

Court of Appeal, Third District, California.
The PEOPLE, Plaintiff and Respondent,

v.

Ladell Deangelo BROWN, Defendant and Appellant.

No. C050121.

(Super.Ct.No. 02F03173).

June 23, 2006.

Office of the State Attorney General, Sacramento, CA, for Plaintiff and Respondent.

[Victor J. Morse](#), San Francisco, CA, for Defendant and Appellant.

CANTIL-SAKAUYE, J.

*1 Cheryl Jones was killed and her husband Victor Jones was seriously wounded on April 11, 2002, when what appeared to begin as an armed robbery ended in murder and attempted murder. The district attorney charged Dante Jamahl Alexander, Ladell DeAngelo Brown and Johtell Laverne Frank with the crimes. [\[FN1\]](#) The three defendants were tried in a single trial before separate juries. Defendant Brown's jury deadlocked and the court declared a mistrial.

[FN1.](#) The original information also named Serrano Haywood as a defendant. In September 2003, Serrano pled guilty to voluntary manslaughter and attempted murder, and admitted he was an armed principal in the shootings. (*People v. Alexander* (Sept. 21, 2005, C047115) [nonpub. opn.])

This appeal involves the retrial of defendant Brown. The jury convicted him of the murder of Cheryl Jones ([Pen.Code, § 187](#)--count one), the attempted murder of Victor Jones ([§§ 187 & 664](#)--count three) and the robbery of Victor Jones (§ 211--count four). [\[FN2\]](#) The jury acquitted defendant of robbing Cheryl Jones as alleged in count two. It found true allegations of aggravated firearm use. (§ 12022.53, subs.(b), (c) & (d).) In separate proceedings, the court found true allegations defendant had been convicted of a serious or violent felony (§§ 667, subs.(b)-(i) & 1170.12), and had served a prior prison term (§ 667.5, subd. (b)). The court sentenced defendant to an aggregate term of life without the possibility of parole plus 74 years to life.

[FN2.](#) Undesignated statutory references are to the Penal Code.

On appeal defendant argues he is entitled to reversal because the admission he shot Victor Jones was the result of unlawful and coercive interrogation, specifically, an explicit promise that defendant could be with his baby boy if he admitted shooting one of the victims of attempted robbery. Defendant also contends the court committed reversible error when it excluded expert testimony to explain how interrogation techniques may cause a suspect to confess. We conclude neither contention has merit and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Robbery and Shooting:

Jaynelle Frank checked into room 106 at the Gold Rush Inn in Sacramento on Monday, April 8, 2002. Defendant, the father of Jaynelle's unborn child, was staying at the Inn with her. Jaynelle's younger sister, Johtell Frank, checked into room 108 at the Gold Rush Inn on the same day. With Johtell at the Inn was her boyfriend and defendant's best friend, Dante Alexander. [\[FN3\]](#)

[FN3](#). The reporter's transcript and the transcripts of defendant Brown's interrogation refer to Dante Alexander, Johtell Frank, Serrano Haywood, Jaynelle Frank, Victor Jones and Cheryl Jones by their first names. To avoid confusion, we shall refer to them by their first names here.

The victims, Victor Jones and his wife Cheryl, checked into room 207 at the Gold Rush Inn early the following evening, Tuesday, April 9, 2002, at approximately 5:00 or 6:00 p.m. Prior to meeting defendant, Victor purchased and consumed a quantity of cocaine on G Parkway before returning to the Inn around 12:00 a.m. on April 9. Victor met defendant in the parking lot at about midnight on April 9 and bought cocaine from him. Later, in the early morning hours of April 10, defendant sold Victor more cocaine. Over the next several hours, Victor purchased approximately \$100 worth of cocaine from defendant on credit. In exchange for the extension of credit, Victor allowed defendant to borrow his Kia van, which was on loan from the dealership. Defendant left in the van with Dante and returned around 2:00 or 2:30 a.m. Victor purchased more cocaine on credit and defendant kept the car keys. When Victor went to defendant's room between 4:00 and 5:00 a.m. to ask for more cocaine, defendant told him he had no more.

