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Court of Appeals of Washington,
Division 1.

STATE of Washington, Respondent,

v.

Cameron B. LaCROIX, Appellant.

No. 66644–4–I.
May 16, 2011.

Appeal from Kitsap Superior Court; Honorable Leila Mills, J.
Julie Marie Gaffney, Kitsap County Prosecutor's Office, Port Orchard, WA, for Respondent.

Thomas E. Weaver Jr., Attorney at Law, Bremerton, WA, for Appellant.

UNPUBLISHED OPINION

DWYER, C.J.

*1 Cameron LaCroix appeals from the juvenile court's adjudication finding him guilty of arson. LaCroix contends that the trial court erred by admitting into evidence a series of self-incriminating statements made to police during a custodial interrogation and by sustaining a defense witness's invocation of his Fifth Amendment privilege. Finding no error, we affirm.

I

In September 2009, LaCroix was arrested for arson in connection with a fire that destroyed Arnold's Home Furnishings in Bremerton on July 27, 2009. During the custodial interrogation that followed his arrest, he made a series of self-incriminating statements wherein he confessed to setting the fire. LaCroix was subsequently charged with arson in the first degree.

Prior to trial, a CrR 3.5 hearing was held to determine the admissibility of LaCroix's self-incriminating statements. Four police officers who had taken part in LaCroix's interrogation testified at the hearing. LaCroix did not testify. At the conclusion of the hearing, the trial court entered the following written findings of fact: [FN1]

FN1. LaCroix assigns error only to Finding of Fact V. Thus, the rest are verities on appeal. *State v. Broadaway*, 133 Wn.2d 118, 131, 942 P.2d 363 (1997).

I.

That on July 27, 2009, a fire destroyed Arnold's Home Furnishing in Bremerton, Washington.

II.

That the Respondent[ ] was contacted by Detective Mike Davis and Detective Rodney Harker of the Bremerton Police Department on July 29, 2009, and made a statement to them.

III.

That on September [1]0, 2009, the Respondent was arrested in Belfair, Washington, at 12:45 p.m. He was handcuffed, searched and placed in the front passenger seat of a police vehicle. He was read his *Miranda*[FN2] rights as well as juvenile warnings and said he understood. LaCroix waived his rights, and he agreed to talk with Detectives Mike Davis and Rodney Harker. LaCroix understood his rights. He did not request an attorney, a parent or any other friendly adult.
FN2. *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

IV.

That the Respondent was one and a half months shy of his seventeenth birthday. He was not under the influence of any substance. He did not appear to be on any medications. He appeared to understand questions asked of him and his answers were responsive. Although the Respondent was not clean, there was nothing to suggest that he was in poor physical condition or in any way disabled.

V.

That the Respondent was transported to the Bremerton Police Department. He arrived at 1:25 p.m. and remained at the station until 9:50 p.m. He was in an interview room for most of that time. The time that he was actually interviewed was approximately five hours. The reminder of the time was spent on breaks. He was not questioned outside of normal waking hours. He was provided with food, beverages, and opportunities to use the restroom. During the entire contact he never asked for the interview to stop; he never asked for an attorney; he never requested the presence of his parent or other friendly adult. The Respondent never gave any verbal or non-verbal indication that he wanted the interview to stop.

VI.

*2 Officers repeatedly told the Respondent to tell the truth and that it would be easier if he would tell the truth. Officers told the Respondent that it could affect whether he was treated as an adult or juvenile. Officers advised the Respondent of Gage Goff's [FN3] statements but did not tell him that the statements had been retracted.
FN3. Testimony had indicated that Goff was an acquaintance of LaCroix and also a suspect in the arson.

Clerk's Papers (CP) at 26–28.

Based on these findings of fact, the trial court concluded that

[LaCroix's] will was not overborne by the detectives who interviewed him. The Respondent supplied statements that were freely self determined.... The police officers[']conduct was not overbearing so as to overcome the Respondent's will to resist. LaCroix responded knowingly, intelligently, and voluntarily waived his right to remain silent.

...

