Filed 10/19/17 In re Taylor B. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re TAYLOR B., a Person Coming Under the Juvenile Court Law.	B270862
	(Los Angeles County Super. Ct. No. YJ38076)
THE PEOPLE,	
Plaintiff and Respondent,	
v.	
TAYLOR B.,	
Defendant and Appellant.	

APPEAL from a judgment (order of wardship) of the Superior Court of Los Angeles County, Irma J. Brown, Judge. Affirmed.

Sean Kennedy, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Taylor B. (Taylor), a minor, appeals from a judgment (order of wardship) (Welf. & Inst. Code, § 602) entered following a determination she committed assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4);[1] count 2) and acted as an accessory after the fact to murder (§ 32; count 3). Taylor claims the juvenile court erroneously ruled she waived her *Miranda*[2] rights, and erred by failing to suppress her involuntary confession obtained by way of a police ruse. She further contends the court erred by refusing to consider a psychologist's testimony supporting Taylor's theory of self-defense. We affirm.

FACTUAL SUMMARY

The evidence, the sufficiency of which is undisputed, established that on October 14, 2014, Bradley Hayes (the deceased victim) was the driver of a vehicle containing Taylor, Jennifer (Taylor's mother), and their friend Alex. While Hayes was driving, Taylor repeatedly hit him in the head with a metal sunscreen container and sprayed his face with sunscreen. Alex then choked Hayes, and Jennifer stabbed him.

After some delay, Taylor called 911 and reported a kidnapping. When City of Gardena Police Officer Luis Contreras responded to the call, he found Hayes, unconscious and without a pulse, with dried blood on his throat and back. Taylor, Jennifer and Alex were present at the scene, and told Contreras they had been kidnapped.

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[1] Unless otherwise indicated, subsequent section references are to the Penal Code.

[2] *Miranda* v. *Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694] (*Miranda*).

Taylor was interviewed at the police station and admitted she attacked Hayes with the spray bottle. As further discussed below, she gave a number of explanations for her actions, including that Hayes had a gun in the car and she felt threatened, he was acting "weird," he would not take the passengers where they wanted to go and she felt like they were being kidnapped, and she had a feeling that something bad was about to happen. She further admitted that while Hayes was unconscious, Jennifer told her and Alex that they should tell the police Hayes had tried to kidnap them.

After Taylor's interview the police, during booking, recovered parts of a cell phone from her bra area. Taylor explained that after the fight with Hayes, Jennifer broke Hayes's phone and told Taylor to hide the parts for Jennifer.

An autopsy revealed that Hayes died of strangulation and stab wounds.

At the jurisdiction hearing, the prosecution argued that Taylor's conduct in hitting and spraying Hayes with the metal can while he was driving constituted assault likely to produce great bodily injury. The prosecution further argued that Taylor's conduct in hiding the victim's cell phone parts made her an accessory after the fact to murder. The juvenile court credited both theories in finding Taylor committed both offenses, and the court rejected Taylor's proffered theory of self-defense as to the assault.

DISCUSSION

1. The Juvenile Court Properly Ruled Taylor Impliedly Waived her Miranda Rights.

a. Taylor's Motion to Suppress.

On November 4 and November 17, 2015, a hearing was held on Taylor's motion to suppress her statements made during her police interview. She contended she had not validly waived her *Miranda* rights and her confession was coerced.

Detective Patrick Goodpaster testified that he and Detective Daniel Guzzo interviewed Taylor in a jail interview room at the Gardena police station. An audio/visual recording was made of the interview. The prosecution introduced into evidence a copy of the video and a transcript of its contents, and the parties stipulated the court could view the video.

The video recording and transcript reflect that the interview began at 9:27 p.m. with Goodpaster saying, "Come on in. All right. We're going to talk a little bit [about] what happened earlier and just a little bit of everything." Guzzo stated, "I want you to feel comfortable. Are you comfortable? Do you want a glass of water or anything? You're good?"

After Taylor identified herself, Goodpaster said, "I have to read this to you but we're going to talk a little more in depth, okay? I already talked to your mom." Goodpaster then gave Taylor *Miranda* admonitions, asking after each, "Do you understand?" Each time, Taylor answered, "yes." After these admonitions, Goodpaster questioned Taylor, who made incriminating statements during an interview that lasted 30 minutes.

