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State v. Jackson: Police Use of Trickery, Threats, and Deception -- What Price Confession?

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State v. Jackson: Police Use of Trickery, Threats, and Deception—What Price Confession?

For a criminal confession to be admissible, it must have been given voluntarily.[1] Involuntary confessions are excluded because such statements are unreliable as evidence, and because of the belief that coercive techniques should not be countenanced by a civilized society, regardless of the importance of the information they may yield.[2] In determining whether a confession was rendered voluntarily, courts have applied a "totality of circumstances" test.[3] Under this test a court examines the totality of the circumstances surrounding a confession and then decides whether it was given voluntarily or whether the defendant's will was "overborne."[4]

In *State v. Jackson*[5] the North Carolina Supreme Court applied the totality of circumstances test and reached a decision that broadens the parameters of acceptable police conduct during noncustodial interrogations[6] to previously unimagined dimensions. By holding that the use of fabricated evidence, false statements, and implied threats was not sufficient to render defendant's confession involuntary,[7] the court implicitly condoned such unconscionable behav-

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1. Rogers v. Richmond, 365 U.S. 534 (1961); Spano v. New York, 360 U.S. 315 (1959); Leyra v. Denno, 347 U.S. 556 (1954); Ashcraft v. Tennessee, 322 U.S. 143 (1944); Lisenba v. California, 314 U.S. 219 (1941); Brown v. Mississippi, 297 U.S. 278 (1936).

2. C. WHITEBREAD, CRIMINAL PROCEDURE § 15.01 (1980).

3. Haynes v. Washington, 373 U.S. 503, 514 (1963). In Leyra v. Denno, 347 U.S. 556, 558 (1954), the Court emphasized that each case involving a question of voluntariness must be decided on its own facts. It was not until 1956, in Fikes v. Alabama, 352 U.S. 191, 197 (1957), however, that the Court first used the phrase "totality of the circumstances" in relation to voluntariness. *See also* Schneckloth v. Bustamonte, 412 U.S. 218, 248-49 (1973) ("[v]oluntariness is a question of fact to be determined from all the circumstances"); Haynes v. Washington, 373 U.S. 503, 514 (1963) (courts must look to the "context in which [the confession was] made" to determine voluntariness); Blackburn v. Alabama, 361 U.S. 199, 207 (1960) (voluntariness depends on the "pertinent circumstances"); Crooke v. California, 357 U.S. 433, 440 (1958) (the court must weigh the "sum total of the circumstances" in determining voluntariness).

Many commentators have suggested that the totality of circumstances approach is simply a means for a court to express its opinion that, in a given case, there was a causal relationship between police misconduct and the subsequent confession. *See* Grano, *Voluntariness, Free Will, and the Law of Confessions*, 65 VA. L. REV. 859 (1979); White, *Police Trickery in Inducing Confessions*, 127 U. PA. L. REV. 581 (1979); Note, *Police Use of Trickery as an Interrogation Technique*, 32 VAND. L. REV. 1167 (1979).

4. Rogers v. Richmond, 365 U.S. 534, 544 (1961) (confession is invountary if the behavior of the police caused the suspect's will to resist to be overborne).

5. 308 N.C. 549, 304 S.E.2d 134 (1983).

6. Noncustodial interrogations are distinguished from custodial interrogations on the basis of whether defendant's freedom of action is restricted. During noncustodial interrogations, the defendant is free to leave at will. At custodial interrogations the defendant's presence can be compelled. Furthermore, *Miranda* warnings are required for custodial interrogations but not for noncustodial interrogations. Miranda v. Arizona, 384 U.S. 436, 444-45 (1966).

Miranda warnings are the procedural safeguards that must be read to a defendant prior to a custodial interrogation. The defendant must be warned that "he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.* at 444.

7. *Jackson*, 308 N.C. at 574, 304 S.E.2d at 148 ("while deceptive methods or false statements by police officers are not commendable practices, standing alone they do not render a confession of guilt inadmissible").

ior and virtually emasculated the principle of fundamental fairness.[8] In analyzing the court's decision, this note will discuss whether defendant was seized within the meaning of the fourth amendment[9] and analyze whether defendant's subsequent confession was given voluntarily under the "totality of circumstances" test.[10]

In *Jackson* defendant initially was sought by the police as a possible witness in the stabbing death of Leslie Hall-Kennedy. Jackson had been at the scene of the murder when the body was discovered; but he left the scene soon after the police arrived and did not speak to them.