*2 Around 8:00 a.m. on April 10, defendant and Jaynelle accompanied Victor to pick up and cash his paycheck. Defendant saw Victor's paycheck which was over \$500. Victor paid defendant what he owed for the cocaine, and defendant asked if he could borrow the van to take Jaynelle to her prenatal appointment. Victor agreed when defendant promised to sell him more cocaine.

Defendant took the van, and Victor and his wife stayed at the Inn to smoke the cocaine. Defendant checked in with Victor from time to time, sold him more cocaine, and left again with Dante in the van. Victor received a telephone call from defendant around 6:00 p.m. on April 10 informing him that the van had been stolen. Victor did not believe the story and told defendant to return to the Inn.

When defendant returned to the Inn with Dante about 20 minutes later, Victor bought more cocaine. Victor told the defendant the explanation about the van was "bullshit" and demanded to know how defendant planned to make things right. When Victor suggested defendant return the money he had already paid for cocaine, defendant gave Victor \$20 and a quarter ounce of cocaine. Satisfied, Victor told defendant he would pay for Jaynelle's room so defendant would not have to "hustle" that night for the money. Victor walked with defendant and Dante to a liquor store where Victor bought alcohol for all of them.

Shortly after Victor returned to his room, Dante's girlfriend Johtell appeared at his door. She claimed an interest in the cocaine defendant had given Victor as compensation for loss of the van. Victor verbally rebuffed Johtell and later complained to Dante about her

conduct. Victor continued to smoke cocaine and think about how he could get defendant to return the van.

Around midnight, Johtell and Dante came to Victor's room and asked him to buy more liquor for them. Victor agreed to walk to the store, but they insisted on giving him a ride. Cheryl decided to go along. Victor emptied his pockets of cash and illegal items before leaving the room. Dante and Johtell went downstairs ahead of Victor. Victor heard Jaynelle say to Johtell, "You know what they about to do? That's fucked up."

The four left the Inn with Johtell driving Dante's car, Cheryl next to her in the front seat, Dante in the back seat on the driver's side, and Victor in the back seat on the passenger side. Instead of driving to the liquor store, Johtell headed south on Highway 99 and turned off the freeway at Sheldon Road in Elk Grove. En route, Johtell ignored Victor's repeated demands to pull over and let him get out of the car. Johtell was driving erratically while talking with someone on her cell phone. Victor also observed what he thought was a police car following them. It flashed its high beams once they left the freeway.

Johtell drove east on Sheldon Road and stopped the car on a dark, dead-end street. The second car pulled up behind Dante's car. Dante stepped out of his car, turned toward Victor with what Victor described as a .45-caliber handgun, and said, "Give me everything you got." Victor gave Dante \$12, his wallet, wrist watch and room key. Defendant walked up with an automatic rifle and ordered Cheryl and Victor out of the car. He demanded to know where the narcotics were. Victor explained he left the cocaine in the room. Johtell confirmed that she had seen Victor empty his pockets into a drawer before they left.

*3 Victor tried to stay in front of Cheryl as they got out of the car. He noticed a light in a nearby house. Victor began talking loudly and tried to maneuver in the direction of the house. Defendant told him to be quiet. Victor continued to talk, offering to give defendant more money later that day if he let Cheryl leave. Finally, Victor charged past defendant and Dante. Cheryl was supposed to run the opposite direction. Dante shot Victor once as he ran, but Victor continued toward the house. Victor then heard both guns firing and received two more wounds. He was close to the front door of the house when his foot was shot from under him. Victor looked back and saw defendant use the rifle to shoot Cheryl.

Victor broke the windows around the front door of the house and yelled for help. Defendant approached Victor on the porch, holding the handgun Dante had in the car. Defendant pointed the gun at Victor's head. One of the cars departed, leaving defendant behind. After the gun misfired several times, defendant came close to Victor and said, "You are a lucky mother fucker." Victor responded, "You are a dead mother fucker, you understand." Defendant drove away.

Owen Autry, the occupant of the house, was awakened by gunfire at 1:30 a.m., and immediately telephoned 911. While Autry stayed on the line with the 911 operator, Victor yelled that the people who shot him were in apartments 106 and 108.

Cheryl died at the scene. Based on the size of the wounds, the pathologist testified the bullet was likely fired at close range by a .223 assault rifle.