At the suppression hearing, the prosecutor argued that Taylor impliedly waived her *Miranda* rights by confirming she understood them after the admonitions were given to her, and then proceeding to talk to Goodpaster. Taylor's counsel argued

no implied waiver should be found because Taylor was 15 years old at the time of the interview, lacked any experience with law enforcement, and had "faced severe and chronic trauma." Counsel also argued more generally that "a youth should never be allowed to impliedly waive her *Miranda* rights" by virtue of juveniles' inherent vulnerability to the pressures of custodial interrogation.

b. Juvenile Court's Ruling.

The court indicated that its consideration of the relevant factors for assessing whether Taylor had validly waived her *Miranda* rights -- including her experience, education, background, intelligence, and capacity to understand the *Miranda* warnings -- was limited because "those factors have not been placed into evidence." However, the court found it appeared from the record that Taylor was 15 years old and either a sophomore or junior in high school who was progressing satisfactorily in her schooling. The court noted the record did not conflict with counsel's representation that the present case was Taylor's first encounter with law enforcement. The court further indicated the video did not suggest any coercion had occurred. Based on "the totality of the circumstances," the court found that Taylor had validly waived her *Miranda* rights.

c. Analysis.

" 'Under the Fifth Amendment to the federal Constitution, as applied to the states through the Fourteenth Amendment, "[n]o person . . . shall be compelled in any criminal case to be a witness against himself . . . ." [Citation.] "In order to combat [the] pressures [of custodial interrogation] and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights" to remain silent and to have the assistance of counsel. [Citation.] "[I]f the accused indicates in any manner that he

wishes to remain silent or to consult an attorney, interrogation must cease, and any statement obtained from him during interrogation thereafter may not be admitted against him at his trial" [citation], at least during the prosecution's case-in-chief [citations].' [Citation.] "Critically, however, a suspect can waive these rights.' [Citation.] To establish a valid waiver of *Miranda* rights, the prosecution must show by a preponderance of the evidence that the waiver was knowing, intelligent, and voluntary. [Citations.]" (*People v. Nelson* (2012) 53 Cal.4th 367, 374-375 (*Nelson*).) An implied waiver of *Miranda* rights may be found when, after having been admonished of those rights, a defendant responds affirmatively that he or she understood them and provides a tape-recorded statement to the police. (*People v. Whitson* (1998) 17 Cal.4th 229, 247 (*Whitson*); *People v. Sully* (1991) 53 Cal.3d 1195, 1233.)

"Juveniles, like adults, may validly waive their *Miranda* rights." (*People v. Jones* (2017) 7 Cal.App.5th 787, 809 (*Jones*).) "Determining the validity of a *Miranda* rights waiver requires 'an evaluation of the defendant's state of mind' [citation] and 'inquiry into all the circumstances surrounding the interrogation' [citation]. When a juvenile's waiver is at issue, consideration must be given to factors such as 'the juvenile's age, experience, education, background, and intelligence, and . . . whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.' [Citations.]" (*Nelson*, *supra,* 53 Cal.4th at p. 375.) "This approach allows the necessary flexibility for courts 'to take into account those special concerns that are present when young persons, often with limited experience and education and with immature judgment, are involved.' [Citation.]" (*Id.* at p. 379.)

"When a court's decision to admit a confession is challenged on appeal, 'we accept the trial court's determination of disputed facts if supported by substantial evidence, but we independently decide whether the challenged statements were obtained in violation of *Miranda*[.]' [Citation]." (*People v. Lessie* (2010) 47 Cal.4th 1152, 1169 (*Lessie*).) We give great weight to the considered conclusions of a lower court that has previously reviewed the same evidence. (*Whitson, supra,* 17 Cal.4th at p. 248.)

Taylor contends that "an implied waiver is not sufficient to satisfy *Miranda* in the case of a juvenile defendant." For support, she relies on *J. D. B. v. North Carolina* (2011) 564 U.S. 261 [180 L.Ed.2d 310] (*J.D.B.*), but that case is inapposite.

