No. _____

IN THE SUPREME COURT OF THE UNITED STATES

In re

TAYLOR B.
Petitioner

v.

PEOPLE OF THE STATE OF CALIFORNIA
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT

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QUESTIONS PRESENTED

1) When the subject of a police custodial interrogation is a child, should investigating officers be required to obtain an express waiver of *Miranda* before beginning the interrogation?
2) When the subject of an interrogation is a child, should police officers be allowed to fabricate incriminating evidence, often referred to as a ruse, to elicit incriminating statements from the child?

JURISDICTION

The judgment of the California Court of Appeal, affirming Petitioner's adjudication of delinquency in juvenile court, was entered on October 19, 2017. The California Supreme Court denied Petitioner's petition for review on January 24, 2018. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., amend. V: "No person … shall be compelled in any criminal case to be a witness against himself…"

U.S. Const., amend. XIV: "No state shall … deprive any person of life, liberty, or property, without due process of law…"

NECESSITY FOR REVIEW

This Court has a history "replete with laws and judicial recognition that children cannot be viewed simply as miniature adults." *J.D.B. v. North Carolina*, 564 U.S. 261, 275 (2011). Based on a growing body of research on juvenile brain development, this Court has repeatedly emphasized that a "child's age is far more than a chronological fact. It is a fact that generates commonsense conclusions about behavior and perception. Such conclusions apply broadly to children as a class. And, they are self-evident to anyone who was a child once himself, including any police officer or judge." *J.D.B.*, 564 U.S. at 272 (citing various U.S. Supreme Court cases) (internal citations and quotation marks omitted).

Recent developments in law and neurological science have confirmed that children are entitled to greater constitutional protections than adults because, among other things, they are "generally are less mature and responsible than adults" and "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *J.D.B.*, 564 U.S. at 272. Children are also "more vulnerable or susceptible to… outside pressures" than adults and "have limited understandings of the criminal justice system and the roles of the institutional actors within

it." *Id.* (citing *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Graham v. Florida*, 560 U.S. 48, 78 (2010)).

For over a decade, this Court has recognized that these qualities make juveniles different from adults at every stage of criminal proceedings against them. *Roper*, 543 U.S. at 568 (barring capital punishment for juveniles); *Graham,* 560 U.S. at 74-75 (barring life without the possibility of parole for juvenile offenders who committed non-homicide crimes because "juveniles' lack of maturity and underdeveloped sense of responsibility often result in impetuous and ill-considered actions and decisions"); *see also Miller v. Alabama*, 567 U.S. 460, 480 (2012) (requiring courts to consider a juvenile's "diminished culpability" before imposing a life without parole sentence). In the *Roper/Graham/Miller* line of cases, this Court recognized that even in the most extreme cases, juveniles are entitled to greater constitutional protections than adults. These holdings were based on this Court's understanding that juveniles have diminished ability to appreciate the consequences of their actions and avoid harmful choices.

This Court has recognized that juveniles are different from adults in the interrogation context long before those recent developments in juvenile law and policy and neuroscience. *See, e.g., In re Gault,* 387 U.S.

1, 45 (1967) ("Admissions and confessions of juveniles require special caution."). After the *Roper/Graham/Miller* cases, this Court again emphasized in *J.D.B.* that, in "the specific context of police interrogation, [...] events that would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens." *J.D.B.*, 564 U.S. at 272. Taylor is one of many juveniles who have been overpowered in a police investigation. Every aspect of her interrogation was geared toward eliciting incriminating statements, not the truth. Police officers exploited vulnerabilities that are typical of any child, such as her dependence on her mother, susceptibility to influence from adults in a position of power, and her limited understanding of the police interrogation and its consequences.