Victor suffered four bullet wounds, but survived. He viewed a photo array six hours after the incident and identified Dante as the man in room 108 who had the handgun. He viewed more photos the following day and identified defendant as the man in room 106

who had the rifle. Victor testified at trial.

B. Defendant's Interrogation:

Law enforcement personnel interviewed defendant three times after his arrest. At each of the interviews, defendant gave different versions of the events surrounding the robbery and shooting.

1. April 12, 2002 Interview:

The first interview took place on April 12, 2002, when Sacramento County Sheriff's detectives Will Bayles and Grant Stomsvik questioned defendant the night he was picked up for a parole violation. Detective Bayles advised defendant of his *Miranda* rights, [\[FN4\]](#) and explained: "[T]here was a homicide that occurred out in Elk Grove, off of Sheldon Road out there, and your name was thrown out into this mix. Okay? And so I'd like to hear your side of the story, and if some people are saying things that aren't true, or if they are true, you just let me know. Okay?"

[FN4. *Miranda v. Arizona* \(1966\) 384 U.S. 436 \[16 L.Ed.2d 694\].](#)

Informed of the date and time of the homicide, defendant told the detectives he had spent the night of Wednesday, April 10, at his mother's boyfriend's house with his girlfriend Jaynelle. He acknowledged that Jaynelle had a room at the Gold Rush Inn, but denied being there at any time during the week of the shooting. The detectives showed defendant a picture of Victor, explaining, "This is the man who was shot, okay, and he survived." Defendant initially denied knowing Victor. When shown a surveillance photo of defendant with Victor from a 7-Eleven store in Rancho Cordova, defendant admitted he had accompanied Victor to a bank and a store because the man owed him money for cocaine. Defendant insisted that Victor was "just some guy ... off the streets." On further questioning, defendant admitted he spent time at the Gold Rush Inn, had been in Victor's room, sold him more cocaine, and borrowed and wrecked Victor's van.

*4 The detectives urged defendant to stop lying about his whereabouts the night of the shooting. They told defendant, "Here's the deal. Dante screwed you so far.... Dante says that you're the one that killed the girl. That's where we're goin'....[¶] ... [¶] [P]lanned it all, provided the guns, and you shot the lady. If you did all that you're kind of screwed."

Defendant denied doing "all that." Detective Bayles responded, "If you didn't do all that ... you're on a truthful path right now, you might want to stay on it and tell the truth just really, really what happened cuz right now you're pretty well screwed. Okay?"

Defendant acknowledged that he gave Victor an amount of cocaine, half of which belonged to Dante, because he had wrecked Victor's van. Victor also threatened to call the police. Defendant did not want his parole violated. Defendant said he decided to go to his mother's boyfriend's house because Dante and Johtell were angry with him.

The detectives told defendant they knew he was at the scene of the shootings. Thereafter, defendant admitted he followed Dante's car with someone named Anthony who told him they were going to get their money back. When they pulled onto a dark street off Highway 99, everyone got out of the cars except defendant. Defendant heard gunfire and saw sparks coming from Dante's gun. Someone yelled, "I missed him" or "I hit him" or "He's still alive." Defendant saw Victor run toward a house, but did not see anyone chase him. Defendant never saw the woman. Anthony got back in the car, made a U-turn, and dropped defendant off at his mother's boyfriend's house.

The detectives continued to accuse defendant of lying about his involvement in the shooting. They told defendant that Victor had identified him as one of the shooters. Defendant eventually admitted he made up the name Anthony and that Serrano Haywood drove the car he rode in to the scene of the crime. Defendant also admitted he got out of the car with Haywood. He said he immediately got back into the car because he was scared and denied he was involved in the shooting.

The following exchange occurred near the end of the interrogation:

"DET. STOMSVIK: [W]hat do you want to do now? You're involved up to your eyeballs in a murder, attempt[ed] robbery.

"[DEFENDANT]: I wish I can go home and just lay down with my--with my girl. [¶] ... [¶] And hold her stomach and kiss--and kiss her stomach and talk to my baby through her stomach."

Detective Stomsvik did not acknowledge defendant's reference to Jaynelle and his baby. Instead, Stomsvik asked if defendant was willing to take a polygraph test. Defendant stated that he was.