J.D.B. involved a 13 year old whom police removed from his classroom, escorted to a closed room, and subjected to police questioning for 30 to 45 minutes without a *Miranda* advisement. (*J.D.B.*, *supra,* 564 U.S. at pp. 265-266.) The question before the Supreme Court in *J.D.B.* was not whether an implied waiver of *Miranda* rights could or should be found in the case of the minor; rather, the issue was whether the child was "in custody" such that *Miranda* warnings should have been given. Because "children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave" (*id.* at pp. 264-265), the court determined that a child's age *should* be considered in determining whether the child reasonably would not have felt he or she was at liberty to terminate the interrogation and leave, such that he or she was "in custody." (*Id.* at p. 281.) *J.D.B.* does not hold that an implied waiver by a juvenile is, as a matter of law, barred by *Miranda*.

Our Supreme Court's decision in *Nelson* post-dated *J.D.B.* and explicitly referenced *J.D.B.* (*Nelson*, *supra,* 53 Cal.4th at p. 383, fn. 7), and yet the court still held that the 15-year-old defendant in that case had implicitly waived his *Miranda* rights " 'by willingly answering questions after acknowledging that he understood those rights.' " (*Nelson,* at p. 375.) *Nelson* reaffirmed that the "totality of the circumstances" test applies to determining whether a juvenile's waiver is valid. (*Ibid.*) It would be inappropriate for us to assume, as Taylor asks us to do, that our Supreme Court did not fully consider the holding of *J.D.B.* in issuing its opinion in *Nelson*. We thus reject Taylor's request that we find no implied *Miranda* waiver by Taylor solely on the ground that she is a juvenile, and instead we apply the factors set forth in *Nelson* to determine the validity of her waiver.

As the juvenile court found, Taylor was a 15 year old who appeared to be progressing satisfactorily in her education. This court has viewed the video and read the transcript of her interview with the police, which confirm Taylor was properly advised of each *Miranda* right, she acknowledged she understood each one, and she then proceeded to answer the detectives' questions. Although Taylor had no previous experience with law enforcement, she presented in her interview as a savvy, street-smart young woman. "Nothing in the record suggests defendant was unable to understand, or did not understand, the meaning of the rights to remain silent and to have the assistance of counsel, and the consequences of waiving those rights." (*Lessie, supra,* 47 Cal.4th at p. 1169 [finding valid waiver by 16 year old who "while no longer in school, had completed the 10th grade and held jobs in retail stores"]; see *People v. Lewis* (2001) 26 Cal.4th 334, 384 (*Lewis*) [finding schizophrenic 13-year-old minor understood and waived his *Miranda* rights]; *People v. Davis* (1981) 29 Cal.3d 814, 825 [upholding implied waiver of 16 year old where nothing

indicated he did not understand his rights or was "frightened into submission by the officers' behavior"]; *Jones, supra,* 7 Cal.App.5th at p. 811 [finding valid waiver of 16 year old with prior arrests who was attending high school, where content of the police interview reflected minor's understanding of questions and coherent responses].)

Taylor argues that "[d]ue to her mother's substance abuse, Taylor suffered years of neglect, physical abuse and sexual abuse, which left her traumatized at the time of the offense. . . . A girl who has been mistreated and abused by older males will inevitably feel coerced by male police officers . . . ." However, in support of this claim, Taylor points to no evidence that was before the juvenile court at the time of its ruling. Therefore, her argument is unavailing.

We conclude that the juvenile court did not err in ruling that Taylor validly waived her *Miranda* rights.

2. The Court Properly Found Taylor's Statement Was Voluntary.

a. Pertinent Facts.

In her October 10, 2014 interview with Goodpaster and Guzzo, appellant stated she and her mother Jennifer were basically homeless and for that reason had stayed in Hayes's trailer for the past three days. Taylor said Hayes was a "tweaker" and she did not like or trust him.

Taylor said that on the day of the assault, she, Jennifer, Hayes, and Taylor's friend Alex went to a Starbucks coffee shop in Hayes's vehicle. While Hayes and Alex entered Starbucks, Taylor and Jennifer stayed in the car. Jennifer knew Hayes had a gun in the car. While Hayes was inside Starbucks, Jennifer moved the gun case up front with her and put it underneath the seat, saying she did not trust Hayes.

When he came back to the car, Hayes "started acting really weird" and giving "weird looks" to Taylor and Jennifer. Goodpaster asked Taylor why, if Hayes only started acting weirdly when he came out of Starbucks, Jennifer told Taylor while he was still inside that she did not trust him. Taylor said she did not know, and Jennifer just got a feeling.