Jackson was interviewed by members of the Raleigh Police Department on three occasions during the course of the investigation.[11] During the second interview the police told Jackson that they had found bloodstains on the pants he had given them the previous day and that tracks from his tennis shoes had been found in the victim's house.[12] Jackson knew that the police did not have such evidence, however, because he had not given them the clothes he had worn on the night of the murder.[13] Jackson denied committing the crime and stated that "he went with other persons into the apartment . . . after they heard screams coming from the apartment."[14]

Defendant did not hear from the police again until almost two weeks later, when a detective approached him on a downtown street to tell him that

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8. *But cf.* Rochin v. California, 342 U.S. 165, 173 (1952) (due process expresses a sense of "fair play"); Lisenba v. California, 314 U.S. 219, 236 (1941) (due process protects against fundamental "unfairness" in the use of confessions). *See generally* Paulsen, *The Fourteenth Amendment and the Third Degree*, 6 STAN. L. REV. 411 (1954) (court will measure police conduct against certain basic standards of fundamental fairness that are essential to our system of justice).

9. The fourth amendment provides that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV. *See infra* note 33.

10. *See supra* note 3. In ruling that defendant's confession was involuntary and therefore inadmissible, the trial court relied on language in State v. Roberts, 12 N.C. (1 Dev.) 259 (1827). In *Roberts* the court stated that "[c]onfessions are either voluntary or involuntary. They are called voluntary, when made neither under the influence of hope or fear, but are attributable to that love of truth which predominates in the breast of every man . . . ." *Id.* at 261. The trial court concluded that defendant confessed because his guilt had been ascertained rather than for a "love of truth"; thus, the confession was ruled involuntary. *Jackson*, 308 N.C. at 584, 304 S.E.2d at 154.

In reversing the trial court, the North Carolina Supreme Court ruled that "it has never been held by this Court that a confession is inadmissible in evidence unless it is 'attributable to that love of truth which predominates in the breast of every man.' " *Id.* (quoting Record at 25). The court stated that "[t]he North Carolina test to determine the admissibility of a confession continues to be whether the confession is voluntary under the totality of the circumstances of the case." *Id.* at 585, 304 S.E.2d at 154. In his dissent, Justice Exum claimed that under North Carolina case law, trickery or deception on the part of the police rendered a confession involuntary and inadmissible. *Id.* at 599, 304 S.E.2d at 162 (Exum, J., dissenting).

11. The investigation lasted from March 15, 1983, until April 8, 1983. Jackson was questioned by the police on March 26th, March 27th, and April 8th. The April 8th interview, during which the defendant confessed, lasted approximately five hours. *Jackson*, 308 N.C. at 551-59, 304 S.E.2d at 135-39.

12. *Id.* at 566, 304 S.E.2d at 143. Both of these statements were false, *id.*, and presumably defendant realized they were false.

13. *Id.*

14. *Id.*

Detective Mack wanted to talk with him about the Hall-Kennedy murder. Defendant was not arrested; he voluntarily got into the detective's car and went to the police station.[15] During the course of the five-hour interrogation,[16] defendant was told that "the police had a murder weapon; they had defendant's fingerprints . . . and that they had a witness who saw the defendant coming out the door carrying a knife."[17] The police, in fact, had not found defendant's fingerprints on the weapon nor was there any such eyewitness account.[18] Shortly after the recitation of these facts, defendant confessed.[19]

On April 27, 1981 a grand jury returned a bill of indictment charging defendant with first degree murder.[20] Defendant filed a motion to suppress the use of oral and written statements that the officers had solicited from him. He alleged that his statements had been obtained in violation of his fourth and fifth amendment rights under the constitutions of North Carolina and the United States, and in contravention of North Carolina case law.[21] The superior court granted defendant's motion to suppress the evidence, stating that his confession failed to meet the North Carolina standard for the admissibility of confessions articulated in *State v. Roberts*.[22]

On appeal[23] to the North Carolina Supreme Court, the State argued that the trial court had applied an improper standard in determining whether the confession had been voluntary.[24] The supreme court agreed, stating that "the North Carolina test to determine the admissibility of a confession continues to be whether the confession is voluntary under the totality of the circumstances."[25] In reversing the superior court, the court concluded that police

15. *Id.* at 566, 304 S.E.2d at 144. *Miranda* warnings are required only when a suspect is taken into custody. *See supra* note 6.

16. *See supra* note 11.

17. *Jackson*, 308 N.C. at 568, 304 S.E.2d at 144. Although defendant probably knew that earlier statements made by the police were untrue, there was no evidence nor any finding by the trial court that defendant knew that the evidence concerning his fingerprints or the witness who saw him was fabricated. *Id.* at 601, 304 S.E.2d at 163.

18. *Id.* at 601, 304 S.E.2d at 163.