[LaCroix's] statement to detectives on September 10, 2009 was voluntary and is not suppressed.

CP at 29.

Following an adjudicatory hearing, the trial court entered written findings of fact and conclusions of law, finding LaCroix guilty as charged.

LaCroix appeals.

II

LaCroix first contends that the trial court's factual finding that his interrogation lasted for five hours during normal waking hours is not supported by substantial evidence. We disagree.

We will not disturb findings of fact where they are supported by substantial evidence. *State v. Black*, 100 Wn.2d 793, 802, 676 P .2d 963 (1984).

Here, the trial court found that the "time that [LaCroix] was actually interviewed was approximately five hours." CP at 27. Officers testified that LaCroix was arrested at 12:45 p.m. He was then transported for roughly half an hour to the Bremerton Police Department. According to the officers' testimony, during this time the police did not ask him any direct questions about the incident. The officers further testified that, once at the police station, LaCroix was questioned a number of times between 1:30 p.m. and 9:50 p.m. and was given breaks between the interrogation periods.[FN4]

FN4. Even though LaCroix contends that the questioning lasted until a DNA sample was taken from him at 10:15 p.m., nothing in the record suggests that he was questioned after 9:50 p.m.

The testimony that LaCroix was not asked any direct questions while he was being transported to Bremerton is sufficient to support omitting this time period from the total time LaCroix was "actually questioned," LaCroix's assertion to the contrary notwithstanding. None of the testimony at the CrR 3.5 hearing suggests that the actual time of interrogation lasted for significantly longer than five hours. Moreover, uncontroverted evidence was presented at the CrR 3.5 hearing that LaCroix's interrogation ended before 10:00 p.m., and we see no reason to doubt that these are "normal waking hours" for a sixteen-year-old in the the summer.

Because substantial evidence supports the trial court's finding that LaCroix was questioned for "approximately five hours" during normal waking hours, the trial court did not err by so finding.

III

LaCroix next contends that the trial court erred by admitting into evidence his confession, which he asserts was the result of coercive police activity that overbore his will to exercise his constitutional right against self-incrimination.[FN5] We disagree.[FN6]

FN5. Whether LaCroix claims the protection of the Fifth Amendment or article I, section 9 of the Washington Constitution, our analysis is the same because the rights conferred thereby are coextensive. *State v. Unga*, 165 Wn.2d 95, 100, 196 P.3d 645 (2008).

FN6. Before addressing the merits of LaCroix's claim, we note that-notwithstanding LaCroix's urging to the contrary-we do not consider trial testimony in analyzing the trial court's ruling on the voluntariness of his confession. We review the trial court's CrR 3.5 hearing ruling based on the record made at that hearing. Much of the information presented by LaCroix in his briefing is not germane to our review of that question.

*3 We consider the totality of the circumstances in determining whether the right to remain silent has been voluntarily waived. *State v. Unga*, 165 Wn.2d 95, 103, 196 P.3d 645 (2008) (citing *Fare v. Michael C.*, 442 U.S. 707, 725, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979)) ("The totality-of-the-circumstances analysis ... specifically applies in deciding the admissibility of a juvenile defendant's confession."). The voluntariness of a confession does not depend solely on the mental state of the suspect; "rather, 'coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary.' " *Unga*, 165 Wn.2d at 101 (quoting *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986)). Therefore, the appropriate inquiry is whether, under the totality of the circumstances, coercive police conduct overbore the suspect's will and caused the suspect to make an involuntary confession. *State v. Broadaway*, 133 Wn.2d 118, 132, 942 P.2d 363 (1997). A trial court's finding of voluntariness will not be disturbed on appeal when it is supported by substantial evidence in the record. *Broadaway*, 133 Wn.2d at 133–34.

The nature and scope of the inquiry we must undertake has been discussed at length by our Supreme Court.

Circumstances that are potentially relevant in the totality-of-the-circumstances analysis include the "crucial element of police coercion"; the length of the interrogation; its location; its continuity; the defendant's maturity, education, physical condition, and mental health; and whether the police advised the defendant of the rights to remain silent and to have counsel present during custodial interrogation. *Withrow v. Williams*, 507 U.S. 680, 693–94, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993) (and cases cited therein).