Later, Hayes was driving, Jennifer was the front seat passenger, and Taylor and Alex were in the back seat. The group told Hayes to take them to their friend Jerry's house. However, Hayes drove onto the freeway as if he was heading to Los Angeles. Jennifer protested, but Hayes kept driving towards Los Angeles and began threatening the group. Taylor told Goodpaster that Hayes was "acting crazy and just – he was threatening us because we already knew he had a gun . . . ." Taylor said that Hayes "started like getting all weird and then . . . he jolted on the brake" and the gun slid out from under the seat, at which time he tried to reach for it.

Taylor, from the back seat, began hitting Hayes with a spray can of sunscreen. Taylor thought she hit him 10 or 15 times. She also sprayed him on the side of his face. When this happened, the group was exiting the 105 freeway.

Taylor stated that Hayes drove to the side of the road, stopped, turned around, and was "looking crazy." He grabbed Taylor's arm and Alex reacted by "choking [Hayes] out" from behind him. Hayes was still trying to hit Taylor and that was when Jennifer "flipped out" and stabbed Hayes. Taylor thought Jennifer stabbed Hayes only a few times; Taylor really did not notice Jennifer had done it until Taylor suddenly saw blood. After Hayes was "all choked out" but still breathing, Alex pulled him into the back seat.

Taylor then told Goodpaster that she attacked Hayes because he "started to . . . threaten my mom and he was just freaking out." Goodpaster asked what Hayes said to Jennifer that "set [Taylor] off." Taylor replied, "it's just because he kept on . . . asking for the gun even before we got to . . . Jerry's . . . and then just he kept on doing it and then when he hopped on the freeway, that was when I was like, you need to take us to Jerry's right now or -- and then just, I don't know. It was just my first instinct." She acknowledged that Hayes never threatened to kill her.

Taylor reported that Jennifer drove the group to Jerry's house. Taylor said Hayes was still alive because they could see him breathing and Alex was checking his pulse. The group did not think about driving to a hospital, because they thought it would have been too late. When they got to Jerry's house, Jerry came outside to the vehicle and told the group they needed to call the police. By then it appeared to Taylor that Hayes was not breathing.

Taylor then told Goodpaster that once they turned onto Jerry's street, Alex took over driving. Alex parked the vehicle at Jerry's house because Jennifer was "really freaking out." Taylor acknowledged that perhaps 30 minutes passed from the time of the fight to the time the car was parked.

At this point in the interview, Goodpaster introduced a ruse. He told Taylor that Jennifer had tried to call 911 and had left the phone on, resulting in a recording. Goodpaster said he thought he heard Alex on the recorded call repeatedly saying, " 'I killed him.' " Guzzo said, "the 911 recording['s] like, 'Fuck, I killed him. I killed him. What do you want to do?' " Taylor said, "I think that he was freaking out because . . . it didn't feel like he had a pulse or anything."

Goodpaster then asked, "At what point did you guys realize he was dead? [¶] [Taylor]: Is he actually dead? [¶] [Goodpaster]: Yeah, he's dead. But I hear on the recording -- [¶] [Taylor]: I don't remember. [¶] [Goodpaster]: -- you don't remember? He's like, 'Fuck it. He's dead. He's dead.' . . . I think it was Alex or maybe it was you. I couldn't tell. Did you say that? [¶] [Taylor]: I don't -- huh-uh. [¶] [Goodpaster]: Do you remember Alex saying that? [¶] [Taylor]: No, huh-uh. [¶] [Goodpaster]: . . . I could have sworn it was [a] guy's voice. [¶] [Guzzo]: Yeah. [¶] [Taylor]: I don't know."

Goodpaster told Taylor they had video of the group when they were parked, and Taylor said that was where they were when they called the police. Goodpaster said the video showed them walking towards Jerry's house, before the police came. Taylor said she was carrying bags of clothes to Jerry's house. Goodpaster asked if it was not odd that "you have a guy in the backseat that you guys think is dead" and they were delivering clothes instead of administering CPR or screaming for help. Taylor replied, "I don't know. [¶] [Goodpaster]: I mean you're just a baby. Just talk to me . . . . [¶] [Taylor]: I don't know."

