IN THE COURT OF APPEALS OF IOWA

No. 1-740 / 10-1742
Filed February 15, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT ANTHONY HOWARD,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Mark J. Smith (motion to suppress) and Marlita A. Greve (trial), Judges.

Robert Howard appeals the denial of his motion to suppress following his conviction for second-degree sexual abuse and child endangerment. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, and Alan R. Ostergren, County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

DANILSON, J.

Robert Howard appeals the denial of his motion to suppress following his conviction for second-degree sexual abuse and child endangerment. Because the trial court did not err in denying Howard's motion to suppress, we affirm.

I. Background Facts and Proceedings.

Robert Howard sometimes lived with his girlfriend, Jessica, her seventeen-month-old son A., her mother, her stepfather, and her stepbrother. On January 14, 2010, around noon, Howard, Jessica, and A. were alone in the house when the electricity went out. The electrical circuit panel was located in Jessica's mother's bedroom; however, it could not be reached without opening her parents' locked door. Jessica left Howard and the child at home and drove to her mother's workplace to obtain a key to the bedroom door.

Jessica was away from the home approximately twenty minutes. During that time, Howard called Jessica and told her A. had blood in his diaper. When Jessica returned, she found A. in his crib laying on his stomach and screaming. The couple called Howard's mother who advised them to call their doctor. When told of A.'s condition, the doctor's office told Jessica and Howard to "hurry up and get down to the doctor's office." Instead, Howard took a shower, changed his clothing, and stopped by a friend's house before going to the doctor's office.

Dr. Collete Hostetler examined the child. She observed a bleeding laceration in the child's anal area, and bruising, swelling, and venous congestion around the anus. She concluded the injury was caused by an external type of force, "a penetrating trauma . . . rather than a tear from a [hard] stool." She opined the injury had been inflicted "within several hours" of her examination. As

a mandatory reporter of suspected abuse, Dr. Hostetler notified the Iowa Department of Human Services (DHS).

At approximately 6:00 p.m., DHS caseworker Dustin Krueger and Detective Tim Hull interviewed Howard in a clinic examination room. The interview lasted less than an hour. Howard initially denied he caused the injury to the child. Later, however, he admitted that after Jessica left the house, he inserted his penis into the child's anus. He stopped when the child started crying. Howard put a diaper back on the child, but changed it again after noticing blood in the diaper.

The State charged Howard with second-degree sexual abuse and child endangerment.

Howard filed a motion to suppress the statements he made to Detective Hull, contending they were induced by promises of leniency.[1] During Howard's interview with Detective Hull, the following exchanges occurred:

> DETECTIVE HULL: What if some guy had kind of like a sickness and he couldn't control himself and he stuck his penis in a year-and-a-half-year-old's butt? What do you think should happen to him? Do you think he should get the help he needs? You know, because, obviously, he's sick and needs help.
>
> HOWARD: He should go to a hospital where they can help him or something. I don't know.
>
> DETECTIVE HULL: Okay. How long should he be in the hospital, just until he gets treated for his sickness?
>
> HOWARD: Yeah.
>
> DETECTIVE HULL: Okay. How do we get the help, get you the help you need?
>
> . . . .
>
> DETECTIVE HULL: . . . Same thing with people who like to have sex with children. They're just programmed that way, and

[1]Howard also urged his statements were inadmissible because he had not been informed of his *Miranda* rights. *See Miranda v. Arizona*, 384 U.S. 436, 479, 86 S. Ct. 1602, 1630, 16 L. Ed. 2d 694, 726 (1966). This claim is not raised on appeal.

they need to get reprogrammed because they're sick and they need some help. They basically—they have a disease, okay? And there's people out there that are specialists that can help them get the help they need.

Do you agree with that?

HOWARD: I agree.

DETECTIVE HULL: Okay.

HOWARD: What happens to people like that, though? I've never met someone like that, whatever it is, like with little kids or anything.