The totality-of-the-circumstances test specifically applies to determine whether a confession was coerced by any express or implied promise or by the exertion of any improper influence. *State v. Broadaway*, 133 Wn.2d 118, 132, 942 P.2d 363 (1997); *Arizona v. Fulminante*, 499 U.S. 279, 285, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991) (abrogating test stated in *Bram v. United States*, 168 U.S. 532, 18 S.Ct. 183, 42 L.Ed. 568 (1897)). A promise made by law enforcement does not render a confession involuntary per se, but is instead one factor to be considered in deciding whether a confession was voluntary. *Fulminante*, 499 U.S. at 285; *Broadaway*, 133 Wn.2d at 132; *United States v. LeBrun*, 363 F.3d 715, 725 (8th Cir.2004); *United States v. Dowell*, 430 F.3d 1100, 1108 (10th Cir.2005).

Whether any promise has been made must be determined and, if one was made, the court must then apply the totality-of-the-circumstances test and determine whether the defendant's will was overborne by the promise, i.e., there must be a direct causal relationship between the promise and the confession. *Broadaway*, 133 Wn.2d at 132; *see State v. Rupe*, 101 Wn.2d 664, 678–79, 683 P.2d 571 (1984); *United States v. Walton*, 10 F.3d 1024, 1029 (3d Cir.1993) ("the real issue is not whether a promise was made, but whether there was a causal connection between [the promise] and [the defendant's] statement").

*4 This causal connection is not merely "but for" causation; the court does "not ask whether the confession would have been made in the absence of the interrogation." *Miller v. Fenton*, 796 F.2d 598, 604 (3d Cir.1986); *see Fulminante*, 499 U.S. at 285. "If the test was whether a statement would have been made but for the law enforcement conduct, virtually no statement would be deemed voluntary because few people give incriminating statements in the absence of some kind of official action." *United States v. Guerrero*, 847 F.2d 1363, 1366 n. 1 (9th Cir.1988).

A police officer's psychological ploys, such as playing on the suspect's sympathies, saying that honesty is the best policy for a person hoping for leniency, or telling the suspect that he could help himself by cooperating may play a part in a suspect's decision to confess, "but so long as that decision is a product of the suspect's own balancing of competing considerations, the confession is voluntary." *Miller*, 796 F.2d at 605; *accord United States v. Miller*, 984 F.2d 1028, 1031 (9th Cir.1993); *United States v. Durham*, 741 F.Supp. 498, 504 (D.Del.1990); *State v. Darby*, 1996 SD 127, 556 N.W.2d 311, 320; *State v. Bacon*, 163 Vt. 279, 294–95, 658 A.2d 54 (1995). "The question [is] whether [the interrogating officer's] statements were so manipulative or coercive that they deprived [the suspect] of his ability to make an unconstrained, autonomous decision to confess." *Miller*, 796 F.2d at 605; *see United States v. Baldwin*, 60 F.3d 363, 365 (7th Cir.1995) ("the proper test is whether the interrogator resorted to tactics that in the circumstances prevented the suspect from making a rational decision whether to confess or otherwise inculpate himself"), *vacated on other grounds*, 517 U.S. 1231, 116 S.Ct. 1873, 135 L.Ed.2d 169 (1996), *adhered to on remand*, 124 F.3d 205 (7th Cir.1997).

Unga, 165 Wn.2d at 101–103 (alterations in original). Finally, a suspect's "failure to realize the possible consequences of giving the statement does not change its voluntary nature." *State v. Curtiss*, No. 39215–1–II, slip op. at 12 (Wash.Ct.App. May 6, 2011); *State v. Heggins*, 55 Wn.App. 591, 598–99, 779 P.2d 285 (1989).