19. *Id.* at 568, 304 S.E.2d at 144.

20. *Id.* at 550, 304 S.E.2d at 135.

21. *Id.* Defendant argued that his fourth amendment rights were violated because he had been seized illegally, and that his fifth amendment rights were contravened because the coercive methods employed by the police had elicited an involuntary confession. *Id.*

22. State v. Roberts, 12 N.C. (1 Dev.) 259 (1827). The superior court stated that "the defendant 'confessed' because he was found out and caught, rather than because such confession was 'attributable to that love of truth which predominates in every man, not operated upon by other motives more powerful with *him*, and thus the confession was not admissible under state law." *Jackson*, 308 N.C. at 562, 304 S.E.2d at 141. *See supra* note 10.

Although the court granted defendant's motion to suppress, defendant's contention that the police violated his rights under the constitutions of the United States and the State of North Carolina was rejected. *Jackson*, 308 N.C. at 562, 304 S.E.2d at 141. Justice Exum, in his dissent, challenged this conclusion. *Id.* at 602, 304 S.E.2d at 164 (Exum, J., dissenting).

23. The State appealed pursuant to N.C. GEN. STAT. § 15A-979(c) (1983) and rule 4 of the North Carolina Rules of Appellate Procedures. *Jackson*, 308 N.C. at 550, 304 S.E.2d at 135.

24. *Jackson*, 308 N.C. at 584-85, 304 S.E.2d at 153-54.

25. *Id.* at 585, 304 S.E.2d at 154. *See* State v. Schneider, 306 N.C. 351, 355, 293 S.E.2d 157, 160 (1982) ("Voluntariness is to be determined from consideration of all circumstances surrounding the confession."); State v. Booker, 306 N.C. 302, 311, 293 S.E.2d 78, 83 (1982) (key question concerning voluntariness is "whether the totality of the evidence, including both the uncontro-

methods had not been so coercive as "to make an innocent person confess."[26] The court balanced the societal interest in obtaining confessions against the interest in safeguarding defendants' rights, and concluded that the interest served by extracting confessions should prevail unless the methods employed were likely to produce an unreliable confession.[27] With this conclusion the court sought to avoid the situation in which relatively harmless police misconduct renders an otherwise valid confession inadmissible.[28] *Jackson* presents two critical issues: whether defendant's confession was inadmissible because it followed an unlawful seizure under the fourth amendment and whether the confession was inadmissible because it was given involuntarily.

The fourth amendment protects an individual from unreasonable searches and seizures by law enforcement officials.[29] This safeguard applies to seizures of individuals as well as seizures of tangible goods.[30] The linchpin of the fourth amendment is probable cause.[31] For police officers to effect a lawful arrest or seizure, there must be probable cause for their action. In *Brinegar v. United States*[32] the United States Supreme Court held that probable cause "exists where 'the facts and circumstances within [the officers'] knowledge and of which [they] had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed."[33]

The protection afforded by the fourth amendment is effectuated by the exclusionary rule,[34] a judicial device requiring the suppression of evidence obtained by law enforcement officers in contravention of the Constitution. The policy underlying this sanction against illegal police conduct is to "compel respect for the constitutional guaranty [of the fourth amendment] in the only

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verted evidence and the evidence in conflict, amounted to such coercion, actual or psychological, as would render defendant's confession involuntary"); State v. Davis, 305 N.C. 400, 419-20, 290 S.E.2d 574, 586 (1982) (voluntariness is determined "based upon . . . examination and consideration of the entire record on appeal"); State v. Morgan, 299 N.C. 191, 198, 261 S.E.2d 827, 831-32 (1980) (test for voluntariness is "whether, from the totality of the circumstances, . . . such mental or psychological pressure was brought to bear against defendant so as to overcome his will").

26. *Jackson*, 308 N.C. at 573, 304 S.E.2d at 148. (citing the standard for admissibility of confessions suggested in F. IMBAU, CRIMINAL INTERROGATION AND CONFESSIONS 218 (1967)).

27. *Id.* at 573-74, 304 S.E.2d at 148.

28. *Id.* at 573, 304 S.E.2d at 148.

29. *See supra* note 9.

30. Mincey v. Arizona, 437 U.S. 385, 390 (1978); Weeks v. United States, 232 U.S. 383, 390-92 (1914).

31. C. WHITEBREAD, CRIMINAL PROCEDURE § 3.02 (1980). Because police conceded there was no probable cause to arrest or seize Jackson, his status during the interrogation was a pivotal issue at the suppression hearing. In his concurring opinion to the 4-3 decision, Justice Mitchell stated, "Had it not been established . . . that the defendant was not in custody at the time of his confession, I might well join the dissenters." *Jackson*, 308 N.C. at 587, 304 S.E.2d at 155.