DETECTIVE HULL: There's doctors and nurses that treat them and just like any other sickness.

HOWARD: I know. But, like, where do they go? Do you know what I'm trying to say?

DETECTIVE HULL: To a treatment center like people go to treatment centers for drug addictions.

HOWARD: Yeah. I've been to New Horizons.

DETECTIVE HULL: It's a treatment center for sex addiction. Their addiction is, you know, with children. You know, a lot of people don't want to talk about that stuff; but it happens. We deal with this a lot. You know, we have dozens of cases like this every year. You know, people go get the treatment they need; and, you know, then they can prove they can be around children again.

They have to pass the program and make sure they're going to be safe around kids, and they graduate. And, you know, then they have to slowly prove they can be around kids without doing harm to them.

. . . .

DETECTIVE HULL: Okay. Do you agree with what happened today that that person just needs some help so they don't do this again, they don't ever ham another child?

HOWARD: Yeah.

. . . .

DETECTIVE HULL: Okay. And if I'm you—Where would you like to be five years from now?

HOWARD: Five years for me?

DETECTIVE HULL: Yeah.

HOWARD: Well, five years I wish I could have my school under my belt.

. . . .

HOWARD: Well I'm looking to go to school. I'm looking for a job, so I am trying.

DETECTIVE HULL: Okay. The first thing is that we get you help, right?

HOWARD: Yes.

DETECTIVE HULL: Okay. So are you ready to tell us what happened today or—Because this is the time right now.

I know it's difficult for you, but I know you love [A.] and you love Jessica. And she loves you. She told us that, okay? And she does want you to be the father figure that [biological dad] isn't, okay? He's not going to be that person. She wants you to be that person. She told us so. Okay?

. . . .

Okay. So what happened with [A.] today? Come on, I really do want to help you.

HOWARD: Okay. Help me.

DETECTIVE HULL: So how did this happen?

HOWARD: Like you guys said.

DETECTIVE HULL: Okay. How is that?

You're just sick, Robert. You need help.

HOWARD: I know.

DETECTIVE HULL: Okay. So how do we get you there, from here to there? How do we do it? I mean, do you have urges that you can't control?

HOWARD: No. (Crying)

DETECTIVE HULL: No, okay.

HOWARD: I don't know what brought it on.

DETECTIVE HULL: Okay. What brought what on?

HOWARD: Doing that.

DETECTIVE HULL: Okay. What did you do?

HOWARD: (No response).

DETECTIVE HULL: You know that no matter what you tell me today, I'll give you a ride home, drop you off wherever you want to go as long as we can promise that Jessica and [A. are safe] and you're not going to contact them until we know that Jessica and [A.] are going to be safe and you get the help you need, okay.

I'll give you a ride wherever you want to go, okay? Like I say, you just got to promise that you're not going to have contact with [A.] and Jessica for a couple weeks, okay? So what happened?

HOWARD: I put my penis in.

. . . .

DETECTIVE HULL: How long did you do that for?

HOWARD: Just a minute.

DETECTIVE HULL: Just a minute?

HOWARD: Yeah. Just until he started crying.

Following a hearing, the district court (Judge Mark J. Smith) denied the motion to suppress finding:

> the interview took place for approximately thirty minutes, it was at a medical clinic where the defendant was free to leave, and statements that an individual needs treatment who would

> perpetrate this type of act and a promise to get help for the defendant does not constitute a promise of leniency in that Detective Hull never referred to avoiding incarceration, that it would go better for the defendant if he told the truth, or that the statements would have any effect on further criminal prosecution.

At trial, Howard asked the court to reconsider the denial of his motion to suppress. The district court (Judge Marlita Greve) again found "[t]here were no promises of leniency made" and no "coercion or deceptive activity by the police." The recording of Howard's statements was admitted into evidence. He was convicted as charged and now appeals.

II. Analysis.

Voluntary confessions are a proper element in law enforcement. *Maryland v. Shatzer,* 559 U.S. ___, ___, 130 S. Ct. 1213, 1222, 175 L. Ed. 2d 1045, 1055 (2010); *Miranda v. Arizona*, 384 U.S. 436, 478, 86 S. Ct. 1602, 1630, 16 L. Ed. 2d 694, 726 (1966). However, involuntary confessions are inherently unreliable and consequently, inadmissible. *State v. McCoy*, 692 N.W.2d 6, 28 (Iowa 2005); *State v. Quintero*, 480 N.W.2d 50, 52 (1992). Howard argues his confession was involuntary because it was induced by promises of leniency.

A. Scope of Review.

> "[W]here there is no dispute as to the words used or their obvious meaning, and the circumstances surrounding the expressions," then the court determines as a matter of law whether the police gave "some assurance that the accused might gain in some manner" by admitting guilt. *State v. Mullin,* 249 Iowa 10, 15, 85 N.W.2d 598, 601 (1957). In cases involving the *Mullin* circumstances, Iowa courts decide admissibility on an evidentiary basis and not a constitutional basis. *See McCoy,* 692 N.W.2d at 27-28; *Quintero,* 480 N.W.2d at 52 (holding involuntary confession inadmissible, "not on the basis of a constitutional principle, but as a matter of the law of evidence"). Involuntary confessions are inadmissible evidence because of their "inherent lack of reliability." *McCoy,* 692 N.W.2d at 28. This evidentiary rule developed

> because "the law has no way of measuring the improper influence or determining its effect on the mind of the accused." *Quintero,* 480 N.W.2d at 52.

Here Howard's interview was recorded and there is no dispute regarding the exact words used by Detective Hull. Therefore, the record is sufficiently clear to analyze this issue on an evidentiary basis as a matter of law.

B. Promissory Leniency.

Our supreme court has previously outlined the applicable principles in *McCoy*, 692 N.W.2d at 27:

> In *State v. Mullin*, this court held involuntary a written confession induced by an officer's statement to the defendant that it would be best for the defendant to tell what he knew about a robbery because more mercy would be granted by the authorities that handled the prosecution. 249 Iowa 10, 18, 85 N.W.2d 598, 602–03 (1957). This court held that "if it clearly appears the confession was induced by force, threats, promises, or other improper inducements, the question is one of law for the court alone and the statement should be rejected." *Id.* at 14, 85 N.W.2d at 600.
>
> > This court made clear in *Mullin* that a
> > confession can never be received in evidence where the prisoner has been influenced by any threat or promise, "'for the law cannot measure the force of the influence used, or decide upon its effect upon the mind of the prisoner[,]'" and therefore excludes the declaration if *any degree* of influence by force *or other inducement has admittedly been exerted* upon him. "Voluntary" [is] defined as meaning a statement made of the free will and accord of the accused, without coercion, whether from fear of any threat of harm, promise or inducement, or any hope of reward.

Applying these principles, the court found the defendant's statements induced by promises of leniency. *McCoy*, 692 N.W.2d at 28-29. The *McCoy* court adopted the following findings of the trial court:

> The court finds that Detective Thomas's statement during defendant's interview: "If you didn't pull the trigger, you won't be in

> any trouble," repeated at least twenty-five times, indicates leniency in exchange for defendant's confession. Moreover, Detective Thomas's statement suggested that it would be advantageous for defendant if he offered a confession or made inculpatory statements. The implication of Detective Thomas's repeated statement was, if the defendant didn't shoot Jonathan Johnson, he would not be in any trouble and he would [be] free to go or at least not be charged with Johnson's murder. It is questionable whether or not the aforementioned statement by Detective Thomas if mentioned once or twice to the defendant would have resulted in the Court's conclusion that the statement was a promise of leniency. However, once the Court reviewed the video it is apparent that this statement repeated twenty-six times in an hour and a half could only lead one to believe that a statement given would not result in charges being filed against the defendant.

Id.

In *State v. Hodges*, 326 N.W.2d 345, 349 (Iowa 1982), the defendant's statements were found involuntary because the questioning officer "stated that a lesser charge would be much more likely if he gave 'his side of the story.'" And in *Mullin*, the defendant's statements were held to be involuntary because the officer's

> language was sufficient to justify the accused in a belief that if he confessed he would be given more lenient treatment, special consideration by the prosecuting authorities and the court, than he would if he denied his guilt and was found guilty in the eventual trial.

249 Iowa at 18, 85 N.W.2d at 602-03. In all of these cases, the defendant had been offered promises or implications that criminal charges would not be pursued or would be of a lesser degree. This is not such a case.

Although we are troubled by Officer Hull's several statements about getting Howard "help" and "treatment," no promise of leniency in prosecution or sentencing was made. In *State v. Whitsel*, 339 N.W.2d 149, 153 (Iowa 1983), our supreme court stated, "We do not consider either an offer to recommend

psychiatric help or an offer to inform the prosecutor of defendant's cooperation to be tantamount to a promise of leniency." The court cited several cases from other jurisdictions where the court had determined a defendant's statements were voluntary though police promised psychiatric help. *See Whitsel*, 339 N.W.2d at 154. "In sum, the totality of the circumstances reveals the complete absence of any form of coercion and demonstrates that the inculpatory statement made by [the defendant] was voluntary." *Id.* at 155; *see also Dunson v. State*, 711 S.E.2d 53, 58-59 (Ga. Ct. App. 2011) ("But the offer to obtain counseling for [defendant] did not bear on the question of punishment. It involved a collateral benefit, and promises of a collateral benefit do not impact a statement's admissibility.").

Here, Officer Hull did not state or imply "help" would be in lieu of criminal charges. *See*, *e.g.*, *Harper v. State*, 873 A.2d 395, 407-08 (Md. Ct. Spec. App. 2005) (finding defendant's statements involuntary where trooper stated that if defendant confessed "he might be able to receive some sort of medical treatment" instead of "being locked up for the rest of [his] life"). There was also no offer by Officer Hull that he would intercede with any authorities to help Howard if he confessed, and no benefit suggested if Howard confessed.

Much of the discussion about "help" related to there being help "out there." Officer Hull then turned the focus of help to "we need" to "get you help, right?" Then the officer stated, "Come on I really do want to help you." And "[y]ou're just sick Robert," "you need help." The officer never crossed the line to explain "what advantage is to be gained or is likely from making a confession." *McCoy*, 692 N.W.2d at 28 (citing *Hodges*, 326 N.W.2d at 349).

Moreover, although the officer told Howard he would give Howard a ride home, the ride was not conditioned upon Howard's confession. The officer prefaced his remarks by stating, "[n]o matter what you tell me today, I'll give you a ride home, drop you off wherever you want to go . . . ."

In listening to the recording, we conclude Howard's will was not overborne during this short, thirty-minute interview. There were no strong-arm tactics, no threats, intimidation, physical force, or coercion. Howard answered the questions in a manner that reflected a sound mind. The interview was nothing more than an attempt to get Howard to tell the truth.

C. Totality of the Circumstances.

We come to the same conclusion employing a totality-of-circumstances analysis.[2] The "totality of the circumstances" encompasses the characteristics of the accused and the details of the interrogation process. *Whitsel*, 339 N.W.2d at 153 (listing several relevant factors including the defendant's knowledge and waiver of his *Miranda* rights, the defendant's age, experience, prior record, level of education and intelligence, the length of time defendant is detained and interrogated, the defendant's ability to understand the questions, the defendant's physical and emotional condition and his reaction to the interrogation, whether

[2] The dissent states the supreme court has expressed disapproval of the totality-of-the-circumstances analysis, citing *McCoy*, 692 N.W.2d at 28. But in *McCoy*, the court notes the district court did not employ a totality-of-circumstances analysis and the "State filed no post-hearing motion asking the court to employ the federal totality-of-the-circumstances test." 692 N.W.2d at 28. We acknowledge the supreme court has concluded when a confession is "clearly" involuntary, we need not consider the totality of the circumstances, and we reject the use of the confession as a matter of law because it constitutes unreliable evidence. *See id.* at 27; *State v. Quintero*, 480 N.W.2d 50, 52 (Iowa 1992). But when the issue is not so clear—as it is here—prior case law indicates we view the totality of the circumstances in determining whether the confession was voluntarily given. *See Whitsel*, 339 N.W.2d at 153.

any deceit or improper promises were used in gaining the admissions, and any mental weakness the defendant may possess; "no one factor is determinative"). Here, Howard was questioned in a room at a health care clinic, not the police station. A department of human services worker, whom Howard knew, was present and also questioned Howard during the interview. Howard was not read *Miranda* warnings; however, he was not in custody and therefore *Miranda* warnings were not required.[3] *State v. Miranda*, 672 N.W.2d 753, 759 (Iowa 2003) ("'*Miranda* warnings are not required unless there is both custody and interrogation.'" (citation omitted)). The questioning lasted about thirty minutes, and Howard was not restrained in any manner. No deceit was employed. Neither the officer nor the social worker made any promises to Howard, except that he would be free to leave at the end of the interview, which he did.

Howard notes that his mother testified he reads at a fourth grade level, was a special education student, and was "easily persuaded to go your way." However, we note that during the interview Howard demonstrated he was capable of exerting his will, refusing to give Detective Hull the name of the person with whom he spent his time when he was not at his girlfriend's home.

In *McCoy*, the court stated:

> An officer can tell a suspect that it is better to tell the truth without crossing the line between admissible and inadmissible statements from the defendant. However, the line is crossed "*if the officer also tells the suspect what advantage is to be gained or is likely from making a confession*." Under the latter circumstances,

[3] Our decision would have been easier had Howard received the *Miranda* warnings. But, considering part of the interview was completed by the DHS worker and all the circumstances, the absence of *Miranda* warnings does not justify a different result.

> the officer's statements ordinarily become promises of leniency, rendering the statements involuntary.

692 N.W.2d at 28 (citations omitted). Detective Hull did not ever tell Howard what advantage was to be gained or was likely should he make a statement.

III. Conclusion.

The district court did not err in finding Howard's statements were not made in response to promises of leniency and we therefore affirm.

AFFIRMED.

Vogel, P.J., concurs; Potterfield, J., dissents.

POTTERFIELD, J. (dissenting)

I dissent and would find the district court erred in denying defendant's motion to suppress his confession. I believe the officer's interrogation violated our supreme court's rule on promissory leniency, not because Officer Hull offered treatment but because he implicitly offered treatment only, not as an adjunct to incarceration.

Case law mandates that because the recorded interview leaves "no dispute as to the words used or their obvious meaning and the circumstances surrounding the expressions," we are to review the issue as an evidentiary matter rather than reviewing the totality of the circumstances de novo as we would if the defendant's confession had not been recorded and disputes existed regarding the words used or their meanings. *See State v. Mullin*, 249 Iowa 10, 15, 85 N.W.2d 598, 601 (1957); *see also State v. McCoy*, 692 N.W.2d 6, 27–28 (Iowa 2005) (agreeing with the district court's decision to decide the voluntariness issue on an evidentiary basis rather than under a totality-of-the-circumstances test); *State v. Quintero*, 480 N.W.2d 50, 51–52 (Iowa 1992) (holding defendant's confession was inadmissible "not on the basis of a constitutional principle, but as a matter of the law of evidence," citing to Iowa Rule of Evidence 5.403). *But see State v. Whitsel*, 339 N.W.2d 149, 153 (Iowa 1983) (stating the voluntariness of the defendant's inculpatory statement was to be determined by examining the totality of the circumstances and concluding "the totality of the circumstances reveals the complete absence of any form of coercion"); *State v. Hodges*, 326 N.W.2d 345 at 347–48 (Iowa 1982) (stating that determining the voluntariness of defendant's taped confession "necessarily depends upon the totality of the

circumstances of the individual case"); *State v. Munro*, 295 N.W.2d 437, 440 (Iowa 1980) ("This court determines the issue of whether officers have exercised coercion so as to render statements involuntary by examining the totality of the circumstances."); *State v. Cullison*, 227 N.W.2d 121, 127 (Iowa 1975) (declining to review the voluntariness of defendant's inculpatory statements at law, as requested by the defendant, and instead finding the issue involved a "violation of basic constitutional safeguards" requiring a review of the totality of the circumstances surrounding the defendant's statements).

Because our court has consistently interpreted recent case law to require an evidentiary review of a recorded confession, I agree with the majority's conclusion that an evidentiary review is proper in this case. This scope of review does not allow us to consider the totality of the circumstances, requiring us to ignore factors that arguably affected the voluntariness of Howard's confession, including the psychological impact of the interrogation on Howard; the legal significance of Howard's reaction to questioning; and Howard's mental challenges.

Even without considering those factors, I find the record here demonstrates an interrogation in which the accused was repeatedly and deliberately presented with the idea that his confession would lead to treatment and not to prosecution, rendering his confession involuntary and inadmissible. *See Mullin*, 249 Iowa at 14, 85 N.W.2d at 600 ("[I]f it clearly appears the confession was induced by . . . promises[ ] or other improper inducements, the question is one of law for the court alone and the statement should be rejected."). The setting of the questioning, in an exam room in the medical clinic where

Howard and the child's mother had brought the child for treatment, allowed Officer Hull to avoid any suggestion of incarceration or prosecution. Officer Hull admitted he told Howard he would let him go home after the interview no matter what Howard confessed so that Howard would feel "comfortable not thinking about jail-type thing [sic] whatsoever." Officer Hull chose not to reveal that he was recording his conversation with Howard, and nothing indicates Howard knew Officer Hull's purpose was to gather evidence. Officer Hull gave no Miranda warnings and did not mention that Howard's responses to questioning would be used against him at a trial.

Further, Officer Hull testified at the suppression hearing that his repeated discussions about treatment as the consequence of an admission were designed to elicit a confession. Howard confessed as a result of the officer's deliberate ruse which implied that treatment in lieu of incarceration would follow, that Howard would have the ability to make plans for the next five years of his life, that he would be released no matter what he confessed, and that he would be permitted to rejoin the family of the child and the child's mother after a short period of no contact with the mother and child. There is no suggestion in this record that Officer Hull indicated to Howard that treatment would be merely a collateral benefit of incarceration. Rather, Officer Hull's tools of persuasion were calculated fiction—that a confession would result in a ride home, treatment, a short period of no contact with the family, followed by a return to unsupervised interaction with children and completion of his schooling.

I believe the majority's reliance on *Whitsel* is misplaced for several reasons. Whitsel, who was charged with kidnapping and sexual abuse,

volunteered information concerning a prior arrest in another state where the officers had offered psychiatric help in exchange for his cooperation.[4] *Whitsel*, 339 N.W.2d at 153. In response, the detectives told Whitsel they would recommend to the county attorney that Whitsel receive psychiatric help. *Id.* The detectives emphasized to Whitsel that they could not make any promises or give any guarantees. *Id.* No such qualifying language was used with Howard. Further, Whitsel was interrogated at the Linn County Sheriff's Office, where he was advised of his Miranda rights and signed an express waiver. *Id.* at 151. Both circumstances clearly indicate notice that the State intended to prosecute and were lacking in the present case.

Similarly, the majority cites to *Dunson v. State*, 711 S.E.2d 53 (Ga. Ct. App. 2011), a Georgia case where officers transported the accused to the police station for questioning after informing him that he was a suspect. Although the officers offered to secure counseling for Dunson, they explicitly discussed the length of time of incarceration, making that situation the more typical promise of treatment during incarceration, which is permissible under the line of promissory leniency cases. *Dunson*, 711 S.E.2d at 488; *see, e.g.*, *Whitsel*, 339 N.W.2d at 153 ("We do not consider . . . an offer to recommend psychiatric help . . . to be tantamount to a promise of leniency."). Dunson's offer of treatment as a

[4] *Whitsel* was decided on the basis of a totality-of-the-circumstances analysis. The Iowa Supreme Court has since expressed disapproval of such an analysis in these circumstances, suggesting we are to decide issues regarding the voluntariness of confessions on an evidentiary basis, not using a totality of the circumstances test. *See McCoy*, 692 N.W.2d at 28 ("The district court did not decide the voluntariness issue under a totality-of-the-circumstances test. It is clear from the court's ruling that it decided the issue on an evidentiary basis, a procedure with which we concur.").

collateral benefit is therefore distinguishable from Officer Hull's implications of treatment in lieu of incarceration.

Further, the *Dunson* court also concluded Dunson's statements were voluntary because his "hope of benefit" had not been induced by another, but rather was self-induced. *Dunson*, 711 S.E.2d at 58–59. Dunson had suggested a hypothetical sentence that he felt the alleged offender should receive, but the *Dunson* court found Dunson "offered no evidence that the officers induced him to believe he would receive" this sentence. *Id.* In the present case, however, Officer Hull suggested many times to Howard that the person who hurt this child just needed help or treatment. When Howard asked about what happened to people who sexually abuse children, specifically asking "where do they go? Do you know what I'm trying to say?," Officer Hull responded, "To a treatment center . . . ." This statement is representative of an overarching theme presented by Officer Hull that whoever hurt the child simply needed treatment, "just like [with] any other sickness." Though Officer Hull never explicitly offered Howard treatment in lieu of incarceration, a review of the interview shows ample evidence that, unlike in *Dunson*, Officer Hull did induce Howard to believe he would receive help in the form of the hypothetical treatment the two men discussed and would not be incarcerated, as punishment and incarceration were not discussed.

I would find Officer's Hull's statements to Howard constituted an offer of help in lieu of incarceration. *See Harper v. State*, 873 A.2d 395, 407 (Md. Ct. Spec. App. 2005) (finding a police officer's "express or implied assertion that a suspect will be given leniency in prosecution or sentencing if he makes a statement" is an improper promise of a special benefit); *State v. Farnsworth*, 738

N.W.2d 364, 374 (Minn. 2007) ("We have held that offers of help do not make a statement involuntary as long as the police have not implied that a confession may be given in lieu of criminal prosecution."). Officer Hull's statements strategically planted in Howard's mind the idea that he would receive treatment, and nothing more, if he confessed. Our supreme court has stated, "'[s]tatements exacted by promissory leniency are not excluded on prophylactic grounds to deter police misconduct; they are excluded on grounds that statements exacted under such circumstances are unreliable.'" *State v. Lowe*, ___ N.W.2d ___ n.10 (Iowa 2012) (quoting *State v. Kase*, 344 N.W.2d 223, 226 (Iowa 1984)). "When a statement is made in response to a promise of leniency, the statement's 'probative value, if any exists, is substantially outweighed by the danger of confusion of issues and would be misleading to the jury under Iowa rule of evidence [5.403].'" *Id.* (quoting *McCoy*, 692 N.W.2d at 28). I believe that is the situation clearly presented by this undisputed record. Accordingly, I would find Howard's inculpatory statements were improperly induced by Officer Hull's promises of leniency and should not have been admitted into evidence.