LaCroix points to the following circumstances in contending that the trial court erred in ruling his statements admissible: (1) the length of his interrogation; (2) the officers' emphasis on honesty and cooperation; (3) the officers' use of a computer voice stress analyzer (CVSA) and reference to their belief in his dishonesty based on the results thereof; (4) the officers' assertion that he had been implicated by another suspect; (5) the officers' assertion that they would recommend charges in juvenile court, rather than adult

court, if he was cooperative; (6) his age; and (7) his physical condition. The trial court received and considered the testimony and evidence on each of these questions. Its findings of fact support its determination of voluntariness. The state of the applicable law, as to each of the conditions cited by LaCroix, did not compel a contrary conclusion.

*5 LaCroix first points to the length of his interrogation. As noted, the trial court's finding that he was interrogated for approximately five hours during normal waking hours is supported by the evidence. The five hours of interrogation were spread over a nine hour period. He was provided with food, beverages, bathroom breaks, and other periods without questioning. LaCroix cites no authority compelling a finding that such circumstances amount to coercion.

LaCroix next points to the officers' repeated assertions both that it was in his best interest to be honest with them, and that they believed he was being dishonest. In this regard he also points to the officers' use of the CVSA in support of their statements to him that he was not believed by them and to the officers' claim that another suspect had implicated him.

LaCroix cites no authority supporting the proposition that a police officer's refusal to believe a suspect's version of events is unconstitutionally coercive.[FN7] In this regard, we note that the record does not support LaCroix's assertion that the police admitted to accusing him of lying "24 separate times." Appellant's Br. at 46. Indeed, in several of these instances, the officer was merely emphasizing the importance of honesty. The precise number of police challenges to LaCroix's honesty aside, police officers are not required to accept a suspect's version of events at face value, nor must they feign credulity while conducting their interrogation. Because nothing in the record indicates that the police officers' challenges to LaCroix's truthfulness deprived LaCroix of his ability to make an "unconstrained, autonomous decision," LaCroix's argument that such challenges rendered his confession involuntary is unavailing.

FN7. Some courts in other jurisdictions have found repeated accusations of lying to be a factor tending to show involuntariness in cases involving younger suspects. *See* *A.M. v. Butler*, 360 F.3d 787 (7th Cir.2004); *In re Jerrel C.J.*, 283 Wis.2d 145, 699 N.W.2d 110 (2005). In *A.M.* the suspect was an 11–year–old who confessed during a noncustodial interrogation without being informed of his rights; in *In re Jerrel C.J.*, the suspect was a 14–year–old who had been handcuffed to a wall for approximately two hours immediately prior to the interrogation and who was not allowed to contact his parents in spite of his repeated requests to do so. These cases are inapposite.

Moreover, the officers' references to the results of the CVSA in support of their contentions that LaCroix was being dishonest did not render LaCroix's subsequent statements involuntary.[FN8] In *Wyrick v. Fields*, 459 U.S. 42, 48, 103 S.Ct. 394, 74 L.Ed.2d 214 (1982), the United States Supreme Court rejected the proposition that the use of a polygraph during interrogation is inherently coercive. In fact, " '[c]ourts have held confessions to be voluntary when police falsely told a suspect that his polygraph examination showed gross deceptive patterns,' " *Unga*, 165 Wn.2d at 116 (quoting *State v. Burkins*, 94 Wn.App. 677, 695–96, 973 P .2d 15 (1999)), and Washington courts have declined to suppress confessions merely because they were given after the administration of a polygraph test. *State v. Bradford*, 95 Wn.App. 935, 949, 978 P.2d 534 (1999); *State v. Acheson*, 48 Wn.App. 630, 635, 740 P.2d 346 (1987).

FN8. LaCroix cites *Contee v. United States*, 667 A.2d 103 (D.C.2005) (per curiam) in support of his assertion that the police use of a CVSA shows that LaCroix's confession was involuntary. The *Contee* court stated that "[t]he one matter that gives us pause is the fact that appellant openly confessed only after [the officer] administered a ... [CVSA] test to appellant." 667 A.2d at 104. Nevertheless, the *Contee* court ultimately concluded that the confession at issue was voluntary for reasons that we find in the case before us as well. In both *Contee* and in the present case, the CVSA was administered on a voluntary basis. The cases are also similar in that nothing before us suggests that LaCroix was misled to believe that the results of the CVSA would be admissible at trial. Thus, *Contee* lends no support to LaCroix's contention that the trial court's determination that his statements were voluntary should be reversed.