2. April 15, 2002 Interview:

Detective Bayles introduced defendant to Jeanie Overall, a polygraph examiner employed by the Attorney General's Office. Overall advised defendant of his *Miranda* rights and explained he could not be forced to take the polygraph. Defendant affirmatively agreed to speak to Overall and take the polygraph examination.

*5 Overall asked defendant several questions about his background. In response to a question regarding his marital status, defendant stated he was excited that his girlfriend Jaynelle was pregnant with his first child. He said he "was hoping [he'd] be there to see her have it." Overall answered, "That would be nice," and went on to another question. Later, when Overall asked, "What's the best thing that's happened to you in your life?" defendant responded, "Probably my girl being pregnant." Overall turned to a different topic.

With respect to the polygraph test, Overall cautioned defendant: "There's all different types and kinds of polygraph tests that people can take. The one that you're scheduled to take this evening is ... termed a specific because it's dealing with a specific thing that's happened. In this case it's the murder of Cheryl Jones.... [¶] ... [¶][T]his is the type or kind of test that this polygraph instrument was originally built and designed for. It's at its utmost accuracy and capability in this type of test. *Now due to that, I very straightforwardly advise everybody that comes in with me, if you're not gonna pass your polygraph, do not take it.* As long as everything you tell me about this case is one hundred percent the truth, you ought to take the test and show that what you're saying is true.... *If somebody really wants to, quote, beat a polygraph, the way to do it is stand up, walk out and don't take the test.* " (Italics added.) Overall explained that based on the results of the polygraph, she would report to the Sheriff's Office if she believed defendant was telling the truth. She also confirmed that although her report became part of defendant's permanent case file, the polygraph result could not be used in court. Overall then reiterated, "Now, I've been doing homicide polygraphs for a long time, and when I tell you that it requires you to be one hundred percent truthful, I really can't stress that enough. This thing does not measure deception in degrees...."

Overall questioned defendant about how he got involved in the homicide, and defendant repeated the story of his innocent presence at the scene of the shootings. She told

defendant once more that she would "give a report to the people here at the sheriff's office on [his] truthfulness and [his] honesty."

During a pretest, defendant answered "No" to the following questions: (1) "Did you shoot Cheryl Jones April the 11th in Elk Grove?" (2) "Did you shoot anyone in Elk Grove [on] the 11th?" (3) "Do you know where the gun is located that was used to shoot Cheryl Jones?" Defendant responded in the same manner when asked the same questions during the polygraph examination. His responses were the same on the second and third tests. Overall informed defendant that the polygraph test showed he was lying when he responded "No" to the key questions. She continued, "[T]here is no way, Ladell, with these charts that I can do anything but report to these detectives here that you're not telling the truth about this shooting." Emphasizing that defendant was involved in "some heavy stuff," Overall told defendant, "I wish your life could have been different, and I still think you can make it different.... I want you to see that--that baby be born. I don't know why, but I feel like it's a boy." Defendant confirmed that someone else had told him the same thing.

*6 Overall urged defendant to tell her the truth about what happened. "I don't know if you don't tell me what the truth is. I'm not a mind reader.... You have a choice you can tell the truth and try to get this mess straightened out and *let me go out there and talk to those detectives and try to do whatever I can for you*, and I want to tell your side of what happened. I can't do that if you won't tell me." (Italics added.) She offered several possible explanations for defendant's involvement as a shooter.

Overall made three references to defendant's baby during this part of the interrogation. She told defendant, "That baby growing in your girlfriend right now needs you. It's gonna need you a whole lot ... and I want to see you be able to be with that child and have a life, but only the truth is going to take you to that place." Overall suggested that defendant wanted to do the right thing and defendant responded, "Just want to be there for my baby." Overall said, "I want you to be there for your baby, and what's gonna take you there is the truth.... [¶] ... [¶] [I] want the first time that baby lays eyes on his daddy to know that his father is an honest man cuz that's all you're ever gonna be able to give him, Ladell. If you're an honest man, your son will be...."

