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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. LONNIE JOHNSON, Defendant and Appellant.	B282481 (Los Angeles County Super. Ct. No. BA437114)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rand S. Rubin, Judge. Reversed and remanded with directions.

Tracy A. Rogers, under appointment by the Court of Appeal, for Defendant and Appellant.

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

INTRODUCTION

A jury convicted Lonnie Johnson of first degree residential burglary of his grandparents' home. Johnson argues the trial court committed reversible error in admitting his videotaped confession because it was the result of coercion and therefore not voluntary. Because the police officers obtained Johnson's confession by a combination of improper threats and promises of leniency, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Home of Johnson's Grandparents Is Burglarized*

On May 15, 2015 Audrey Fletcher, Johnson's grandmother, received a telephone call at work from her security company informing her the alarm system at the home she shared with her husband, Wiley Fletcher, had been activated. Mrs. Fletcher told the security company not to call the police; she would go check the house.

When Mrs. Fletcher arrived home 15 to 25 minutes later, she noticed that the front door was unlocked and not completely closed and that the molding around the door was pried away from the wall. Mrs. Fletcher also observed damage to the stairway leading to the second floor, including cracks in several of the wooden steps, dents in the railing, and a six-inch hole in the wall near the bottom of the stairs, "like something fell and it knocked against the wall." On the second floor, Mrs. Fletcher discovered her safe, described at trial as measuring "two feet by two feet," was missing from her son's room and Mr. Fletcher's

smaller safe and jewelry box were missing from the master bedroom.[1]

Mrs. Fletcher went next door and asked her neighbor, Linda Rhone, if she had seen anything. Rhone said she saw a tall, heavyset man walking out the front door carrying a large, black safe.[2] Rhone stated she saw the man place the safe in the front seat of a gray car with tinted windows and get into the back seat. Rhone said she did not see anyone else on the property or in the car.

Mrs. Fletcher recognized the car from Rhone's description as a car belonging to Johnson's friend, Dillon Lee. She went to Lee's house, found the car parked in the driveway, and saw Lee talking to his girlfriend, who was sitting in the driver's seat. Giovanni Cuevas was standing near the trunk of the car. Mrs. Fletcher asked them if Johnson was there, and they said he was not. She also asked if they broke into her house, but "they just look[ed] at [her] like [she] was crazy" and did not respond. Mr. Fletcher contacted the police and reported the burglary.

B. *The Police Meet with and Then Formally Interview Johnson (the First and Second Interviews)*

On June 1, 2015 Los Angeles Police Officer Brendan Flynn and Detective Asia Hodge met with Johnson at his mother's apartment. Johnson was not under arrest, and Johnson's mother

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[1] Mr. Fletcher estimated the damage to the home, together with the value of the missing items (which included his watch collection), was approximately $28,000.

[2] Johnson, who was 20 years old at the time, was five feet nine inches tall and weighed 145 pounds.

and his girlfriend were present. Officer Flynn explained that he and Detective Hodge were investigating the burglary at his grandparents' house, that the victims thought Johnson had "some sort of involvement in it," and that the officers "wanted to get [Johnson's] side of the story." After some discussion, Johnson agreed to go with Officer Flynn and Detective Hodge to the police station to continue the interview. While walking toward the officers' car, Johnson told Officer Flynn that Lee and Cuevas were "the primary participants" in the burglary and that he knew about what Lee and Cuevas had done. The parties refer to this encounter as the first interview.

What the parties refer to as the second interview occurred in an interview room at the police station. It lasted approximately one hour and was videotaped. During this interview, Johnson explained he had lived with his grandparents for six years, until Mr. Fletcher kicked him out of the house for not going to school and being "lazy." Johnson stated that, on the day of the burglary, while riding with Cuevas and Lee in the gray car, he told them he was mad at his grandfather for kicking him out of the house. Johnson admitted to the officers he told Cuevas and Lee about the safe and the jewelry box in his grandparents' house. Johnson also admitted he told Cuevas and Lee not to touch his grandmother's belongings because his anger was directed at Mr. Fletcher, who, Johnson informed the officers, was married to his grandmother but was not his "blood grandfather." Johnson told the officers, however, he did not believe Cuevas and Lee were "actually going to do it" (i.e., commit the burglary). When they started driving toward his grandparents' house, however, Johnson "kind of got the instinct" and asked Cuevas and Lee to let him out of the car. Johnson said they dropped him

off about a block from the house, and soon he heard the home security alarm. Johnson said he caught a bus and later met up with Cuevas and Lee at Lee's house, where Johnson saw them unloading the safes. Soon after Johnson arrived, he saw his grandmother drive up to the house, and he immediately left. Johnson said he had not had any contact with Cuevas or Lee since that day.