Police also exploited vulnerabilities specific to Taylor and the trauma she suffered. She was homeless at the time she was interrogated and living with her mother's various drug acquaintances. CT 26, 28-30; SRT 2, 4-6. Her school attendance was sporadic at best, and she had a history of being physically and sexually abused by various men throughout her childhood. *Id.* Police knew most of these facts from the beginning of their interrogation. *See* SRT 2, 4-6, 21. More importantly, all of this information was available to both lower

courts when they assessed her capacity to voluntarily waive her *Miranda* rights and exercise her willpower throughout the interrogation. *See id.*

This Court should review the tactics police used against Taylor in light of the "growing consensus–among the supporters of those techniques, not just the critics–about the need for extreme caution in applying them to juveniles." *In re Elias V.*, 237 Cal. App. 4th 568, 587 (2015). This Court should review two specific techniques police used against 15-year-old Taylor. First, police relied on an implied waiver of *Miranda* and did not even attempt to elicit an express waiver or explain that Taylor was giving up her *Miranda* rights by speaking to them. Second, police used a ruse and repeatedly insisted that they had incriminating evidence, which didn't exist, against Taylor until she adopted their statements. Police officers used a variety of other tactics—such as minimization and the false choice strategy—that this Court and lower courts have viewed with increasing skepticism. Recent developments in juvenile law and policy, neuroscience, and even the hallmark manual on police interrogation support a categorical rule barring police from using ruses against children. *Id.* Review is required to determine whether the most vulnerable population, children like

Taylor, should be subject to some of the most deceptive and coercive interrogation techniques.

STATEMENT OF THE FACTS

I. THE CRIME

A. Taylor's Unsafe and Unstable Living Situation

On October 10, 2014, Taylor was a 15-year-old girl with no previous experience with law enforcement. RT 104-05. She was living with her mother, Jennifer Nichols, and Nichols's various drug acquaintances. SRT 6, 21. Taylor's father had abandoned her just after she was born. SRT 2; CT 48-49. Nichols was addicted to methamphetamine and had suffered several prior convictions for theft and drug-related offenses. CT 25, 28. Due to addiction, Nichols lost her job and her housing, leaving the family's living situation completely unstable. Nichols resorted to living with different drug acquaintances, moving from house to house often. CT 26; SRT 6, 21. Taylor had no choice but to come with her. *See id.* Due to homelessness, Taylor stopped attending high school and she suffered stress and abuse living in unsafe environments inhabited by her mother's adult male companions. CT 22, 26; SRT 4-6, 21.

B. A Fight Between Adults Ends in a Homicide

Nichols befriended Bradley Hayes, a telephone lineman from Hesperia. RT 224. He lived in a trailer near the beach during the workweek. *Id.* Nichols and Hayes used methamphetamine together, and they had a tumultuous, violent relationship. RT 114, 120-21. One day, Hayes agreed to drive Nichols, Taylor and Taylor's adult boyfriend, Alejandro Terrazas, to Terrazas's car in Hawthorne. Nichols sat in the front passenger seat of Hayes' truck. Taylor and Terrazas were in the back seat. Taylor didn't know exactly why, but Hayes and Nichols started fighting. RT 114. Taylor was scared because she knew that Hayes carried a gun in his truck. RT 114-15. As the fight escalated, Hayes turned the car around, reversed course and began cursing and driving erratically. RT 114.

Hayes' bizarre conduct triggered a panic reaction, related to Taylor's post-traumatic stress disorder. RT 187-88. Taylor suffered from PTSD due to childhood physical and sexual abuse, which made her hypersensitive to potential danger and impaired her ability to relax and sleep well. RT 181. Taylor feared that Hayes was kidnapping her and her mother or was about to hurt them. RT 187-88. Hayes slammed on the brakes as he was driving, and Taylor saw his gun slide out from under the passenger seat. SRT 10. She thought he was reaching for it,

so she grabbed a sunscreen bottle on the floor of car and hit Hayes in the head with it and sprayed him with sunscreen oil. SRT 10; RT 127. Then suddenly, Nichols stabbed Hayes in the abdomen while Terrazas strangled him until he lost consciousness.