Defendant offered another version of the events. He said he "was tryin' to talk to Victor for nothin' to happen" and placed himself between Victor and Cheryl so the two gunmen could not shoot them. According to this account, Cheryl pushed defendant, causing him to stumble. Defendant ran to the car when the guns started going off. He repeated he "[d]idn't shoot nobody."

Overall suggested she could pack up and go home. She told defendant, The "only reason I'm talkin' to you is cuz you got a baby on the way, and I'd like to see you get to be with that baby, and these [detectives] have got a case they have to work." Defendant said, "I wish I could be there for my baby." Overall responded, "I want to see you be there for your baby.... I can't get your side of what happened out there if you don't tell me. Do you want me to go get them? Do you want to let it go down like this? Or do you want to do the right thing for yourself, for your girlfriend and for your baby?" Defendant repeated that he wanted to "be able to see the baby born." Overall said, "Okay. I want--I want that, too.... [¶][W]e need to tell them that. I can't go out there and talk to them for you if you're not going to tell me what happened." Defendant continued to deny he had a firearm or shot Cheryl.

Overall suggested that Victor, a security guard, might have had a gun or tried to hurt defendant in some way. Defendant agreed that Victor charged him and he shot at Victor with the 9-millimeter hand gun to scare him into stopping. Defendant added he was not trying to hit Victor. He maintained someone else shot Cheryl after she pushed against defendant's shoulder.

*7 After admitting that he had shot Victor, defendant said, "This accident is gonna cost me my life." He told Overall he had lied because he was scared. He continued: "Scared for my baby. I want to be there for my baby. I wish I could go to my baby right now...." After asking defendant if he had seen Jaynelle since his arrest, she changed the subject and asked if he wanted the detectives to return.

Overall summarized the results of the polygraph, and the substance of her interview with defendant, for Detectives Bayles and Stomsvik. She indicated, "[H]e does want to be able to see his baby, and I told him I felt certain that he is gonna be able to." Stomsvik responded, "I wouldn't see why not." When Overall left the room, she said: "Ladell, good luck to you. You keep tellin' the truth, okay, and you're gonna see that baby."

Before continuing the interrogation, Detective Bayles confirmed that defendant was going to jail for murder. Defendant then repeated his story to Bayles and Stomsvik. He maintained he heard gunshots when Cheryl pushed him and caused him to stumble. Defendant said he tried to shoot at Victor's legs when Victor charged at him. He saw Dante do some shooting and "supposed" that Serrano fired some shots. Defendant denied that he or anyone else followed Victor up to the house after he was shot. Defendant stated that Dante gave the rifle to Serrano before they left the scene. At the end of the interrogation, defendant asked the detectives for a "big favor." He told them he wanted to kiss his girl's stomach and talk to his baby. Detective Bayles responded, "Well, you know, you're probably not gonna get to actually touch your girl--it's gonna be a while.... We'd be lying if we told you something different. I don't think you're gonna get any kind of contact visit until this whole thing is settled and you're either out or--or transferred and locked up where you're gonna be locked up for, you know, more time. I don't think you're gonna get it at the jail you're goin' to here."

3. April 18, 2002 Interview:

Detective Bayles and Detective Stomsvik again advised defendant of his *Miranda* rights before they questioned him. Defendant immediately retracted his earlier admissions, denying he had a gun or shot either Victor or Cheryl. He told the detectives he took responsibility for firing the 9-millimeter handgun at Victor because he heard that Serrano, who was "still on the run," had threatened to shoot Jaynelle. However, defendant gave vague and inconsistent accounts of how Serrano's alleged threat was conveyed to him. He refused to divulge the phone number of the person he claimed had contacted him.

Detective Bayles expressed skepticism: "Now, Ladell, you took a polygraph test and you failed it miserably on the question of whether or not you shot people there that night. And after you failed it miserably you admitted after that, that you had shot Victor. Okay. It can't be both ways. The fact that you failed that polygraph test has a lot of weight in--in how we look at this."