Near the end of the interview, Johnson, at the officers' request, wrote a three-page statement. Officer Flynn told Johnson, "You understand that we're doing everything we can to help you out?" Officer Flynn also stated: "You're not going to go to jail today or anything like that. There might be a point where we bring you in for [more] questioning. Okay. And that's up to the judge at that point if you're going to get charged with anything. But you have to understand that these guys took advantage of you and your family." And before concluding the interview, Officer Flynn stated: "You can call [me] just so we can talk. Okay. We'll get you set up with a job once this is all cleared up. We'll get you all figured out one way or another. I'm not promising you anything but I mean, like, I'll ask some of these business owners if they can make a spot for you and hopefully that will work out."

C. *The Police Arrest and Question Johnson (the Third Interview)*

On June 4, 2015, three days after the first and second interviews, Officer Flynn asked Officer Lo Wong to take Johnson into custody. Officer Wong arrested Johnson at a coffee shop, brought him to the station, and placed him in an interview room.

The subsequent discussion, which the parties refer to as the third interview, was also videotaped.

At the beginning of the interview, and for periods throughout the questioning, Johnson was crying and visibly upset. Officer Wong, along with another officer, Officer Frias, initially questioned Johnson for approximately 40 minutes. Johnson admitted he told Lee and Cuevas the location of the safe, but he repeatedly denied entering his grandparents' home and insisted Lee and Cuevas dropped him off prior to the burglary.

The officers' questioning suggested they did not believe that Cuevas and Lee let Johnson out of the car before the burglary. Officer Wong (falsely) told Johnson that there were "eyewitnesses that saw you there" and that Cuevas and Lee were "both putting you inside the house, so is the neighborhood." The officers repeatedly told Johnson that he needed "to be honest" and that if he were "truthful" his grandparents might "look at it differently" and "respect you more." Officer Wong told Johnson, "Even if you weren't in there, you're going to jail today. . . . You told them where the stuff is, you know, you—you committed a crime, conspiracy to commit burglary, okay. . . . You're going to jail regardless. You could either—it's the same charge, whether you stepped in the house or not, it's the same charge."

Eventually Johnson realized "the truth" the officers were trying to have him acknowledge: "So you two believe I was in there?" Officer Wong replied, "Yes, everybody believes you were in there. Flynn, Asia Hodge – Detective Hodge." Officer Wong repeated that "[c]onspiracy to commit a burglary" is "the same charge, carries the same offense, carries the same penalty" and "[y]ou might as well just be there." Johnson nevertheless persisted in asserting he did not go into his grandparents' house:

"I didn't go in, help them do nothing, none of that. . . . I know for a fact that I didn't go inside of the house."

Officer Frias and Officer Wong left the room, telling Johnson "to think about it," and Officer Flynn entered. Johnson stated to Officer Flynn, "Man, I thought you was going to get me out of here." Officer Flynn replied, "I am getting you out of it. I can only take you so far . . . ." Officer Flynn said that Johnson had "a way out of this" but the officer could only "take this so far to help [Johnson] out" and that, if Johnson was "not going to help [himself] out," the officer could not "really do much more." Johnson stated, "I promise you [I] didn't go in there and do it . . . . But if y'all want me to say I did, then—"

Officer Flynn told Johnson that the other officers anticipated Johnson was "going to break" and would give him "an hour, two hours, three hours" to do so. Officer Flynn stated, however, he would only give Johnson five minutes to "tell[ ] the truth" and "to decide how you want to present yourself to a judge. . . ." The following exchange then occurred:

"Officer Flynn: And you're not being straight forward with us. I can't go to a judge and tell him how great of a kid you are, and how much potential you have in your future.[3]

"Lonnie Johnson: I do.

"Officer Flynn: I—I can't tell that to a judge if you're not going to be truthful with me, or these other officers and investigators.

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[3] Officer Flynn testified, "By me saying 'judge,' I'm normally talking about a filing D.A., but most people who don't deal with the judicial system on a normal basis don't really understand, so some verbiage is switched out."

"Lonnie Johnson: All right.

"Officer Flynn: What happened? It's screaming out of you, dude. You're shaking, you're looking all over the place.

"Lonnie Johnson: I—because I never been in trouble like this before.