C. Taylor Reports the Crime to the Police

Taylor called 911 and reported the violent incident to the police. She told the police that Hayes had tried to kidnap them and that they resisted. The police reported to the scene, and Taylor approached them. She gave the officers pieces of Hayes's cell phone, which the adults broke during their fight. The police officers arrested all three passengers. Hayes eventually died of asphyxiation and stab wounds. RT 113. There were no wounds on his head. *Id.*

II. THE INVESTIGATION AND TRIAL

A. Police Use of an Implicit Miranda Waiver and a Ruse to Elicit a Confession from Taylor

Detective Goodpaster and another male officer interrogated Taylor in an interview room. The officers asked Taylor a few routine booking questions before reading her *Miranda* warnings. Just before he read Taylor her *Miranda* warnings, Goodpaster told Taylor, "I have to read this [*Miranda* warning] to you but we're going to talk a little more in depth, okay? I already talked to your mom." SRT 2. He never attempted to obtain an express waiver of those rights. *See id.* Instead,

he just started asking simple questions about her home life and the circumstances of the offense, which Taylor answered. SRT 2-3.

Taylor told the officers that she was afraid of Hayes and the gun he kept in his truck. SRT 7-10. She also explained that Hayes was driving erratically and not letting anyone out of his truck. SRT 8-9. Dissatisfied with Taylor's initial answers, the officers engaged in a "ruse" to get Taylor to confess. RT 66. Goodpaster claimed that he was downloading a tape of a 911 call that had recorded a conversation between Taylor, her mom and her boyfriend after the cell phone didn't hang up. SRT 17-25; *see also,* RT 263. Goodpaster claimed that the tape revealed that the three had conspired to make up a false story about being kidnapped in attempt to excuse or justify killing Hayes.

Goodpaster knew that his false claims about a 911 tape implicating Taylor in the cover-up of a murder were upsetting her. He repeatedly reassured her and at one point even remarked on her age, stating: "You're just a baby. Just talk to me." SRT 20. Goodpaster also knew that his ruse was leading to very suggestive questioning. He told Taylor: "I don't want to put words in your mouth. You just have to tell me." SRT 22. But Taylor never elaborated her own words but continued to assent to any answers the officers suggested.

Goodpaster kept pushing for a confession: "Who said we need to think of something, we need to think of something, we need to think of a story? Was that your mom or you?" SRT 24. Taylor responded, "I don't think it was me. No." Goodpaster asked, "Maybe it was your mom?" Taylor responded, "Maybe. I don't know." SRT 24. Goodpaster kept pushing for answer: "She [Taylor's mother] said something about 'We need to come up with a story or the same page.'" Taylor responded, "I guess so, yeah, I think… I'm not too certain. I just—I know it was something like that." SRT 25.

B. Denial of the Motion to Suppress the Statement

When the prosecution attempted to admit Taylor's statement into evidence, defense counsel orally moved to suppress it based on constitutional grounds. RT 4. First, the defense argued that the statement was obtained in violation of *Miranda v. Arizona,* 384 U.S. 436 (1966). RT 89. The prosecution conceded that no express waiver of *Miranda* had been sought or obtained by the police, but argued that Taylor's answers to Goodpaster's questions constituted an "implied waiver." RT 86. When defense counsel objected to using an implied waiver against a juvenile, RT 87-89, the prosecutor argued that Mirandized statements can be admitted based on "implied waivers" in addition to express waivers. RT 82. The prosecutor noted that the

California Supreme Court in *People v. Lessie*, 47 Cal. 4th 1152 (2010), found that a juvenile suspect's confession was properly admitted because the juvenile had "implicitly" waived his right to counsel. *Id.* at 1169.

Taylor also argued that the statement was involuntary because the police employed a ruse to elicit the confession. The prosecutor cited *People v. Guerra*, 37 Cal. 4th 1067 (2006), to support the assertion that police may use a ruse or other deceptive tactics to elicit a confession. RT 84. Defense counsel conceded that the use of a ruse may permissible for adult suspects, but argued that the same is not true for juvenile suspects, who should be treated differently due to immaturity and developmental deficits. RT 86-91.