*8 Defendant acknowledged there had been a robbery plan to get "their stuff back," admitted he knew about the plan in advance, but continued to deny he had a firearm. He insisted his prior admission was motivated by the threat to Jaynelle. Defendant had no response when Detective Bayles asked, "Why didn't you say it right away then before you

took the polygraph test?" Bayles continued: "You tried to hold your mud for a long time and stick with that story for hours. This--this is not going to fly. Okay. This is not the way it is. If it was, you would have passed that polygraph test. And if ... you were going to tell a lie about being responsible for this shooting, be it out of fear to protect your girl, you would have told that right away as soon as that news got to you. You wouldn't have had to go through all these things. We've been doing this for a long time, Ladell. [¶] ... [¶] You're wasting our time with this story."

DISCUSSION

I

Admission of Defendant's Statements

Before trial, defense counsel moved to suppress defendant's statements, including the admission that he shot Victor. Counsel argued that the detectives employed "coercive, inquisitorial tactics ... to wrench a confession from [defendant] against his will...." The court reviewed video and audio tapes of defendant's three interviews with law enforcement personnel before the hearing on the suppression motion. At the hearing, the defense presented the expert testimony of Dr. Richard Ofshe, a retired professor of social psychology. Ofshe testified about research showing that modern interrogation techniques lead to false confessions. Ofshe opined that Overall induced defendant to admit he shot Victor accidentally or in self-defense by leading defendant to believe he would receive leniency. He noted that Overall never told defendant he remained subject to serious criminal liability under the felony-murder rule. Ofshe did not offer an opinion on whether defendant's statements were true or false. Thereafter, defense counsel argued that defendant's confession was coerced by Overall's promise that defendant would be able to see the birth of his baby if he admitted he shot Victor accidentally or in self defense. Counsel maintained Overall was "actively lying to [defendant] ..., at least as to the felony murder rule."

Citing the totality of the circumstances, the court ruled that defendant's admissions were voluntary and denied the motion to suppress. First, the court found there was "no evidence one way or the other as to the knowledge that Ms. Overall had regarding the felony murder rule...." The court cited several other facts to support its conclusion defendant's admissions were voluntary. First, the court cited Dr. Ofshe's reference to a study that showed "the strength of the evidence that the police bring to bear upon the defendant is the best predictor of when a guilty person will confess." Here, the deputies had talked to Victor and Autry. They told defendant "right up front" that he was going to be arrested for murder regardless of his statements. Second, defendant stated the sole reason he lied about having a gun and participating in the shooting was Serrano's threat to shoot Jaynelle. Defendant made no reference to Overall's interrogation methods or the alleged promise of preferential treatment when he retracted his earlier admissions. Third, the court found none of the interrogation methods employed by Overall "were ... of the type likely to lead to an untrue statement."

*9 At trial, the jury heard redacted videotapes of the interviews conducted on April 12 and April 15, and a redacted audio tape of the final interview on April 18. The court instructed the jury on felony-murder as the only theory of first degree murder.

On appeal, defendant argues the court erred in denying his motion to exclude his confession. We conclude there was no error in the trial court's ruling. Defendant refers to his pretrial statements given in the second interview as a confession. The Attorney

General refers to the pretrial statements as admissions. [CALJIC No. 2.70](#) distinguishes between confessions and admissions: "A confession is a statement made by a defendant in which he has acknowledged his guilt of the crime[s] for which he is on trial. In order to constitute a confession, the statement must acknowledge participation in the crime[s] as well as the required [criminal intent][state of mind]. [¶] An admission is a statement made by [a] defendant which does not by itself acknowledge his guilt of the crime[s] for which the defendant is on trial, but which statement tends to prove his guilt when considered with the rest of the evidence." We will refer to defendant's pretrial statements as admissions.

Admission of involuntary statements violates a defendant's constitutional right to due process. ([Jackson v. Denno \(1964\) 378 U.S. 368, 376 \[12 L.Ed.2d 908, 915\]; U.S. Const., 5th & 14th Amends.](#)) "A defendant's admission ... challenged as involuntary may not be introduced into evidence at trial unless the prosecution proves by a preponderance of the evidence that it was voluntary. ([Lego v. Twomey \(1972\) 404 U.S. 477, 489 \[30 L.Ed.2d 618\].](#)) A confession or admission is involuntary, and thus subject to exclusion at trial, only if it is the product of coercive police activity. ([Colorado v. Connelly \(1986\) 479 U.S. 157, 167 \[93 L.Ed.2d 473\].](#))" ([People v. Williams \(1997\) 16 Cal.4th 635, 659 \(Williams\)](#).) "[T]he terms 'coerced' and 'involuntary' [are used] interchangeably to refer to confessions obtained by physical or psychological coercion, by promises of leniency or benefit, or when the 'totality of circumstances' indicates the confession was not a product of the defendant's 'free and rational choice.'" ([People v. Cahill \(1993\) 5 Cal.4th 478, 482, fn. 1.](#)) "[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." ([People v. Boyde \(1988\) 46 Cal.3d 212, 238.](#))