"Officer Flynn: Listen—listen. Not telling the truth is only going to make it worse. Do you understand?

"Lonnie Johnson: Uh-huh.

"Officer Flynn: My help, their help can continue as long as you're straight forward and honest. No lies.

"Lonnie Johnson: How far—long can you help me? Can you get me out of jail?

"Officer Flynn: All the way up to the trial. All the way up to the trial. Nobody's promising anybody to get kicked out of jail, but we can help you talk with the DAs and the judge and say how cooperation is working with everything.

"But if you're not going to talk to us, and work with us, and if you're going to keep on blowing smoke up everybody's ass around here, why should I care about what happens to you? It's our job to put liars and cheaters and – and thieves and murderers and rapists away in jail. And you're sitting here and you're doing it to our face.

"Be honest with us and we can help you. We've gone as far as we can, and all the fingers are pointing at you still, man. I told you, we're trying to get you off of this. That's what we were trying to do initially. It sounded legit.

"But now I got independent witnesses saying that's not the case. And if you want to find out who it is, just wait for trial. It's going to come, and all the—and all the deals that you want to make at that point, I'm going to tell the DAs don't even entertain

them. He's a liar, and a thief, and a burglar, and a criminal. He lied to my face, and he didn't want to work with me.

"Lonnie Johnson: I do want to work with you.

"Officer Flynn: Then tell me the truth. That is not a very hard request. That is not a very hard request at all. One day you're going to be a parent, and you're going to pray to God that your kid is never sitting in this chair that you're sitting in right now. And you're going to be able to tell him that lying your way out of it is not an option.

"Lonnie Johnson: Right.

"Officer Flynn: What happened?

"Lonnie Johnson: They – I went in."

Johnson went on to state he entered the home and used a yellow crowbar to crack open the door. Johnson asked Officer Flynn, "If I tell you something, can I—can we keep it between us?" Officer Flynn stated, "Absolutely." Johnson then insisted he stayed in the car while Cuevas and Lee went inside. After more discussion, Officer Flynn said he was going to leave and Johnson should answer his partners' questions "honestly." The officer stated, "I told you that I'd do what I say I'm going to do." Before leaving the room, Officer Flynn warned Johnson, "Don't let me have to come back in here if one of them comes out and says, 'He's blowing smoke up my ass.'"

Officer Wong and Officer Frias returned, and Johnson again denied going in the house. When Officer Wong insisted Johnson "went inside the house with them," Johnson agreed he did, but said, "I know y'all not going to believe what I say regardless." At the end of the interview, Officer Wong told Johnson to "write down what the truth, what you told me right now." Johnson complied and wrote an "apology letter" to his

grandparents—on an investigative action/statement form—admitting he had entered the home and took the safe.

D. *Johnson Files a Motion To Suppress*

Johnson filed a motion to suppress the inculpatory statements he made in the third interview, including the apology letter. The trial court denied the motion. The court stated: "Promises of leniency are just not examples that are bound to make a confession involuntary. Commenting on the realities of the accused['s] position are not enough to make a confession involuntary. The defendant was properly Mirandized. They told the defendant he would feel better if he got it off his chest. Those things just are not things to show it was involuntary. I don't think it was coerced in any way."

E. *Johnson Is Tried, Convicted, and Sentenced*

The People charged Johnson, Cuevas, and Lee with one count of first degree residential burglary (Pen. Code, § 459), but Johnson was tried separately. The Fletchers testified for the prosecution, as did Officer Flynn and Officer Wong. The prosecution played the videotapes of the second and third interviews for the jury, and the jury received transcripts of both interviews. The defense presented an expert witness on false confessions. The parties stipulated to certain facts about what Rhone, the Fletchers' neighbor, had seen the day of the crime. Although the prosecutor stated the People might call Cuevas or Lee as a witness, neither testified at trial.

The jury found Johnson guilty of first degree residential burglary. The court sentenced Johnson to the upper term of six years in prison. Johnson timely appealed.

DISCUSSION

Johnson contends the trial court erred in denying his motion to suppress the inculpatory statements he made during the third interview. Johnson argues his confession was not voluntary and was the product of "constitutionally improper police tactics," including "a combination of inducements, threats, and express and implied assurances of leniency." The People contend "there is not even the slightest evidence of impermissible coercion, improper promises of leniency, or any improper conduct by the police at all in this case." We conclude Johnson has the better argument.