After taking the hearing under submission, the trial judge denied the motion to suppress. RT 106. The judge held that Taylor implicitly waived her *Miranda* rights by speaking with Goodpaster and that such waivers were permissible even when the defendant is a juvenile. *Id.* While the judge did not explicitly address the propriety of using a police ruse to elicit a confession from a juvenile suspect, she found that no "coercive tactics" had been used and thus the statement was voluntary. *Id.*

C. The Adjudication Hearing: Taylor's Uncorroborated Confession Is Used to Prove Assault

The prosecution called Goodpaster, who testified that Taylor originally gave a false account of what had happened, but that, after he and his partner used a "police ruse," Taylor admitted to hitting Hayes in the head with a bottle of sunscreen. RT 66, 263. Taylor's taped statement was admitted in evidence. RT 64, 122. Photos of sunscreen bottles found in the car were admitted. RT 72. An autopsy report, in which the coroner found no abrasions on Hayes's head and listed the cause of death as "stabbing" and "asphyxiation," was also admitted. CT 85; *see also* RT 113.

The defense called Nancy Kaser-Boyd, Ph.D., a forensic psychologist who specializes in the effects of trauma and PTSD on children, to testify in support of self-defense. RT 171, 182, 187-88. Kaser-Boyd opined that years of neglect, unstable living arrangements and being physically and sexually abused by adult males affected Taylor's view of Hayes's demeanor and threatening conduct on the day of the homicide. RT 187-88. Kaser-Boyd diagnosed Taylor as suffering from "complex PTSD" due to repeated exposure to trauma, causing Taylor to honestly and reasonably believe that Hayes posed imminent bodily harm to her and her mother. RT 180.

D. Decisions in the California Courts

The juvenile judge found that the prosecution proved beyond a reasonable doubt that Taylor had committed assault with intent to inflict great bodily injury and accessory after the fact. RT 302-303. Despite the growing body of law that affords greater constitutional protections to juvenile suspects, the Court of Appeal treated Taylor like an adult. When the panel analyzed the voluntariness of Taylor's *Miranda* waiver, it cited two cases where juveniles with criminal records implicitly waived their *Miranda* rights. Opn. at 6-9 (citing *People v. Nelson*, 53 Cal. 4th 367, 374-75 (2012); *People v. Jones*, 17 Cal. App. 5th 787, 809 (2017)). The panel then found 15-year-old Taylor, who had no experience with law enforcement, was a "savvy, street-smart young woman" who understood that she implicitly waived her *Miranda* rights just by answering officers' questions. Opn. at 8. For support, the Court of Appeal cited three cases that pre-date *J.D.B.* Opin. at 8-9 (citing *People v. Lessie*, 47 Cal. 4th 1152, 1169 (2010); *People v. Lewis*, 26 Cal. 4th 334, 384 (2001); *People v. Davis*, 29 Cal. 3d 814, 825 (1981)).

The California Court of Appeal held that, even though Taylor was a juvenile, her statements were voluntary because the interrogation did not involve "relentless questioning" during an "accusatory

interrogation" that was "dominating, unyielding, and intimidating." Opin. at 19 (citing *In re Elias V.*, 237 Cal. App. 4th 568, 586 (2015)). The California Supreme Court denied Taylor's petition for review on January 24, 2018.

ARGUMENT

I. THE COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER RECENT DEVELOPMENTS IN JUVENILE LAW AND POLICY APPLY TO *MIRANDA* WAIVER ANALYSIS.

The California courts did not consider the effect of recent developments in juvenile law and policy that recognize that children are more susceptible to pressure from authority and less capable of understanding the complexities of criminal proceedings against them. These vulnerabilities are most important when a child's consent to give up her constitutional rights is at issue.

A. The Court Should Grant Review to Determine Whether This Supreme Court's Holding and Analysis in *J.D.B. v. North Carolina* Applies to Waiver Analysis.

The California Court of Appeal erred when it held that *J.D.B. v. North Carolina*, 564 U.S. 261 (2011) was inapplicable to waiver analysis. This Court in *J.D.B.* held that, in juvenile cases, *Miranda* custody analysis should be viewed through the eyes of a reasonable juvenile. *Id.* at 274. The Court's holding was not specific to the exact

circumstances of that case. The Court made specific findings that apply to juveniles as a class and the vulnerabilities they bring into the interrogation room.