"On appeal, we review independently the trial court's determination on the ultimate legal issue of voluntariness. [Citation.] But any factual findings by the trial court as to the circumstances surrounding an admission or confession, including 'the characteristics of the accused and the details of the interrogation' [citation], are subject to review under the deferential substantial evidence standard. [Citation.]" ([Williams, supra, 16 Cal.4th 635, 659-660.](#))

*10 Defendant acknowledges that "[s]ome of Overall's pressure tactics were lawful." He nonetheless argues it was unlawful for Overall to "explicitly promise[] [him] that he would be able to be with his baby boy when he was born if he confessed to being armed and shooting Victor Jones during the attempted robbery." Defendant contends that "Overall's promise was deceptive, rather than an accurate explanation of the possible consequences [defendant] could expect.... Overall's promise that confessing would help [defendant] to be free to see his baby boy at his birth was altogether dishonest."

Contrary to defendant's argument, Overall made no coercive or deceptive "promises." We defer to the trial court's factual findings under the "deferential substantial evidence standard." ([Williams, supra, 16 Cal.4th at pp. 659-660.](#)) The record supports the finding that Overall's tactics did not overcome defendant's exercise of free will. Defendant continued to deny any involvement in the shooting until Overall suggested Victor might have been the aggressor. The correctness of the trial court's finding is also demonstrated by defendant's conduct following the interrogation by Overall. First, at the end of the ensuing interview with Bayles and Stomsvik, defendant asked the detectives for a "big

favor." He wanted to kiss his girl's stomach and talk to his baby. Defendant would not have asked for a "favor" if he took Overall's statements as a promise he would be released for telling the truth. Second, defendant retracted his admissions three days later without any reference to Overall's interrogation tactics as the cause. He claimed he lied because Sirrano threatened to shoot Jaynelle. Moreover, the 245-page record of the April 15, 2002, interview supports the trial court's finding that Overall's methods were proper. Overall *Mirandized* defendant and emphasized from the start that after administering the polygraph examination, she would report to the Sheriff's Office about his truthfulness. This included reporting his side of the story, but only if he told her the truth. She urged defendant to tell the truth to controvert the version of events Dante or Sirrano might give to police.

The topic of the baby arose fewer than 10 times during Overall's lengthy interrogation. Defendant first raised the issue in response to Overall's background questions. When asked about his marital status, defendant responded that Jaynelle was pregnant with his first child and he hoped to be able to see it born. Overall said, "That would be nice," and went on to another question. Defendant also told Overall that the best thing that ever happened to him was Jaynelle getting pregnant. Overall turned to a different topic. After the polygraph exam, Overall observed that defendant was involved in "some heavy stuff." She continued: "I wish your life could have been different, and I still think you can make it different.... I want you to see that--that baby be born. I don't know why, but I feel like it's a boy." Overall warned that "only the truth" would allow him "to be with [his] child and have a life." She told him that "[t]he truth is what's gonna let you be there for your baby...." Overall urged him to do the right thing for himself, Jaynelle and the baby. Just before defendant stopped denying that he shot anyone, he said, "I'm never going to be able to hold my baby." Overall responded, "Yes, you will." Defendant admitted he shot Victor, then told Overall he wished he could go to his baby "right now." After asking defendant if he had seen Jaynelle since his arrest, she asked defendant if he wanted the detectives to return. Thereafter, Overall told Bayles and Stomsvik about defendant's desire to see his baby. At no time did she promise defendant he would be freed. Indeed, Overall repeatedly emphasized that the polygraph showed he was lying about not being a shooter and that he was, in fact, in serious trouble.