A. *Applicable Law and Standard of Review*

"'Both the state and federal Constitutions bar the prosecution from introducing a defendant's involuntary confession into evidence at trial.'" (*People v. Wall* (2017) 3 Cal.5th 1048, 1066; see *People v. McCurdy* (2014) 59 Cal.4th 1063, 1086 ["'[t]he due process clause of the Fourteenth Amendment precludes the admission of any involuntary statement obtained from a criminal suspect through state compulsion'"].) "A confession is involuntary if the ""the influences brought to bear upon the accused were "such as to overbear petitioner's will to resist and bring about confessions not freely self-determined."""" (*Wall*, at pp. 1065-1066.) "However, 'no single factor is dispositive in determining voluntariness . . . rather[,] courts consider the totality of the circumstances.'" (*Id.* at p. 1066; see *People v. Linton* (2013) 56 Cal.4th 1146, 1176

["'[w]hether a confession was voluntary depends upon the totality of the circumstances'"].)

"'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.'" (*People v. Wall*, *supra*, 3 Cal.5th at p. 1066; accord *People v. Linton*, *supra*, 56 Cal.4th at p. 1176; see *People v. Leonard* (2007) 40 Cal.4th 1370, 1402 ["'[a] statement is involuntary [citation] when . . . it "was '"extracted by any sort of threats . . . , [or] obtained by any direct or implied promises, however slight"'"'"].) "'[W]here a person in authority makes an express or clearly implied promise of leniency or advantage for the accused which is a motivating cause of the decision to confess, the confession is involuntary and inadmissible as a matter of law.'" (*Wall*, at p. 1066; accord, *People v. McCurdy*, *supra*, 59 Cal.4th at p. 1088; see *People v. Holloway* (2004) 33 Cal.4th 96, 115 ["'[i]t is well settled that a confession is involuntary and therefore inadmissible if it was elicited by any promise of benefit or leniency whether express or implied'"]; *People v. Gonzalez* (2012) 210 Cal.App.4th 875, 882 [same].)

"'The distinction that is to be drawn between permissible police conduct on the one hand and conduct deemed to have induced an involuntary statement on the other "does not depend upon the bare language of inducement but rather upon the nature of the benefit to be derived by a defendant if he speaks the truth as represented by the police." [Citation.] Thus, "[w]hen the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct,' the subsequent statement will not be considered involuntarily made."'" (*People v. Gonzalez*, *supra*, 210 Cal.App.4th at p. 883;

see *People v. Holloway*, *supra*, 33 Cal.4th at p. 115.) For example, "'there is nothing improper in pointing out that a jury probably will be more favorably impressed by a confession and a show of remorse than by demonstrably false denials. . . . Absent improper threats or promises, law enforcement officers are permitted to urge that it would be better to tell the truth.'" (*People v. Case* (2018) 5 Cal.5th 1, 26; see *People v. Williams* (2010) 49 Cal.4th 405, 444 ["'[n]o constitutional principle forbids the suggestion by authorities that it is worse for a defendant to lie in light of overwhelming incriminating evidence'"]; *People v. Carrington* (2009) 47 Cal.4th 145, 174 [police officer's statement that "he would inform the district attorney that defendant fully cooperated with the police investigation did not constitute a promise of leniency"].) Similarly, "'mere advice or exhortation by the police that it would be better for the accused to tell the truth when unaccompanied by either a threat or a promise does not render a subsequent confession involuntary.'" (*Holloway*, at p. 115; see *Gonzalez,* at p. 883.) "'On the other hand, "if . . . the defendant is given to understand that he might reasonably expect benefits in the nature of more lenient treatment at the hands of the police, prosecution or court in consideration of making a statement, even a truthful one, such motivation is deemed to render the statement involuntary and inadmissible."'" (*People v. Gonzalez*, at p. 883; accord, *People v. Holloway*, at p. 115.)

"'On appeal, we conduct an independent review of the trial court's legal determination' as to the voluntariness of a confession." (*People v. Wall*, *supra*, 3 Cal.5th at p. 1066.) "[W]here, as here, '[t]he facts surrounding an admission or confession are undisputed to the extent the interview is tape-recorded,' those facts" are also "'subject to our independent

review.'" (*Ibid.*; accord, *People v. Linton*, *supra*, 56 Cal.4th at p. 1177.) "'The prosecution has the burden of establishing by a preponderance of the evidence that a defendant's confession was voluntarily made.'" (*Wall*, at p. 1066; see *People v. Falaniko* (2016) 1 Cal.App.5th 1234, 1249.)