Similarly, the fact that the detectives portrayed the CVSA as a method of "truth verification" does not mandate a finding that LaCroix's confession was involuntary. Misleading police statements about the strength of the State's case against the suspect do not render the suspect's admissions involuntary. *State v. Furman*, 122 Wn.2d 440, 451, 858 P.2d 1092 (1993); *accord* *State v. Braun*, 82 Wn.2d 157, 161, 509 P.2d 742 (1973) ("While we do not condone deception, that alone does not make a confession inadmissible as a matter of law."). Although "undoubtedly some measure of guile is used when police tell an accused that his answers to questions monitored by a CVSA test are untruthful without also explaining that the test results are not conclusive," *Contee v. United States*, 667 A.2d 103, 104 (D.C.2005) (internal quotation marks omitted), this does not rise to a constitutionally unacceptable level of deception. Similarly, it was not unconstitutionally coercive for the officers to confront LaCroix with statements made by Goff, another suspect, without informing him that those statements had later been recanted.

*6 We also find unpersuasive LaCroix's contention that "[o]verlaying [his] interrogation was the not-so-subtle threat that the detectives had the power to control LaCroix's fate" because the officers informed him that the level of his cooperation could influence whether he would be charged in juvenile or adult court. Appellant's Br. at 47. We perceive of nothing improper, let alone unconstitutional, in the police truthfully informing a suspect of a potential benefit of cooperating with their investigation. The trial court made no finding that the statements made by the police amounted to a promise of leniency. Even if such a promise had been made, it would certainly not have been sufficient to show that LaCroix's will was overborne.[FN9] Indeed, in *Unga,* our Supreme Court found a suspect's confession voluntary despite a police officer's promise of immunity. 165 Wn.2d at 111. Here, the officers' statements to LaCroix about the juvenile and adult court systems were not outside the boundaries established by the Fifth Amendment.[FN10]

FN9. LaCroix's argument is particularly tenuous because we would have to find a "direct causal relationship between the promise and the confession." *Unga* 165 Wn.2d at 102 (citing *Broadaway*, 133 Wn.2d at 132). There is no evidence of such a direct causal relationship in the record. LaCroix did not testify as to his thoughts on the subject.

FN10. LaCroix gets little support from the cases he relies on to show the involuntariness of his confession. In both *Doody v. Schriro*, 596 F.3d 620 (9th Cir.2010), and *Haley v. Ohio*, 332 U .S. 596, 68 S.Ct. 302, 92 L.Ed. 224 (1948), the suspects had not been apprised of their constitutional rights to remain silent. Because a strong presumption of involuntariness attaches where the police have not informed a suspect of his right to remain silent, *State v. Sargent*, 111 Wn.2d 641, 648, 762 P.2d 1127 (1988), little can be adduced from any other similarities between those cases and the present one.

LaCriox's age at the time of his interrogation similarly does not militate in favor of finding that his statements were involuntary. At the time of the interrogation, LaCroix was "one and a half months shy of his seventeenth birthday." CP at 27. While a suspect's age must be considered in evaluating the admissibility of a confession, it is well established that a 16–year–old can voluntarily confess, even in the absence of a friendly adult. *See* *Unga*, 165 Wn.2d at 108 (and cases cited therein). LaCroix's age does not cast doubt on the trial court's finding of voluntariness.

LaCroix's contention that he was in a poor physical state is also unpersuasive. The trial court found that "there was nothing to suggest that [LaCroix] was in poor physical condition or in any way disabled" during the course of his interrogation. CP at 27. There was no evidence adduced at the CrR 3.5 hearing to support LaCroix's appellate assertions that he suffered from "extreme fatigue" or that he fell asleep during questioning. Appellant's Br. at 46. We can find no characteristics of LaCroix that lead us to believe he was particularly susceptible to coercive police practices.