*11 Nor does the record support defendant's claim that his admissions were the result of coercion. It is clear that defendant did not view Overall's reassurances that he would be able to see his baby as promises of leniency. After Overall left the April 15 interview, defendant repeated his new story to Bayles and Stomsvik. Then, at the close of the interview, he asked the two detectives for a "big favor"--to be allowed to kiss his girl's stomach and talk to his baby. Bayles explained there would be no contact visit "until this whole thing is settled...." Defendant would not have asked the question had he believed he had been promised leniency in regard to seeing the baby. It is also significant, as the trial court recognized, that defendant never claimed coercion by Overall when he retracted his admissions three days later. He stated repeatedly that he lied because Sirrano had threatened to shoot Jaynelle. Nor is there anything in the record to support defendant's only explanation for defendant's failure to claim coercion as a basis for changing his story--that he "may not have wanted to admit to the detectives that Overall's promise had duped him into incriminating himself, perhaps out of concern that the

detectives would view him as someone who could be easily deceived and manipulated." Based on our independent review, we conclude defendant's admissions were voluntary.

II

Exclusions of Dr. Ofshe's Expert Testimony

In addition to presenting Ofshe's testimony at the [Evidence Code section 402](#) hearing to determine the voluntariness of defendant's pretrial statements, defendant offered Ofshe as a trial witness to explain the impact of psychological coercion on defendant's admissions. Defense counsel argued that Ofshe's expert testimony involved matters outside the expertise of the jury: "It is something that the jury does need to be allowed to listen to, to view the interrogation through the educated eyes of a trained expert on techniques."

Counsel maintained that Ofshe's testimony was relevant to the defense "that [defendant] was misled, that he was dangled the carrot in front of his face, which is his unborn child, and that he was lied to about the felony murder rule and basically would have pled to the Lindbergh [*sic*] kidnapping if it got him out a day earlier to be with his family."

The court excluded the proffered expert testimony. The court began by acknowledging that its finding that defendant's admissions were voluntary did not automatically render Dr. Ofshe's testimony irrelevant or inadmissible. Instead, the question was whether the expert testimony "would be helpful to the jurors" as they assessed the credibility of defendant's statements. The court found that because defendant made no reference to Overall's interrogation techniques when he retracted his admissions, Ofshe's testimony was not helpful. The court expressly found that the reason defendant gave for making false statements--that Sirrano threatened to kill someone close to him--was within the common experience of a jury to understand and evaluate.

*12 A criminal defendant has the constitutional right to present a complete defense. ([Crane v. Kentucky \(1986\) 476 U.S. 683, 690 \[90 L.Ed.2d 636, 645\]](#).) "That opportunity would be an empty one if the State were permitted to exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant's claim of Innocence." (*Ibid.*) At the same time, states retain the power "to exclude evidence through the application of evidentiary rules that themselves serve the interests of fairness and reliability--even if the defendant would prefer to see that evidence admitted." (*Id.* at p. 690 [90 L.Ed.2d at p. 644].)

[Evidence Code section 801](#) reads in part:

"If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is: [¶] (a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact...."

"The general rule is that an expert may not give an opinion whether a witness is telling the truth, for the determination of credibility is not a subject sufficiently beyond common experience that the expert's opinion would assist the trier of fact; in other words, the jury generally is as well equipped as the expert to discern whether a witness is being truthful." ([People v. Coffman \(2004\) 34 Cal.4th 1, 82.](#))

We review the trial court's decision to exclude expert testimony for abuse of discretion. ([People v. Smith \(2003\) 30 Cal.4th 581, 627.](#))

At trial the jury was asked to decide whether defendant's statements were credible--whether he spoke truthfully when he told Overall he shot Victor or whether he spoke truthfully when he recanted those admissions. Defendant's only stated reason for recanting his admissions, that is, the threat to Jaynelle, was clearly within the common

understanding and experience of jurors. Accordingly, the trial court properly ruled that Ofshe's testimony would be of no assistance to the jurors. Moreover, defendant's failure to cite psychological coercion as a reason he lied about his involvement in the shooting rendered Ofshe's testimony irrelevant. We therefore conclude the trial court did not abuse its discretion in excluding Ofshe's testimony.

DISPOSITION

The judgment is affirmed.