B. *The Trial Court Erred in Denying Johnson's Motion To Suppress Because the Police Officers Made Improper Threats and Promises of Leniency*

Although the line between permissible police techniques and impermissible police conduct in obtaining a confession may be a fine one, Officer Flynn crossed it. Officer Flynn made an implied promise of leniency or benefit by telling Johnson that, if he was "truthful," the officer would go to the judge and advise the judge Johnson was a "great" kid with potential and that he would continue to help Johnson until the trial. He also said he would help speak to the district attorney and the judge about how cooperative Johnson had been. These statements implied that Officer Flynn's assistance and ability to communicate with the judge and the prosecutor on Johnson's behalf would result in favorable treatment or leniency. (See *People v. Gonzalez*, *supra*, 210 Cal.App.4th at pp. 883-884 [statement that, unless the defendant cooperated with police, the parole agent "would be forced to write a parole report recommending [the defendant] for the 'maximum in-custody time,'" was an improper promise of benefit or leniency, given the implication that "if [the defendant] agreed to talk with detectives without counsel present his parole agent would recommend a shorter sentence in the parole report'"]; *In re Shawn D.* (1993) 20 Cal.App.4th 200, 215-216 [officer's statement to the defendant, a minor, that he could be

tried as an adult and that the officer would "*personally talk to the D.A. or persons who do the juvenile*" if the defendant helped retrieve stolen property was "clearly a promise that [the defendant] will benefit from telling the police the whereabouts of the stolen property," and even though the officer "did not come out and state, 'If you confess, I'll make sure you are not tried as an adult,' his comments strongly implied this same meaning"].)

Had Officer Flynn only offered to inform the prosecutors of Johnson's "cooperation," the officer's representations may not have been improper promises. (See *People v. Holloway*, *supra*, 33 Cal.4th at p. 116 ["[t]he detectives did not represent that they, the prosecutor or the court would grant defendant any particular benefit if he told them how the killings happened," and "[t]o the extent [the detective's] remarks implied that giving an account involving blackout or accident might help defendant avoid the death penalty, [the detective] did no more than tell defendant the benefit that might "'flow[ ] naturally from a truthful and honest course of conduct'"'"]; *People v. Jones* (1998) 17 Cal.4th 279, 298 [the "detective's offers of intercession with the district attorney amounted to truthful implications that his cooperation might be useful in later plea bargain negotiations" where the "investigators did not know the full extent of what [the defendant] had done"]; *People v. Ramos* (2004) 121 Cal.App.4th 1194, 1203 [officer's statement that he "would advise the district attorney of [the defendant's] cooperation, but the district attorney would determine what consideration [the defendant] would receive in return for his cooperation" was not a promise of leniency]; *People v. Flores* (1983) 144 Cal.App.3d 459, 469 ["truthful and 'commonplace' statements of possible legal consequences, if unaccompanied by threat or promise, are

permissible police practices and will not alone render a subsequent statement involuntary and inadmissible"].) Officer Flynn, however, did more. He impliedly offered to speak to the judge about Johnson's character and potential and to help him through the pretrial process. Officer Flynn also made a direct threat: If Johnson did not tell him "the truth," he was going to tell the prosecutors that they should not "even entertain" any "deals" and that Johnson was "a liar, and a thief, and a burglar, and a criminal."

Courts have held similar police conduct impermissibly coercive. For example, in *People v. Brommel* (1961) 56 Cal.2d 629, overruled on another ground in *People v. Cahill* (1991) 5 Cal.4th 478, 509, fn. 17, the defendant "persistently and consistently insisted" he had never beaten or struck his daughter, despite "various types of vigorous urging and suggestions from the officers that they knew that defendant had severely beaten" the child. (*Brommel,* at p. 633.) One of the officers, "after stating that defendant had been telling a lot of lies and was not fooling them," stated, "'[I]f we just wrote one word across there, Liar, that would-you can go up before that judge and you can ask him for all the breaks in the world, and he is not going to believe you because when a man tells a lie, then even the truth becomes a lie because he is branded as a liar. [¶] Now if you want to meet that judge that way, if you want to meet your maker that way, well, brother, that is up to you.'" (*Id.* at p. 633.) The Supreme Court held the defendant's admissions were inadmissible because the officer's statement "was both a threat, that unless defendant told the officers what they wanted and were insisting that he tell them they would write 'Liar' on the statement and that defendant could then expect no leniency from the court; and an implied