32. 338 U.S. 160 (1949).

33. *Id.* at 175-76 (quoting Carroll v. United States, 267 U.S. 132, 162 (1925)).

34. The exclusionary rule was established in Weeks v. United States, 232 U.S. 383 (1914). *See generally* 1 W. LAFAVE, SEARCH AND SEIZURES: A TREATISE ON THE FOURTH AMENDMENT §§ 1.1 to 1.11 (1978). The United States Supreme Court carved out exceptions to the exclusionary rule in opinions announced July 5, 1984. *See* United States v. Leon, 52 U.S.L.W. 5155 (1984); Segura v. United States, 52 U.S.L.W. 5128 (1984); Massachusetts v. Sheppard, 52 U.S.L.W. 5177 (1984). These decisions do not change the arguments made in this note.

effectively avaliable way—by removing the incentive to disregard it."[35] Thus, any evidence, including verbal and written statements made by defendant, obtained pursuant to an illegal arrest or seizure must be excluded from use at trial.

In *United States v. Mendenhall*[36] the Supreme Court articulated the reasonable man standard for determining whether a defendant had been seized properly under the fourth amendment. The Court stated that "a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed he was not free to leave."[37] The following circumstances might indicate a seizure: "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, and the use of language or a tone of voice indicating that compliance with the officer's request might be compelled."[38]

The North Carolina Supreme Court adopted the *Mendenhall* standard in *State v. Freeman*.[39] In *Freeman* the court ruled that defendant was entitled to a new trial because inculpatory statements made by defendant and introduced at trial were the product of an illegal seizure.[40] Defendant was "picked up" by the police after his sister made statements to the police that incriminated him in an arson case. When an officer from the police force confronted defendant at his home, he stated: "Detective Parham . . . asked me to come by and pick [you] up."[41] The officer also informed the suspect about the incriminating statements his sister had made to the police. Defendant accompanied the officer to the law enforcement center and was taken to a small room where he was advised of his *Miranda* rights. After being interrogated for approximately three and one-half hours, defendant confessed.[42] At trial, the State introduced defendant's confession into evidence, and defendant was convicted.[43]

On appeal, the North Carolina Supreme Court granted defendant a new trial, stating that his confession was inadmissible because it was the product of an illegal seizure.[44] The Court emphasized that the officer's declaration that he was there to "pick him up," coupled with his revelation of defendant's sister's accusatory statement, could have led a reasonable person to believe that his compliance with the deputy's request might be compelled.[45]

35. Elkins v. United States, 364 U.S. 206, 217 (1960).
36. 446 U.S. 544 (1980).
37. *Id.* at 554.
38. *Id.*
39. 307 N.C. 357, 298 S.E.2d 331 (1983).
40. *Id.* at 358, 298 S.E.2d at 332.
41. *Id.* at 361, 298 S.E.2d at 333.
42. *Id.* at 361, 298 S.E.2d at 333-34.
43. At the pretrial hearing, defendant argued that his confession should be excluded from trial because it was the product of an illegal seizure. After hearing the evidence, the Court denied this motion, stating that defendant's confession was given voluntarily and that "applicable procedures concerning custodial interrogation of defendant . . . were complied with." *Id.*
44. *Id.* at 363, 298 S.E.2d at 335.
45. *Id.* In *Freeman* the North Carolina Supreme Court cited its landmark decision in State v. Davis, 305 N.C. 400, 290 S.E.2d 574 (1982), the first case in which the court applied *Mendenhall*.

In *Jackson* the critical encounter for purposes of fourth amendment analysis occurred on April 8, 1981—it was during that interrogation that defendant confessed. Based on the reasonable man standard enunciated in *Mendenhall* and applied in *Freeman*, the court's conclusion that defendant had not been seized was warranted. Two key facts support the court's finding. First, defendant was not arrested when confronted by police on April 8, 1981, but was simply told that "the [police] wanted to talk with him again in reference to the murder on Cox Avenue."[46] Following this exchange with the police, defendant voluntarily entered the police car and accompanied the officers to the station. The circumstances surrounding this encounter were different from those in *Freeman*, in which defendant was told specifically by the officer that he was there "to pick him up." In *Freeman* there was no doubt that, given the officer's authoritative command, defendant's presence would have been compelled had he resisted. The same conclusion, however, cannot be drawn in *Jackson*; the officer merely requested defendant's presence at the station.