Goodpaster then said, "[At] no point did -- [Hayes] say I'm kidnapping you. . . . when you called that, why did you say that? [¶] [Taylor]: Because that's kind of basically kind of what it felt like he was basically -- [¶] [Goodpaster]: Because he wasn't driving you to Jerry's house? [¶] [Taylor]: Yeah, and then he was just going like to L.A. or I don't -- he was heading like that way, that's why."

Goodpaster later asked whether the reason Taylor attacked Hayes was she had "a moment like, fuck this fool." Taylor nodded yes. Goodpaster asked if after she hit him once it had just snowballed and gotten out of hand. Taylor replied, "Kind of. Well, it's just because when I was little, my grandpa

would always tell me if you get a bad instinct and you think something really bad is about to happen, then you do something." Taylor then added a new detail that before going to Jerry's, Jennifer drove them to a park, where they parked for about 10 minutes.

Goodpaster referenced the fake 911 recording again and said he heard a girl's voice saying they needed to think of a story. Taylor said she did not think it was her, and she did not know if her mother said that. Goodpaster told Taylor to be honest and tell him what her mother had said. Taylor said she did not know and that mother was just worried about her and did not want her and Alex to get in trouble because of her stupid friend Hayes.

Goodpaster asked if Jennifer said they needed to come up with the same story and Taylor responded, "I guess so, yeah, I think" and, when pressed again, Taylor said, "I'm not too certain. I just -- I know it was something like that." Goodpaster continued, "So what did she tell you guys to say? Is that where the kidnapping thing came up? She told you to say that? [¶] [Taylor]: I don't remember. [¶] [Goodpaster]: Did Alex tell you that or did your mom tell you that? [¶] [Taylor]: My mom. [¶] [Goodpaster]: You[r] mom said say what, that he was trying to kidnap us? [¶] [Taylor]: I guess, yeah."

Goodpaster finished the interview by asking whether Jennifer was really the one who hit Hayes first, or if it had been Taylor. Taylor steadfastly maintained she had hit him first.

b. Analysis.

Taylor claims her statements made during her police interview were involuntary. She argues that "[t]he totality of the circumstances suggests that Taylor, who has a history of being traumatized by older males, felt coerced to assent to the version of event[s] being fed to her by Goodpaster, especially since he falsely claimed to have proof of that version on tape. Because

Taylor was a juvenile, there was a high likelihood that the use of this inappropriate police ruse was in fact 'reasonably likely to produce a false statement.' " We reject Taylor's claim, and find that her statements were voluntary.

The Fourteenth Amendment due process clause and article I, section 15 of the state Constitution bar the prosecution from using a defendant's involuntary confession and require the People to establish, by a preponderance of the evidence, that a defendant's confession was voluntary. (*People v. Boyette* (2002) 29 Cal.4th 381, 411 (*Boyette*).) A statement is involuntary only if it is the product of police coercion. (*People v. Mickey* (1991) 54 Cal.3d 612, 647; *People v. Mays* (2009) 174 Cal.App.4th 156, 164.) " ' " 'Although coercive police activity is a necessary predicate to establish an involuntary confession, it "does not itself compel a finding that a resulting confession is involuntary." [Citation.] The statement and the inducement must be causally linked. [Citation.]' [Citation]." [Citation.] A confession is not rendered involuntary by coercive police activity that is not the "motivating cause" of the defendant's confession.' [Citation]" (*Jones, supra*, 7 Cal.App.5th at p. 810; see *People v. Linton* (2013) 56 Cal.4th 1146, 1176 (*Linton*).) " 'In determining whether a confession was voluntary, "[t]he question is whether defendant's choice to confess was not 'essentially free' because his will was overborne." ' " (*Boyette*, at p. 411.)

In evaluating the voluntariness of a juvenile confession, "courts must use ' "special care in scrutinizing the record" ' to evaluate a claim that a juvenile's custodial confession was not voluntarily given. [Citation.]" (*Nelson, supra*, 53 Cal.4th at p. 379.) The court must look at the totality of the circumstances, including the minor's age, intelligence, education, experience, and capacity to understand the meaning and consequences of his confession. (*In re Elias V.* (2015) 237 Cal.App.4th 568, 576 (*Elias*

V.); see *Lewis, supra*, 26 Cal.4th at p. 383.) Among other factors to be considered are the element of police coercion, the location and length of the interrogation, and the minor's physical condition and mental health. (*Boyette*, *supra,* 29 Cal.4th at p. 411.)