promise, that if defendant told the officers the story that they were insisting that he tell them they would not write 'Liar' on the document and defendant might expect a 'break' from the court." (*Id*. at pp. 633-634; see *People v. Neal* (2003) 31 Cal.4th 63, 84-85 [detective's statement threatening "to drop defendant off closer to Timbuktu than to home if he did not cooperate" but promising that if the defendant cooperated the detective would "make it as good for him as he could" was "both a promise and a threat"]; *People v. Lee* (2002) 95 Cal.App.4th 772, 786 [police officer "crossed the line between legitimate interrogation and the use of threats to establish a predetermined set of facts" where "the interrogation . . . was not designed to produce the truth . . . but to produce evidence to support a version of events the police had already decided upon"]; *In re Shawn D.*, *supra*, 20 Cal.App.4th at p. 214 [police statement that if the minor "told the truth his honesty would be noted in [the detective's] police report but if [the minor] lied, the deception would also be documented," "obviously implied that [the minor] would be treated more favorably if he told the truth"]; *In re Roger G.* (1975) 53 Cal.App.3d 198, 202 [confession was involuntary where investigators threatened minor might be charged as an adult if he did not confess and threatened "that 'no way' would [the minor] have a chance of probation or parole if 'he [went] in there hard-nosed'"].)

The People argue that "[t]he cases upholding the admission of confessions or damaging statements under similar or comparable circumstances are legion." The People cite four cases from this purported legion: *People v. Daniels* (1969) 1 Cal.App.3d 367, *People v. Steger* (1976) 16 Cal.3d 539, *People v. Mayfield*

(1993) 5 Cal.4th 142, and *People v. Andersen* (1980) 101 Cal.App.3d 563. All four are distinguishable.

In *People v. Daniels*, *supra*, 1 Cal.App.3d 367 the officers (accurately) told the defendant, who was accused of incest, that his family had been taken into custody and that his daughter might be pregnant. (*Id.* at pp. 371-372.) The court noted the evidence was "uncontradicted that no promises or inducements were made," noting the officer "testified that none were made and defendant mentioned none in his testimony." (*Id.* at p. 376.) Responding to the defendant's argument he had confessed to protect his family, the court stated "the evidence is uncontradicted that there was no promise to release defendant's family, nor *promise* to take the matter up with higher authorities." (*Ibid.*)

In *People v. Steger*, *supra*, 16 Cal.3d 539, the defendant similarly claimed she "spoke to police only to free her [codefendant] husband." (*Id.* at p. 550.) The court noted, however, "the police made no threat or promise, either express or implied, regarding the fate of defendant's husband," and "[a]ny desire of defendant to aid her husband by confessing was entirely self-motivated." (*Ibid.*)

In *People v. Mayfield*, *supra*, 5 Cal.4th at p. 176 the officers "threatened to quit listening to defendant." The court held this remark was not coercive because the officers' remark was "about a course of action they could legally follow" (i.e., stop listening to the defendant) and "the police did not offer defendant anything." (*Ibid.*) Refusing to listen to a defendant is very different from offering to help speak to the judge and the prosecutors and threatening to tell the prosecutors not to discuss settlement.

And in *People v. Andersen*, *supra*, 101 Cal.App.3d 563 the police officers, when asked by a murder suspect whether she would spend the rest of her life in jail if she confessed, responded by "discussing degrees of homicide" and "the preference of judges and juries for admissions and explanations of intent over denials against the evidence." (*Id*. at p. 582.) The court noted "the police were venturing on thin ice because of the implication that a judge or jury would look on defendant's case in a favorable light if she showed remorse by telling the truth, and in an unfavorable light if she persisted in a false story." (*Ibid.*; see *id*. at p. 576 [recognizing the police "skate a fine line" and "must avoid threats of punishment for the suspect's failure to admit or confess particular facts and must avoid false promises of leniency as a reward for admission or confession"].) The court in *Andersen* held, however, that the officers' "answers to defendant's question were substantially accurate, insofar as answers to a legal question can ever be accurate" and that "[t]he police said nothing about what they might do, only what they thought a court might do." (*Id.* at pp. 582-583.) Here, Officer Flynn told Johnson what he was going to do: tell the prosecutors that they should not entertain any plea deals and that Johnson was a liar and a criminal who refused to cooperate with law enforcement. He also told Johnson what he would not do: tell the judge Johnson was a good kid with potential. And rather than giving Johnson answers to legal questions that were "substantially accurate," Officer Wong offered some unsolicited and questionable legal advice when he told Johnson that, because Johnson admitted he knew where the missing items were, he was already guilty of conspiracy to commit burglary, "might as well" have been at the scene of the crime, and was going to jail "regardless."