Also significant is the fact that at the time of the interrogation LaCroix had been read his *Miranda* rights and juvenile warnings and had waived those rights. The purpose of requiring *Miranda* warnings is to "protect the individual from the potentiality of compulsion or coercion ... and from deceptive practices of interrogation." *State v. Pejsa*, 75 Wn.App. 139, 146, 876 P.2d 963 (1994). Throughout the interrogation, LaCroix never requested the presence of an attorney, parent, or other friendly adult. Nor did he request that

the questioning cease. The fact that LaCroix enjoyed the protection of these warnings throughout his interrogation supports the trial court's finding that his self-incriminating statements were made voluntarily.[FN11]

FN11. Although the statements at issue were made over five hours after LaCroix had been read his *Miranda* rights, repeated warnings are not required. *Berghuis v. Thompkins*, —— U.S. ——, 130 S.Ct. 2250, 2263, 176 L.Ed.2d 1098 (2010) ("Police are not required to rewarn suspects from time to time.").

*7 We find in LaCroix's interrogation no circumstances indicating that the trial court ruled erroneously by not finding police activity to have overborne LaCroix's will and deprived him of the ability to choose whether to make incriminating statements. The trial court's determination that, under the totality of the circumstances, LaCroix's confession was made voluntarily is supported by substantial evidence in the record. There was no error.

IV

LaCroix next contends that the trial court erred by allowing a defense witness to invoke his Fifth Amendment privilege against self-incrimination while testifying. We disagree.

At trial, the defense called a boy to testify who had been contacted by police, along with LaCroix, near the scene of the fire. LaCroix's counsel posed a series of 14 questions to the witness. The witness invoked his privilege against self-incrimination and declined to answer each question. Over LaCroix's objections, the trial court sustained the witness's invocation of the privilege.

Our Supreme Court has held that witnesses cannot be compelled to give self-incriminating testimony. *State v. Parker* 79 Wn.2d 326, 331–32, 485 P.2d 60 (1971). The determination of whether a Fifth Amendment privilege applies to a particular witness in a particular circumstance is left to the trial court's sound discretion. *State v. Hobble*, 126 Wn.2d 283, 291, 892 P.2d 85 (1995). Therefore, the trial court's determination is reviewed for abuse of discretion. *Parker*, 79 Wn.2d at 333. "[A] claim of privilege must be supported by facts which, aided by the 'use of reasonable judicial imagination,' show the risk of self-incrimination." *State v. Fish*, 99 Wn.App. 86, 92, 992 P.2d 505 (1999) (quoting *State v. Lougin*, 50 Wn.App. 376, 381, 749 P.2d 173 (1988)).

At the time that the trial court sustained the witness's assertion of the privilege, the trial court was aware of several facts that made the witness's risk of self-incrimination abundantly apparent. The witness was one of only three individuals suspected of the arson and, in the information charging LaCroix with arson, was listed as a suspect associated with the case. The witness's counsel had informed the court that the witness had been arrested for the crime, although he had not yet been charged. The witness had also been seen with LaCroix on the night of the fire near the scene of the crime. Another boy who had been with LaCroix on the night of the fire had stated that the witness "was a pyro at times." Report of Proceedings at 53. LaCroix had stated that the witness had broken a window at Arnold's and had lit paper on fire and thrown it through the broken window. This evidence clearly minimized the need for "judicial imagination" in envisioning the witness's risk of self-incrimination in testifying. The trial court did not abuse its discretion and, thus, did not err by sustaining the witness's invocation of his Fifth Amendment privilege.

V

*8 LaCroix finally contends that the trial court erred by finding, after trial, that LaCriox's confession was corroborated by another boy's pretrial statements to the police. However, LaCroix concedes that the evidence presented at the adjudicatory hearing was sufficient to support the trial court's finding of guilt. The challenged finding is surplusage on appeal. Thus, resolution of this issue would have no bearing on the disposition of this case. Thus, we decline to further address this question.

Affirmed.

We concur: SPEARMAN and LAU, JJ.

Wash.App. Div. 1,2011.
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