"[E]ven when a juvenile has made a valid waiver of the *Miranda* rights, a court may consider whether the juvenile gave a confession after being ' "exposed to any form of coercion, threats, or promises of any kind, [or] trickery or intimidation." ' " (*Nelson, supra*, 53 Cal.4th at p. 379, fns. omitted.) However, deception employed by the questioning authorities "does not undermine the voluntariness of a defendant's statements to the authorities unless the deception is ' " 'of a type reasonably likely to procure an untrue statement.' " ' [Citations.] ' "The courts have prohibited only those psychological ploys which, under all the circumstances, are so coercive that they tend to produce a statement that is both involuntary and unreliable." ' [Citation.]" (*People v. Williams* (2010) 49 Cal.4th 405, 443-444 (*Williams*).)

On appeal, generally " ' "the trial court's findings as to the circumstances surrounding the confession–including 'the characteristics of the accused and the details of the interrogation' [citation]–are clearly subject to review for substantial evidence." ' " (*People v. Jones* (1998) 17 Cal.4th 279, 296.) However, because the interview is video-recorded, the facts surrounding the statement are undisputed, making the issue subject to our independent review. (*Linton, supra,* 56 Cal.4th at p. 1177.) " '[T]he trial court's finding as to the voluntariness of the confession is subject to independent review.' " (*Boyette, supra*, 29 Cal.4th at p. 411.)

The circumstances surrounding the interview do not support Taylor's contention that her statement was involuntary. Goodpaster and Guzzo conducted the interview in the jail interview room, where Taylor was not in handcuffs. She had a blanket which she kept wrapped around her. Guzzo asked Taylor if she was comfortable, and Taylor indicated she was fine.

The interview, which began at 9:27 p.m., lasted 30 minutes. The detectives were not harsh or accusatory; indeed, their overall tone remained decidedly gentle throughout the interview. Goodpaster acknowledged Taylor was young, referring to her as "just a baby." The interview was conversational and the interactions were calm and measured. Although Taylor asserts on appeal that she was "visibly distressed and even crying at times" during the interview, she displayed this distress only after the interview was over, when the camera remained on while Taylor was left alone in the interview room for an extended period. Given the events that had transpired that day, it is to be expected that Taylor became emotional when left by herself with an opportunity to reflect on those events and the likely consequences for her, her mother, and her friend.

The video recording of Taylor's interview provides no indication that Taylor did not comprehend the effect of providing a statement to the police. Taylor did not introduce any evidence that her intelligence level, education, or any other circumstance affected her ability to comprehend the meaning and effect of her statement. Although Taylor contends that she had "a history of being traumatized by older males" that made her vulnerable to coercion by male police officers, as discussed above, she failed to introduce any evidence of this nature for consideration at the hearing on the motion to suppress.

Taylor's primary argument to support her claim that her statement was involuntary is that the detectives used a ruse during her interrogation. It is undisputed that Goodpaster falsely told Taylor that her mother had made contact with a 911 dispatcher and inadvertently had failed to hang up, leading to an audio recording being made of the aftermath of the violent assault on Hayes. Use of this ruse, however, did not render her confession involuntary.

First, Goodpaster did not introduce the ruse until 16 minutes into the 30-minute interview. Before that ruse, Taylor freely made numerous incriminating statements, including that she hit Hayes with a sunscreen bottle numerous times and sprayed sunscreen in his face while he was driving. She also stated that Alex choked him and Jennifer "flipped out and she stabbed him." Taylor provided unclear and inconsistent versions of events in which she purportedly acted in self-defense. She also admitted that she, Jennifer, and Alex did not call 911 for at least 30 minutes, even though Hayes was bleeding and unconscious. Goodpaster's ruse, which he used after Taylor made all the above statements, could not be their " ' "motivating cause," ' " and therefore they cannot be deemed involuntary. (*Jones, supra*, 7 Cal.App.5th at p. 810.)