This Court in *J.D.B.* relied on a growing body of neuroscience and law that supports the "common sense conclusions" that this Court has always recognized. *J.D.B.*, 564 U.S. at 272. Among other vulnerabilities, this Court has repeatedly recognized that children are "generally are less mature and responsible than adults," they "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them," and they "are more vulnerable or susceptible to outside pressures" than adults. *Id.* at 272 (citing various U.S. Supreme Court cases). These qualities apply to all children because, "no matter how sophisticated, a juvenile subject of police interrogation cannot be compared to an adult subject." *Id.* at 272-73. This Court held that these common principles applied to the "specific context of police interrogation." *Id.* at 273.

Evidence shows that juveniles lack the capacity to understand their *Miranda* rights. *See, e.g.,* Thomas Gisso, *Juveniles' Waiver of Rights: Legal and Psychological Competence*, 202–03 (1981); A. Bruce Ferguson & Alan Charles Douglas, *A Study of Juvenile Waiver*, 7 San

Diego L. Rev. 39, 53 (1970) (concluding that over 90 percent of the juvenile suspects had failed to understand their rights, and yet had still "voluntarily" waived them). One study found that the key words used in *Miranda* warnings, such as "counsel," "appointed," and "waive," are nearly impossible for juveniles to understand because they require a high school or college education. Richard Rogers et al., *The Comprehensibility and Content of Juvenile Miranda Warnings,* 14 Psychol., Pub. Pol'y, & L. 63, 82 (2008).

Juveniles could easily be afforded one more safeguard, an opportunity to expressly waive their *Miranda* rights, before consenting to a police interrogation, a situation where they are more likely than any to make unreliable and irreversibly damaging statements. In every other context, juveniles are given limited capacity to make decisions that might harm them and are afforded procedural safeguards when they give up even small rights. For example, juveniles cannot buy alcohol or vote, they cannot consent to sexual relationships with adults, and under the common law infancy doctrine they can retract any contract they made with an adult.

Taylor exhibited all the vulnerabilities of youth, and the interrogating officers exploited them. As just one example, Goodpaster told Taylor, "I have to read this [*Miranda* warning] to you but we're

going to talk a little more in depth, okay? I already talked to your mom." SRT at 2. He said this just before he read *Miranda* warnings to Taylor. *Id.* Goodpaster suggested to Taylor, a child who has never been in police custody and quite possibly had never heard of *Miranda* warnings before, that they were a mere formality. She had no way of understanding what her rights meant when Goodpaster gave her no meaningful opportunity to use them. Regardless of any constitutional rights he was about to read to Taylor, Goodpaster was planning to "talk to her a little more in depth."

What is worse, Goodpaster implied that Taylor's mom gave the officers permission to talk to her. Even if Taylor understood the *Miranda* warnings as substantive rights that she could exercise right then, she understood them only through the view that her mom had given some consent for her to waive them. This tactic, implying that the suspect's mother wanted her to waive her *Miranda* rights, certainly "would leave [an adult] cold and unimpressed." *J.D.B.*, 564 U.S. at 272. But this is enough to overwhelm any child, and Taylor was no exception.

B. This Court Should Grant Review to Definitively Address the Reasoning in *J.D.B.* and the Implicit Waiver Doctrine.

The California Supreme Court, like several other state high courts, has not explicitly addressed how *J.D.B.*'s findings about juveniles' vulnerabilities in custodial interrogations apply to the implicit waiver doctrine. But California courts, like many other state and federal courts, have repeatedly extended *J.D.B.*'s analysis beyond the facts of that case and *Miranda* custody analysis. *See, e.g., Dassey v. Dittmann*, 877 F.3d 297 (7th Cir. 2017) ("The Supreme Court has made it clear that juvenile confessions call for 'special care' in evaluating voluntariness") (citing *J.D.B.* and other Supreme Court cases); *People v. Nelson,* 53 Cal. 4th 367, 383 n. 7 (2011) ("*J.D.B.*'s analysis generally supports the view that a juvenile suspect's known or objectively apparent age is a factor to consider in an invocation determination."); *In re J.G.*, 228 Cal. App. 4th 402, 410 (2014) ("*J.D.B.*'s holding-that a juvenile's age is a factor in the reasonable-person analysis of Fifth Amendment custody may implicate other areas of criminal procedure including voluntariness of waivers of rights and seizure inquiries as well as areas of substantive criminal law, such as blameworthiness of the subject's conduct and/or state of mind."). Without guidance from this Court, the California courts declined to apply *J.D.B.* when