The second key fact is that Jackson was told by officers that he was free to leave.[47] This statement certainly would have served notice to a reasonable person that his participation in the interrogation would not be compelled. This conclusion is buttressed by defendant's own testimony that the officers did not arrest him but just wanted to talk with him.[48]

The facts in *Jackson* clearly indicate that defendant had not been seized on the evening he confessed. There was nothing in the conduct of the officers during the initial encounter on April 8, 1981, or the interrogation that ensued, which would have indicated to a reasonable person that he had been taken into custody or deprived significantly of his freedom of movement. The record does not reveal any of the circumstances delineated by the Supreme Court in *Mendenhall* as indicia of seizure. Furthermore, the evidence indicates that defendant was given water and coffee, and was allowed to use the bathroom at his request.[49] Thus, the facts of the case support the court's conclusion that defendant had not been seized.

In *Davis* a member of the Asheville Police Department received information that led him to consider defendant as a suspect in a recent murder. At the police's request, defendant came to the station for questioning. After being advised of his *Miranda* rights, defendant was interrogated concerning the murder. Defendant disavowed any knowledge of the crime, but agreed to take a polygraph test. Once inside the polygraph room, however, defendant refused to take the test. Following his refusal to take the test, at approximately 8:00 p.m., a detective gave defendant a ride home and asked him to return to the station at 10:00 p.m. The defendant agreed to do so. Upon returning to the station, defendant again was advised of his *Miranda* rights and, after a brief period of interrogation, defendant confessed. *Davis*, 305 N.C. at 403-04, 290 S.E.2d at 577.

At the pretrial hearing, defendant argued that his confession should be suppressed because it was the result of an illegal seizure. Because the State conceded there was no probable cause to arrest defendant, the defendant's status during the interrogation period was the pivotal issue in the case. Applying the reasonable man standard enunciated in *Mendenhall*, the court held that defendant had not been in custody or deprived of his freedom of action in any significant way. *Id.* at 419-20, 290 S.E.2d at 581.

46. *Jackson*, 308 N.C. at 576, 304 S.E.2d at 149.

47. *Id.*

48. *Id.*

49. *Id.* at 578, 304 S.E.2d at 150.

The next issue for determination is whether defendant's confession was voluntary and therefore admissible. The United States Supreme Court has held that, to comport with the fourteenth amendment due process requirement, confessions must be given voluntarily.[50] Resolution of the voluntariness issue hinges on whether tactics used by the police caused defendant's will to resist to be "overborne."[51] If a defendant's confession is given freely, without physical or mental duress, it is admissible. If, however, defendant confesses because police methods overbear his will, then it is given involuntarily and is not admissible at trial. The due process voluntariness standard seeks to ensure the reliability of a defendant's confession by prohibiting the use of coerced confessions to convict a defendant.[52]

Although the thrust of the voluntariness standard is stated easily, it is difficult to apply because there is no single test for determining when interrogations are constitutionally permissible. As Justice Goldberg noted: "The line between proper and permissible police conduct and techniques and methods offensive to due process is . . . difficult . . . to draw, particularly . . . where it is necessary to make fine judgments as to the effect of psychologically coercive pressures and inducements on the mind and will of an accused."[53] In the absence of specific guidelines categorizing particular methods as per se violations of due process, courts have applied the "totality of the circumstances" test.[54]

Although the *Jackson* court applied the proper "totality of circumstances" standard[55] for determining voluntariness, the court erred in concluding that Jackson's confession had been rendered voluntarily.[56] Two elements can be found in the *Jackson* case which require a finding that the confession was involuntary. First, the police used threats and promises to overcome defendant's will to resist.[57] Second, the police used trickery and deception to elicit the confession.[58]

The facts support the argument that the police used threats and promises

50. Brown v. Mississippi, 297 U.S. 278 (1936). In *Brown* a deputy sheriff, after severely beating one of the defendants, claimed that he would continue the beatings until the suspect confessed. The defendant then agreed to confess. The Court ruled that the use of physical torture had violated the fourteenth amendment requirement of due process. The Court stated that, "state action . . . shall be consistent with the fundamental principles of liberty and justice which lie at the base of our civil and political institutions." *Id.* at 286 (quoting Hebert v. Louisiana, 272 U.S. 312, 316 (1926)). For additional cases applying the due process voluntariness standard, see *supra* note 1.

51. *See supra* note 4.

52. Rogers v. Richmond, 365 U.S. 534, 540-41 (1961).

53. Haynes v. Washington, 373 U.S. 503, 515 (1963).

54. *See supra* notes 3 & 25.

55. *See supra* note 10.