C. *The Officer's Threats and Promises Were the Motivating Cause of Johnson's Confession*

That Officer Flynn made improper promises and threats to Johnson does not render his subsequent confession involuntary unless the officer's statements were "'the motivating cause of the decision to speak.'" (*People v. Jones* (2017) 7 Cal.App.5th 787, 812; see *People v. McCurdy*, *supra*, 59 Cal.4th at p. 1088 ["a statement is involuntary and inadmissible when the motivating cause of the decision to speak was an express or clearly implied promise of leniency or advantage"].) "'A confession is "obtained" by a promise within the proscription of both the federal and state due process guaranties if and only if inducement and statement are linked, as it were, by "proximate" causation. . . .' 'This rule raises two separate questions: was a promise of leniency either expressly made or implied, and if so, did that promise motivate the subject to speak?'" (*People v. Tully* (2012) 54 Cal.4th 952, 985-986; see *People v. Williams*, *supra*, 49 Cal.4th at p. 437 ["[a] confession is not involuntary unless the coercive police conduct and the defendant's statement are causally related"].) In other words, the "improper promise 'must be causally linked' to the defendant's confession to warrant exclusion." (*People v. Wall*, *supra*, 3 Cal.5th at p. 1066.)

Courts look to the "timing and sequence of events" to determine whether improper police coercion was "a motivating cause" in a defendant's decision to make incriminating statements. (*People v. Gonzalez*, *supra*, 210 Cal.App.4th at p. 884; see *People v. Perez* (2016) 243 Cal.App.4th 863, 876 [promise was "a motivating cause" of the defendant's confession where the defendant denied any knowledge of the crime for

approximately 25 minutes, until officers promised that "'we are not gonna charge you with anything,'" and "[i]mmediately after" the defendant confessed (italics omitted)]; *People v. Gonzalez*, at pp. 883-883 [promise of leniency was "a motivating cause" of defendant's statements where, "immediately after" the promise, the defendant "changed his mind"]; *People v. Flores*, *supra*, 144 Cal.App.3d at p. 472 ["combined implied threats and promises . . . were the motivating inducing cause" where, following "almost an hour of interrogation and repeated denials . . . of any complicity or culpability in the victim's death, after the threat of a possible death penalty, after assurance that his prior record of assaultive conduct was 'nothing to worry about' and after the implied promise that he might be released from custody until trial, appellant broke and gave the inculpative version of the events that night"]; cf. *People v. Wall*, *supra*, 3 Cal.5th at p. 1067 [promise of leniency "was not the cause of [the defendant's] confession," because, before the detective made the alleged promise, the defendant had already begun to confess, using "almost exactly the same opening sentence when he began describing the events . . . after the alleged promise of leniency as before"]; *People v. Linton*, *supra*, 56 Cal.4th at p. 1177 [implied promise of leniency was not the "'motivating cause' of defendant's subsequent admissions" where the defendant "did not immediately respond" to the promise with an admission of guilt, "which would have reflected his reliance on such promise," but rather made admission hours later during further questioning].)

Johnson consistently and adamantly maintained for nearly an hour that Cuevas and Lee dropped him off before the burglary and that he did not enter the house, despite the three officers' insistence to the contrary. He held fast to this version of events

until Officer Flynn promised, if Johnson told the "truth," to help him "all the way up to trial" and tell the judge Johnson was a great kid with potential and threatened, if Johnson did not tell the truth, to tell the district attorney not to discuss a negotiated plea. Almost immediately after Officer Flynn's promises and threats, Johnson confessed. The timing and sequence of events in the third interview show Johnson made the admissions in direct response to and because of the promises and threats by Officer Flynn.

D. *The Erroneous Admission of Johnson's Incriminating Statements Was Not Harmless Beyond a Reasonable Doubt*

We evaluate the trial court's erroneous admission of an involuntary confession under the standard of *Chapman v. California* (1967) 386 U.S. 18, 24. Under this standard, "'we ask whether it appears '"'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained'"'" (*People v. Wilkins* (2013) 56 Cal.4th 333, 350; see *People v. Chun* (2009) 45 Cal.4th 1172, 1201) or whether the record demonstrates "'beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error'" (*People v. Gonzalez* (2012) 54 Cal.4th 643, 663; see *People v. Merritt* (2017) 2 Cal.5th 819, 827). The People have the burden of proving "the error was harmless beyond a reasonable doubt." (*People v. Reese* (2017) 2 Cal.5th 660, 671.) "To determine whether the People have carried their burden, we examine the entire record and must reverse if there is a '"'reasonable probability'"' that the error contributed to the verdict." (*Ibid.*) '"'To say that an error did not contribute to the ensuing verdict is . . . to find that error

unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record.'" (*People v. Pearson* (2013) 56 Cal.4th 393, 463.) "'[T]he focus is on what the jury actually decided and whether the error might have tainted its decision. That is to say, the issue is "whether the . . . verdict actually rendered in this trial was surely unattributable to the error."'" (*Ibid.*)

"Confessions, as a class, will almost always provide persuasive evidence of a defendant's guilt and as such, 'confessions often operate "as a kind of evidentiary bombshell, which shatters the defense."' [Citation.] Therefore, the erroneous admission of a confession 'is much more likely to affect the outcome of a trial than are other categories of evidence, and thus is much more likely to be prejudicial under the traditional harmless-error standard.'" (*People v. Gonzalez*, *supra*, 210 Cal.App.4th at p. 884; see *People v. Bridgeford* (2015) 241 Cal.App.4th 887, 904.) "However, the improper admission of a confession can be harmless, if, for example, the defendant confessed multiple times, was arrested in the course of committing the crime, if there are 'numerous, disinterested reliable eyewitnesses to the crime whose testimony is confirmed by a wealth of uncontroverted physical evidence' or if the prosecution introduced a videotape of the commission of the crime." (*People v. Gonzalez*, *supra*, 210 Cal.App.4th at p. 884.)

The People argue the "evidence of [Johnson's] guilt was overwhelming in this case," and "[g]iven the compelling testimonial evidence adduced at trial, any error in the admission of appellant's confession was clearly harmless beyond a reasonable doubt." The People also contend Johnson "sealed his own fate by his admissions during the first and second

interviews, and by absconding from trial shortly prior to the verdict." These arguments are unconvincing.

Johnson did make several incriminating statements during the first and second interviews, including that he told Lee and Cuevas about the safe and the jewelry box, that he was angry with Mr. Fletcher, and that he was in the car the day of the burglary. But he also stated in those interviews that he did not think Cuevas and Lee were actually going to burglarize the house and that he told them to let him out of the car once he realized Cuevas and Lee were going to commit the crime. Cuevas and Lee did not testify at Johnson's trial, and the Fletchers' neighbor said she saw a tall, heavyset male who did not match Johnson's description—and no one else. While the remaining evidence may have been substantial evidence to support a guilty verdict, it is not overwhelming. (Cf. *People v. Villasenor* (2015) 242 Cal.App.4th 42, 70 [error was harmless beyond a reasonable doubt where "[s]etting aside the statements [improperly] obtained . . . 'overwhelming' is an apt descriptor for the remaining evidence establishing defendant's guilt"]; *People v. Dowdell* (2014) 227 Cal.App.4th 1388, 1405 ["even without hearing [the defendant's] statement, the jury would have convicted [the defendant] as charged based on the overwhelming evidence of his guilt"]; *People v. Gonzalez*, *supra*, 210 Cal.App.4th at p. 885 ["even excluding the unlawful confession we conclude there is sufficient admissible evidence in the record from a variety of 'disinterested reliable' witnesses to support his conviction"].) On this record the People have not established beyond a reasonable doubt that the jury's verdict was "surely unattributable" (*People v. Pearson*, *supra*, 56 Cal.4th at p. 463) to Johnson's confession and apology letter, which were the only

direct evidence of Johnson's presence at and physical participation in the burglary. The oral and written confessions were "evidentiary bombshells" in this case. (*People v. Gonzalez*, at p. 884; see *People v. Neal*, *supra*, 31 Cal.4th at p. 87 ["we cannot say that the confessions were 'unimportant in relation to everything else the jury considered'" where the defendant's "confessions, with their detail and general consistency with each other and with extrinsic facts, functioned as the veritable 'centerpiece of the prosecution's case'"]; *People v. Bridgeford*, *supra*, 241 Cal.App.4th at p. 907 [""'the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him'""].)

DISPOSITION

The judgment is reversed. The matter is remanded with directions to vacate the order denying Johnson's motion to suppress the inculpatory statements in the third interview, to enter a new order granting the motion, and for a new trial.

SEGAL, J.

We concur:

PERLUSS, P. J.

WILEY, 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.