juveniles are most vulnerable—when they waive their *Miranda* rights through the subtle implied waiver doctrine.

J.D.B. naturally extends to the implicit waiver doctrine because juveniles have a limited capacity to consent to a *Miranda* waiver or understand their rights and the consequences of waiving them. As Justice Liu stated in a dissent to the court's denial of petition for review in *In re Joseph H.*, 200 Cal. Rptr. 3d 1, 1 (2015) (Justice Liu dissenting), years after *J.D.B.* was decided, "*Miranda* waivers by juveniles present special concerns." The dissent cited the same concerns that arise from the implied waiver in Taylor's case. Citing *J.D.B. v. North Carolina*, the court noted the "very real differences between children and adults," which "must be factored into any assessment of whether a child validly waived his *Miranda* rights." *Id.* These differences apply to waiver analysis, not just custody analysis. "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." *Id.* (internal citations and quotation marks omitted).

These issues are all present in Taylor's case. Her personal background and history of trauma are relevant here, but police also used methods that would be coercive to any child. They implied that her mother had already consented to her speaking with police officers. SRT 2. They treated *Miranda* as a mere formality rather than a substantive right Taylor could exercise. *See id.* Police officers also told her they would "talk a little more in depth" before even reading her rights. *Id.* These steps might be permissible in the case of an adult, but a child who has never heard these advisements before could not possibly understand that she could exercise her *Miranda* rights under those circumstances.

II. THIS COURT SHOULD GRANT REVIEW TO DETERMINE WHETHER POLICE MAY USE RUSES TO ELICIT CONFESSIONS FROM JUVENILE SUSPECTS.

There is a high risk of false confession when police officers lie to suspects. As the California Court of Appeal put it, "Confronting innocent people with false evidence [. . .] may cause them to disbelieve their own innocence or to confess falsely because they believe that police possess overwhelming evidence." *Elias V.*, 237 Cal. App. 4th at 584 (citing various studies about the effect of using false evidence against suspects). "Innocent suspects may succumb to despair and

confess to escape the rigors of interrogation in the naïve belief that later investigation will establish their innocence rather than seek to confirm their guilt." *Id.* This might be one of many reasons many other countries don't allow police officers to lie to any suspects. *See id.* ("False evidence, the use of which is forbidden in Great Britain and many European nations was used in many cases in this country in which defendants subsequently exonerated by DNA evidence were wrongfully convicted based upon confessions.") (internal citations omitted).

This Court has generally allowed police to deceive adult suspects, with some reservations, but the risk of a false confession is far higher when these tactics are used against children. Studies consistently show that juveniles are more likely than adults to falsely confess. *See* Steven Drizin & Richard Leo, *The Problem of False Confessions in the Post–DNA World*, 82 N.C. L. Rev. (2004) (finding that, in a sample of 125 people who had falsely confessed to crimes, juveniles under 18 years old were an overrepresented group comprising approximately 33% of the sample); *see also* Allison Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 Rutgers L. Rev. 943, 952 (2010) ("juveniles are over-represented in proven false confession cases, typically accounting for about one-third of the samples").

Courts and scholars therefore have recognized "a growing consensus—among the supporters of those techniques, not just the critics—about the need for extreme caution in applying them to juveniles." *Elias V.*, 237 Cal. App. 4th at 578; *see also* Steven Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. Ky. L. Rev. 257, 274-75 (2007) (finding that juveniles are more likely than adults to provide false confessions and yield to police tactics, such as leading and repetitive questioning, due to adolescent brain development, pressure to please authority figures and other factors). But, as Taylor's case and the division among lower courts show, this Court must draw a brighter line when police use deception against juvenile suspects.