We also do not find Taylor's statements made *after* the use of the ruse to be involuntary, because the ruse was not reasonably likely to procure a false statement. (*Williams, supra*, 49 Cal.4th at pp. 443-444.) Taylor's statements provided before the ruse, supporting a story that Hayes was attempting to kidnap them, were contradictory and not credible. Goodpaster described the ruse he used as a tactic used to gain the truth. He testified, "I felt that [Taylor] was lying to me so I threw a ruse out there and her story changed and she then gave me what I believe was the truth at that point." The aim of the ruse was to lead Taylor

to believe that the police already knew what really transpired after the assault, because the discussions between Taylor, Jennifer and Alex were inadvertently captured on a 911 call. If Taylor believed that the police already knew the truth, she would be less likely to lie, and more likely to tell them what really happened. Taylor concedes Goodpaster "proposed specific factual scenarios that were apparently consistent with his belief about what actually had happened . . . ." It is difficult to see how this type of ruse would lead to a false statement, and thus we do not find that the ruse led Taylor to make an involuntary confession. (See *People v. Farnam* (2002) 28 Cal.4th 107, 182 [false statements by police that defendant's fingerprints were found on victim's wallet did not render his confession involuntary]; *Jones, supra*, 7 Cal.App.5th at p. 814 [16 year old's statement not involuntary despite police showing him "fake six-packs identifying him as the shooter" and falsely stating his fingerprints had been found on the gun, where the police "clearly believed that [minor] was the shooter, and the various ruses they employed were aimed at eliciting his admission that he was the one who fired the gun"]; *Frazier v. Cupp* (1969) 394 U.S. 731, 739 [suspect's confession not rendered involuntary where officer falsely told him his accomplice had been captured and had confessed].)

Moreover, even after Goodpaster used his ruse, Taylor continued to claim that she felt Hayes was trying to kidnap her. Taylor's exculpatory claim was evidence of a still operative ability to calculate her self-interest in choosing whether to disclose or withhold information. (Cf. *Williams*, *supra,* 49 Cal.4th at p. 444.) Further, in response to the questions after the use of the ruse, Taylor frequently replied no, she did not know, she did not remember, and/or she was uncertain. When Goodpaster asked the leading question of when the group realized Hayes was dead,

Taylor replied, "Is he actually dead?" This is not the response of a person whose will had been overborne. (Cf. *ibid.*)

Taylor relies upon *Elias V.,* but that case is readily distinguishable for a number of reasons. In that case, the appellate court found that the confession of 13-year-old Elias was involuntary based on the following factors: "(1) Elias's youth, which rendered him ' "most susceptible to influence," [citation], and "outside pressures," [citation]' [citation]; (2) the absence of any evidence corroborating Elias's inculpatory statements [regarding his lewd contact with a three year old]; and (3) the likelihood that [police] use of deception and overbearing tactics would induce involuntary and untrustworthy incriminating admissions." (*Elias V., supra,* 237 Cal.App.4th at pp. 586-587.)

Elias is first distinguishable because the child there was only 13 years old, and the detective's "accusatory interrogation" in a small room at his school "was dominating, unyielding, and intimidating" (*Elias, supra,* 237 Cal.App.4th at p. 586), and featured "relentless" questioning insinuating the guilt of the young suspect. (*Id.* at p. 582.) Second, unlike in *Elias*, in this case substantial evidence already corroborated Taylor's inculpatory statements, including the physical evidence.

Finally, the deceptive police tactics described in *Elias* were quite different from those used in the instant case. In that case, the police falsely told the 13-year-old suspect that the alleged victim had explained " 'perfectly' " how he had touched her, and also that a witness had walked in and seen him touching the victim's vagina. (*Elias, supra,* 237 Cal.App.4th at p. 583.) The court in *Elias* was swayed by "[s]tudies demonstrat[ing] that the use of false evidence enhances the risk of false confessions." (*Id.* at p. 584.) The court cited one such study concluding that " '[c]onfronting innocent people with false evidence – laboratory reports, fingerprints or footprints, eyewitness identification,

failed polygraph tests – may cause them to disbelieve their own innocence or to confess falsely because they believe the police possess overwhelming evidence.' " (*Ibid*.) In the instant case, however, the police falsely suggested that they had a recording of discussions that ensued between Taylor, Jennifer, and Alex, in an effort to have Taylor tell the truth instead of sticking with the story that the police believed her mother or Alex had concocted and instructed her to tell. That deception is not of the same magnitude as the types of "false evidence" that are discussed in *Elias* and which were used in the aggressive interrogation of the minor in that case.

