumstances, therefore, did not constitute coercion nor precipitate an involuntary confession. Defendant's conviction and death sentence was therefore upheld.

Note: It is not unusual for an interrogating officer to feel like he has to offer a suspect something to get him to open up and start making admissions. So the tendency is to want to walk a thin line between proper interrogation techniques and making some sort of an offer of leniency. The detective here (and the DDA) knew it would be important to get defendant to talk about his sexual intent in assaulting Melissa during both the October assault and the November murder or they wouldn't have pressed him so hard on that issue. Offers of leniency are a common problem and, where found to be the motivating factor in an eventual confession, will come back to bite us every time whether done to get the subject to waive his *Miranda* rights (e.g., *People v. Tully* (2012) 54 Cal.4th 952, 986.), or to confess after he's already waived (e.g., *People v. Chun* (2007) 155 Cal.App.4th 170.). Don't flirt with this issue. We were lucky here, but might not be the next time.