Goodpaster testified that he and his partner used a "ruse" when they interrogated Taylor to elicit a confession from her. RT 66. They told Taylor that her mother's cell phone stayed connected after someone in the car first called 911, and that they had somehow downloaded everything that was said in the car after Nichols stabbed Hayes. RT 66, 263. Goodpaster insisted that he heard various incriminating statements. He repeatedly claimed that Taylor knew Hayes was dead before she called the police, that Taylor and her mom conspired to

create a false story about being kidnapped in order to get away with killing Hayes, and that Taylor hit Hayes out of anger rather than fear. RT 66, 263.

Taylor unsurprisingly adopted some of the officers' incriminating statements during the ruse. RT 66, 90. The fact that Taylor caved during the ruse was later used to prove her culpability at trial. But Taylor's shift to a more nervous and submissive demeanor and her short and muted answers should have been evidence that she was completely overpowered by the ruse and the persistent way it was employed.

A. The Deceptive Tactics That are Appropriate for Adults Should not be Used Against Children.

This Court has generally allowed the police to use deceptive tactics to elicit a confession from a suspect. *See, e.g., Illinois v. Perkins*, 496 U.S. 292, 297 (1990). The focus of the voluntariness analysis of a confession obtained through the use of a police ruse is whether the deception was defendant's will was overborne when she confessed. *Lynumn v. Illinois*, 372 U.S. 528, 534 (1963). When the suspect is a juvenile, however, courts have become increasingly cautious about allowing deceptive tactics like those used against Taylor. *See, e.g., People v. Elias V.*, 237 Cal. App. 4th 568 (2015). The risk of both

coerced statements and false confessions are much higher for juveniles than adults. *Id.* at 578.

In Taylor's case, like many other children, the risk of a false statement was high. She was kept in an isolated room, separate from her mother or any friendly adult, until the interrogation began late in the evening. People's Ex. 14. The psychiatrist who evaluated Taylor testified that the events Taylor had just witnessed was "the worst thing she'd lived through." RT 207. The video shows her wrapped in a sheet, in a fetal position, visibly distressed and even crying at times. *See* People's Ex. 14. Two adult male police officers interrogated her. People's Ex. 14; SRT 1.

Taylor's will was overborne from the moment Goodpaster told her that they would talk more about the events before even reading her *Miranda* rights. Then, throughout the interrogation, Goodpaster repeatedly referenced fabricated incriminating evidence. *See, e.g.,* SRT 17-26. He proposed specific false factual scenarios and then falsely claimed these were on the tape. *Id.* He pushed for Taylor's agreement. *Id.* She resisted a couple of times, but she eventually agreed to the factual account that Goodpaster claimed was on tape. *Id.*

B. A Bright Line Rule is Required to Protect Children Like Taylor, who Suffered a Long History of Trauma, Abuse, and Neglect.

To protect all children—and specifically children like Taylor with histories of trauma, abuse, and neglect—this Court should prohibit police officers from using a ruse to elicit incriminating statements from any child. Even the Reid manual, the hallmark manual on police interrogations, agrees. *In re Elias V.*, 237 Cal. App. 4th 568, 587 (2015) (citing Inbau et al., *Criminal Interrogation and Confessions* (5th ed. 2013)). The Reid manual has been used to train about two-thirds of police executives in the U.S. to use a ruses and other deceptive tactics against adults. *Id.* at 588. And the Reid manual recommends that only one tactic—the use of "fictitious evidence which implicates the subject"—should be reserved for adults and not used against children. Inbau et al., *Criminal Interrogation*, at 255. Specifically, the Reid manual advises that "this technique should be avoided when interrogating a youthful suspect with low social maturity" because juveniles "may not have the fortitude or confidence to challenge such evidence and depending on the nature of the crime, may become confused as to their own possible involvement if the police tell them evidence clearly indicates they committed the crime." *Id.*

Throughout Taylor's interrogation, she sat, wrapped in a sheet, in a fetal position, with two adult male police officers who towered over her in a small room. *See generally* People's Ex. 14; SRT 2-26. The officers frequently implicated her mom and adult boyfriend, and often talked over her and insisted on their version of the facts. *Id.* Because Taylor was a juvenile, and because she had a history of abuse, there was a high likelihood that the use of this inappropriate police ruse was would produce a false statement.