In sum, we conclude that all of Taylor's statements were voluntary and properly admitted at the jurisdiction hearing.

3. The Court Did Not Refuse to Consider Mental Health Expert Testimony.

Taylor's final claim is that in evaluating whether Taylor had established the affirmative defense that she acted in self-defense, the juvenile court erroneously "refused to consider" expert testimony from Dr. Nancy Kaser-Boyd, a clinical and forensic psychologist who examined Taylor. Her claim has no merit.

The juvenile court did not exclude any testimony by Kaser-Boyd. Over the prosecution's objection, the court permitted her to testify, deemed her qualified as an expert witness in the field of post-traumatic stress disorder (PTSD) as it relates to adolescents, and overruled all of the prosecution's objections to questions posed by Taylor's counsel during her direct examination.

Kaser-Boyd testified Taylor suffered from PTSD complex, and that trauma from past physical and sexual abuse by males led to her PTSD. Kaser-Boyd also testified about the relationship between PTSD and requisite mental states of self-defense, and offered an opinion that a 15 year old with a background of

molestation and sustained abuse would have an honest expectation of fear and imminent bodily harm in a situation where a male driving her was high on methamphetamines, driving erratically, and engaging in a verbal argument with her mother with a gun nearby.

At the end of Taylor's counsel's examination of Kaser-Boyd, counsel sought to have this expert witness authenticate records from the Department of Children and Family Services (DCFS) purportedly regarding Taylor. The prosecutor posed relevance and chain of custody objections. The court ruled that the records could not be admitted because Kaser-Boyd was not the DCFS records custodian and could not authenticate the records. The court stated, "[Kaser-Boyd] can use anything on which to base her opinion but that doesn't make the records [themselves] admissible."

Ultimately, in making its findings on the assault count, the court rejected Taylor's theory of self-defense, which was based largely on the testimony of Kaser-Boyd. The court found as follows: "[T]he problem here is that the People argued that Dr. Kaser-Boyd's testimony wasn't connected to anything, and I would have to concur to the extent that I think the testimony of Dr. Kaser-Boyd was relevant but it's not tied to any -- it's not corroborating any testimony of the defense. My reading of the case, that in cases where the court has allowed that, the battered wife syndrome was the issue in [*People v. Humphrey* (1996) 13 Cal.4th 1073], and I would liken it to trauma that Dr. Kaser-Boyd testified to here. But we don't have any testimony of the minor with regard to her state of mind or experiences that would have [led] to that state of mind.

"We have the tape where she talked about it with Detective Goodpaster, as well as with Dr. Kaser-Boyd and her review of the DCFS records. So while the doctor's allowed to use . . . any document to form an opinion, those records are not part of the record in this matter because they were not allowed into evidence. Dr. Kaser-Boyd is not an employee of [DCFS] nor custodian for their records so those records could not be authenticated and therefor [*sic*] were not received into evidence. So we have a theory but with no corroboration with regard to its applicability in this matter. [¶] So for those reasons the court believes that the People did meet their burden with regard to count 2 and find it to be true beyond a reasonable doubt."

The court did not, as Taylor contends, refuse to consider Kaser-Boyd's testimony because it was based on inadmissible hearsay. The court made no mention of whether this expert's opinion was based on hearsay. Rather, as set forth above, the court simply noted the testimony was based in part on DCFS records that were inadmissible because they were not authenticated.

Moreover, it is not correct that the court did not consider Kaser-Boyd's testimony. The court did so, but discounted it because of the absence of testimony from Taylor or other substantial corroborating evidence supporting her theory of self-defense. " '[T]he law does not accord to the expert's opinion the same degree of credence or integrity as it does the data underlying the opinion. Like a house built on sand, the expert's opinion is no better than the facts on which it is based.' " (*People v. Gardeley* (1996) 14 Cal.4th 605, 618.) The court found that the evidence presented did not raise a reasonable doubt as to whether Taylor acted in self-defense, and we find no error in that regard.

DISPOSITION

The judgment (order of wardship) is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

STONE, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.