56. In ruling to suppress confessions for lack of voluntariness, the North Carolina Supreme Court has emphasized various elements that, under the totality of the circumstances, caused the defendant's will to be overborne. *See, e.g.*, State v. Stevenson, 212 N.C. 648, 194 S.E. 81 (1937) (misrepresentation of the quantum of evidence); State v. Pruitt, 286 N.C. 442, 212 S.E.2d 92 (1975) (suggestions of hope or fear); State v. Roberts, 12 N.C. 259 (1 Dev.) (1827) (false statements concerning the admissibility of evidence).

57. *Jackson*, 308 N.C. at 586-90, 304 S.E.2d at 155-57 (Exum, J., dissenting).

58. *Id.* at 553-59, 304 S.E.2d at 137-39.

to induce Jackson's confession. The officers admitted to telling defendant, among other things, that "if he did go to the gas chamber, nobody, after the pill was dropped in the bucket of water, would rush in to save his life,"[59] and that "he could go into court and plead not guilty and if he did that then the other officers would probably go into court and testify that he was a black man out here viciously raping and murdering white women."[60] Moreover, one officer told defendant that "if he would tell the truth about the incident that it would certainly come out in court that he cooperated."[61] The police officers also intimated that if defendant did not confess, they would introduce fabricated evidence against him at trial.[62] These statements clearly are indicia of "threats or promises" calculated to induce defendant's confession. In numerous cases, the court has declared confessions involuntary on facts far less compelling than those in *Jackson*.[63]

In addition to inducing Jackson's confession through the use of implied threats and promises, police unduly influenced the substance of his statements by raising the specter of the death penalty.[64] During the interrogation, officers told Jackson that first degree murder carried a sentence of death unless there were "extenuating circumstances."[65] In explaining what would constitute extenuating circumstances, one of the officers stated:

> [I]f you did kill the girl and you done it by accident, or it wasn't premeditated, or it happened at a rational moment, irrational moment or something to that effect, that the judge and jury should know that . . . not that you premeditated, set there with a knife and went through the house and stabbed her without some other circumstance besides premeditation.[66]

Jackson clearly incorporated the officer's admonition that extenuating circumstances could spare him from the death penalty into his confession. He

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59. *Id.* at 587, 304 S.E.2d at 155 (Exum, J., dissenting).

60. *Id.* at 590, 304 S.E.2d at 157 (Exum, J., dissenting).

61. *Id.* at 589, 304 S.E.2d at 156 (Exum, J., dissenting).

62. *Id.* at 590, 304 S.E.2d at 157 (Exum, J., dissenting).

63. In State v. Pruitt, 286 N.C. 442, 212 S.E.2d 92 (1975), police officers told defendant that they knew he was "lying" and that they did not want to "fool around." In addition, defendant was told that it would be "harder on him" if he did not cooperate. The North Carolina Supreme Court ruled that the confession had been given involuntarily because it had been "made under the influence of fear . . . growing out of the language and acts of those who held him in custody." *Id.* at 458, 212 S.E.2d at 102-03. In State v. Fox, 274 N.C. 277, 163 S.E.2d 492 (1968), interrogating officers told the accused that it would be "a lot better" if he would tell the truth about what happened, and that he would probably only "be charged with being an accessory" to murder. Again, the court ruled that admission of the confession was prejudicial error because the statements by the officers constituted suggestions of hope and fear. *Id.* at 292-93, 103 S.E.2d at 503. Finally, in State v. Stevenson, 212 N.C. 648, 194 S.E. 81 (1937), a case similar to *Jackson*, the court ruled defendant's confession involuntary because it had been induced by officers' claims that they had sufficient evidence to convict defendant.

64. One of the reasons the United States Supreme Court promulgated the voluntariness standard was to ensure the reliability of confessions. The Court was concerned that in the absence of such a safeguard, police coercion would cause defendants to skew their confessions to fit the fact scenarios suggested by the police. *Jackson* vividly illustrates this phenomenon. *See supra* note 52 and accompanying text.

65. *Jackson*, 308 N.C. 587, 304 S.E.2d at 155-56 (Exum, J., dissenting).

66. *Id.* at 588, 304 S.E.2d at 156 (Exum, J., dissenting).

admitted committing the murder, but stated that the victim, a recently married woman, had invited him to come to her home and, once there, had indicated a willingness to have sexual relations with him. He claimed that upon his advances toward her she began to scream and, in a state of panic, he "stabbed her in the back."[67]

The reliability of Jackson's confession is questionable. The correlation between defendant's statements and the officer's suggestions concerning the mitigating effect of extenuating circumstances is too great to disregard. In fact, the trial judge ordered the suppression of defendant's confession because he doubted its veracity.[68]

The second, and perhaps most compelling, reason for concluding that Jackson's confession was given involuntarily is that the police used trickery and deception to extract his statements. During the second interview police told defendant that they had found bloodstains on the pants he had given them, and that tracks from his tennis shoes had been found in the victim's house. Both statements were false.[69] Furthermore, in preparation for the third interview, one of the detectives obtained a knife identical to the one believed to be the murder weapon, smeared blood on it, and placed his right thumb print in the blood.[70] Then, with the bloody knife lying on the interview table, another detective told defendant that the police had found the murder weapon, a knife, and that his fingerprints had been lifted from the weapon. Defendant also was told that the police had a witness who saw him coming out of the victim's front door carrying a knife.[71] After being confronted with these falsehoods, defendant confessed.

Based on the extreme fact situation in *Jackson*, it is inconceivable that a court, applying the totality of circumstances test, could conclude that defendant's confession was voluntary. The error of the court's conclusion is demonstrated by the fact that any one of the tactics used by the police—threats, false statements, or trickery—might have been sufficient to cause defendant's will to be overborne. Any test that purports to measure whether a defendant's will has been overborne, yet is flexible enough to accommodate the unconscionable methods used by the police in *Jackson*, is seriously deficient.

In his dissent, Justice Exum argued that prior to *Jackson*[72] the use of trickery and false statements had been sufficient to render the resulting confession involuntary under *State v. Stephens*[73] and *State v. Anderson.*[74] In *Stephens* investigators told defendant and his attorney that the attorney could not be present during the polygraph examination but that he could be present during the subsequent interrogation. The investigators started questioning the de-

67. *Id.* at 563, 304 S.E.2d at 141-42.
68. *Id.* at 600, 304 S.E.2d at 163 (Exum, J., dissenting).
69. *Id.* at 566, 304 S.E.2d at 143-39. *See supra* note 12 and accompanying text.
70. *Jackson*, 308 N.C. at 553, 304 S.E.2d at 137.
71. *Id.* at 558-59, 304 S.E.2d at 139.
72. *Id.* at 599, 304 S.E.2d at 162 (Exum, J., dissenting).
73. 300 N.C. 321, 266 S.E.2d 588 (1980).
74. 208 N.C. 771, 182 S.E. 643 (1935).

fendant immediately after the polygraph, however, without informing his attorney, who had been waiting outside the door. The court suppressed the confession and stated that "[i]f the totality of circumstances indicates that defendant was threatened, *tricked*, or cajoled into a waiver of his rights, his statements are rendered involuntary as a matter of law."[75]

Stephens fails, however, to support Exum's claim that trickery alone will render a confession involuntary. The court stated specifically that its decision to suppress defendant's confession was based on the "totality of the circumstances."[76] Also, *Stephens'* relevance to *Jackson* is questionable because it can be distinguished on its facts. In *Stephens* the police's trickery effectively deprived defendant of his sixth amendment right to counsel.[77] No corresponding right-to-counsel issue existed in *Jackson* because the defendant had waived his sixth amendment right.[78] Also, unlike Stephens, Jackson was not in custody at the time of his confession. Consequently, the procedural safeguards[79] offered to people in custody were not in effect.

In *Anderson*,[80] the second case cited by Justice Exum, defendant confessed after being informed that some of his codefendants had "talked" to police officials.[81] The court granted Anderson's motion to suppress. *Anderson* supports Justice Exum's proposition that a confession induced by trickery or deception is inadmissible as a matter of law. The only impropriety by law enforcement officials was the false allegation concerning statements made by his accomplices.[82] Furthermore, the pertinent facts in *Anderson* were similar to those in *Jackson*. In both cases false statements concerning the quantum of evidence possessed by the interrogators caused the defendants to confess.

Because the court did not articulate clearly the standard it was applying, the precedential value of *Anderson* is diminished. The court simply stated that "inasmuch as the involuntariness of the alleged confession is apparent from the testimony of the state's witness . . . we are disposed to disregard form for merit and to hold that the alleged confession should have been stricken out."[83]

Although *Stephens* and *Anderson* do not support Justice Exum's assertion that prior to *Jackson* trickery and false statements rendered a confession involuntary, serious attention should be given to promulgating such a rule. In *Miranda v. Arizona*,[84] the Supreme Court attempted to eliminate the "inherently

75. *Stephens*, 300 N.C. at 327, 266 S.E.2d at 592.

76. *Id.*

77. *Id.*

78. *Jackson*, 308 N.C. at 576, 304 S.E.2d at 149 (court held that although defendant knew he could have attorney present during questioning, he never requested one).

79. *See supra* note 6.

80. State v. Anderson, 208 N.C. 771, 182 S.E. 643 (1935).

81. *Id.* at 780, 180 S.E.2d at 648-49. This precipitous statement by police officials was false. *Id.*

82. Because the false statements were the only impropriety mentioned by the court, one can infer that trickery alone was sufficient to render the confession inadmissible.

83. *Anderson*, 208 N.C. at 783, 182 S.E.2d at 650.

84. 384 U.S. 436 (1966).

coercive" nature of custodial interrogation.[85] By extending certain fifth amendment protections[86] to the interrogation room, the Court theorized that the coercive atmosphere would be reduced. In practice, however, this result has not occurred because most suspects waive their *Miranda* rights and, as a result, interrogation proceeds much as it did prior to *Miranda*.[87] Consequently, the policy goal underlying *Miranda*—reducing the coercive atmosphere that permeates police interrogation—has not been realized. Thus, more effective steps must be taken to defuse the coercive nature of interrogation.

That trickery is an especially coercive interrogation technique is indisputable. Its powerful effect stems in part from the fact that once a suspect believes that evidence of his guilt exists, he may see no further reason to resist interrogation. The *Miranda* Court sought to blunt the adverse effect of trickery by prohibiting its use to obtain a waiver of rights.[88] The Court, however, did not expressly ban the use of trickery once a waiver was secured. A study conducted by Professor Driver suggests that the Court did not extend its prohibition against trickery far enough.[89] In his study, Driver concluded that "[t]he Miranda warnings failed to provide safeguards against the social psychological rigors of arrest and interrogation except to the extent that they prevent interrogation altogether."[90]

If the deceptive methods, including trickery, threats, and false statements, employed by the police in *Jackson* are not sufficient to render a confession involuntary, one wonders what measure of psychological coercion would transcend the threshold of acceptable police behavior. Unfortunately, the court did not address this critical question directly. It can be inferred from the court's silence, however, that police officers are to be given considerable latitude in employing psychological measures of coercion when interrogating suspects.

As a safeguard against the abusive methods used by the police in *Jackson*, North Carolina should adopt the standard on deceptive practices promulgated in the American Law Institute's Model Code of Pre-Arraignment Procedure. The Code stipulates that:

> No law enforcement officer shall attempt to induce an arrested person to make a statement or otherwise cooperate by . . . any . . .

85. *See supra* note 6. Although the *Miranda* Court was addressing custodial interrogations specifically, it is arguable that the same policy rationale should apply to noncustodial interrogations as well. As Professor LaFave has noted, "the person who honestly but unreasonably thinks he is under arrest has been subjected to precisely the same custodial pressures as the person whose belief in this regard is reasonable." LaFave, *"Street Encounters" and the Constitution:* Terry, Sibron, Peters, *and Beyond*, 67 MICH. L. REV. 39, 105 (1968).

86. *Miranda* held that the fifth amendment's self-incrimination clause requires that a person undergoing custodial interrogation be informed of his right to silence as well as of his right to the presence of counsel, either obtained or appointed, during interrogation. *See supra* note 6.

87. *See* Medalie, Zeitz and Alexander, *Custodial Police Interrogation in Our Nation's Capital: The Attempt to Implement* Miranda, 66 MICH. L. REV. 1347, 1394-95 (1968); Comment, *Interrogations in New Haven: The Impact of* Miranda, 76 YALE L.J. 1519, 1562-78, 1613-16 (1967).

88. *Miranda*, 384 U.S. at 476.

89. Driver, *Confessions and the Social Psychology of Coercion*, 82 HARV. L. REV. 42 (1968).

90. *Id.* at 59.

> method which, in light of such person's age, intelligence and mental and physical condition, unfairly undermines his ability to make a choice whether to make a statement or otherwise cooperate.[91]

Under this provision, a suspect's confession would be inadmissible if police tactics impaired his ability to make a rational decision. This standard would protect the fifth amendment and due process rights of defendants without hindering police interrogation.

In conclusion, the *Jackson* court's decision increases the quantum of evidence a defendant must present to demonstrate that his will was overborne by the circumstances surrounding his confession. This undermines the United States Supreme Court's objective in promulgating the voluntariness standard.[92] As a consequence, it is probable that confessions will be less reliable and defendants subject to greater coercion than before *Jackson*. To defuse the coercive atmosphere that envelops police interrogation, North Carolina should adopt the deceptive practices standard recommended by the American Law Institute.

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91. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, § 140.4 (Proposed Official Draft 1975).

92. *See supra* note 52 and accompanying text.