Police knew of most of Taylor's vulnerabilities. Among other things, Taylor told the officers she didn't speak with her father, that she and her mother were "pretty much" homeless, and that she wasn't attending high school. SRT 2, 4-5. She also told the officers that she and her mom were staying in Hayes' trailer because they "had nowhere else to go." SRT 6. Before the fight, Taylor said, Hayes was threatening the rest of the people in the car, driving erratically, and had a gun. *See, e.g.,* SRT 7-9. At one point in the video, Taylor showed the officers scratches on her arms from Hayes. *See* People's Ex. 14. The Court of Appeal stressed that Taylor conceded that Goodpaster "proposed specific factual scenarios that were apparently consistent with his belief about what actually had happened." Opn. at 18. The panel

reasoned, "It is difficult to see how this type of ruse would lead to a false statement." *Id.* But all of the evidence showed that Taylor was most likely a victim caught up in a lethal fight between adults who were high on methamphetamine.

Although the officers had no legitimate reason to suspect Taylor was lying when they used the ruse, they had every reason to know she would be susceptible to their tactics. They recognized Taylor's vulnerability and used it to pull incriminating statements out of her. When she seemed reluctant, Goodpaster told Taylor, "I mean you're just a baby. Just talk to me, I mean." SRT 20. He offered reasons she might have attacked Hayes and said, "You didn't want to spend, um, Wednesday, Thursday, Friday with him but you guys are kind of obligated to because you guys are kind of homeless right now." SRT 21. Goodpaster exploited the ways Taylor was particularly powerless and vulnerable as he applied the ruse. Yet the California Court of Appeal, assessing from the totality of the circumstances, found Taylor to be a "savvy, street-smart young woman" who was not coerced by these tactics. Opin. at 8. This Court should consider a clear rule against using police ruses on children so that cases like Taylor's, in which juvenile-specific weaknesses are exploited through police deception, do

not continue slipping through the one-size-fits-all totality of the circumstances test.

CONCLUSION

For the foregoing reasons, this Court should grant review.

Dated: April 20, 2018 Respectfully submitted,

Sean Kennedy (SB No. 145632)
Attorney for Petitioner

CERTIFICATION OF WORD COUNT

I, Sean Kennedy, hereby certify that this brief contains 5,658 words as calculated by the word processing software in which it was written. I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 20, 2018

Respectfully submitted,

Sean Kennedy (SB No. 145632)
Attorney for Petitioner

PROOF OF SERVICE

I, Christopher Hawthorne, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 919 Albany Street, Los Angeles, CA 90015. On April 20, 2018, I served the foregoing document described as Petition for Writ of Certiorari by placing a copy thereof enclosed in sealed envelopes addressed as follows:

Hon. Irma J. Brown
Judge, Los Angeles Superior Court
Department 240
Inglewood Juvenile Courthouse
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In the care of:
Center for Juvenile Law and Policy
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California Court of Appeal
Second Appellate District, Division Three
300 S Spring St, B-228
Los Angeles, CA 90013

California Supreme Court
350 McAllister St
San Francisco, CA 94102

I deposited such envelopes in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am aware that on motion of the party served, service is presumed invalid if postal cancelation date or postage meter date is more than one business day after date of deposit for mailing in affidavit.

Executed on April 20, 2018, at Los Angeles, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Christopher Hawthorne

Appendix A

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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.

Appendix B

Court of Appeal, Second Appellate District, Division Three - No. B270862

S245679

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re TAYLOR B., a Person Coming Under the Juvenile Court Law

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THE PEOPLE, Plaintiff and Respondent,

v.

TAYLOR B., Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice