STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 5, 2000
v	No. 212986 Oakland Circuit Court
MICHELLE A. OLIVERIO, Defendant-Appellant.	LC No. 97-156800-FH

Before: Wilder, P.J., and Holbrook, Jr., and McDonald, JJ.

HOLBROOK, JR., J. (dissenting).

The majority concludes that the "the various techniques used during the questioning in this case" approached, but did not cross, the line between proper police procedure and improper inducement or coercive conduct. *Ante*, p __. Because I believe that under the circumstances present in this case the police did cross over that line, I respectfully dissent.

The essential question a trial or an appellate court must answer in cases such as these is "whether the defendant's will was overborne" at the time the defendant made the incriminating statements. *Lynumn v Illinois*, 372 US 528, 534; 83 S Ct 917; 9 L Ed 2d 922 (1963). Accord *Dickerson v United States*, ___ US ___; 120 S Ct 2326, 2331; 147 L Ed 2d 405 (2000). "And, of course, whether the confession was obtained by coercion or improper inducement can be determined only by an examination of all of the attendant circumstances." *Haynes v Washington.* 373 US 503, 513; 83 S Ct 1336; 10 L Ed 2d 513 (1963).

The word "coercion" is a strong term that conjures up pictures of using actual or threatened physical violence to brow beat a confession from a suspect. However, police "conduct which renders a confession involuntary does not consist only of express threats so direct as to bludgeon a defendant into failure of the will. Subtle psychological coercion suffices as well, and at times more effectively . . . ." *Jones v Cardwell*, 686 F2d 754, 757 (CA 9, 1982). Accord *Miranda v* Arizona, 384 US 436, 438; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *Townsend v Sain*, 372 US 293, 307; 83 S Ct 745; 9 L Ed 2d 770 (1963).

After reviewing the record, I conclude that the not so subtle psychological coercion employed by the interrogating officer rendered defendant's confession involuntary. The record clearly indicates that defendant's confession came only after the officer told her that she and her family faced pervasive public disclosure of the incident if she did not confess before leaving the

police station. Defendant was told that if she did not confess, the police would question her fellow employees at the restaurant where she and the complainant worked. She was told the police would question "all" of her "employers," the clear implication being that the police investigation would not be limited to her employer at the above mentioned restaurant. She was told that the police would "talk to all of her neighbors" and would place "an article in the paper about this to see if anyone else comes forward." The officer told defendant that if she did not "come clean," his superior might "assign[] a criminal task force" that would lead to "a lot of people askin' a lot of questions about you."

Thus, defendant was presented with the following Hobson's choice: either confess to the crime alleged, or not confess and face public humiliation for herself, her husband, and her children.

The coercive atmosphere was further compounded by the officer's repeated assurances that if she confessed, the matter could somehow be kept between defendant and the family of the complainant. See *Bram v United States*, 168 US 532, 542-543; 18 S Ct 183; 42 L Ed 568 (1897), quoting 3 Russ. Crimes (6th ed), p 478 (observing that "'a confession, in order to be admissible, . . . must not be . . . obtained by any direct or implied promises, however slight'"). Indeed, when defendant expressed concern on how this matter would affect her husband and her children, the officer responded, "Well, they don't have to know about this. All right? Like I say, we can keep this just between you and the [complainant's] family." Having had no prior experience with the criminal justice system, defendant had no reason not to believe the officer's assurances that her family could be protected from the psychological strain of a public airing of this public matter if she would only confess.

The officer also deceived defendant by repeatedly telling her that the complainant had taken and passed a lie detector test. See *Miranda, supra* at 453. Further, Nadine Glappa—the woman who came with defendant to the police station and the only person defendant might have been able to turn to during the interrogation—was not allowed to accompany her friend to what was characterized by the police just routine questioning. Then, when Glappa asked whether she should call either a lawyer or defendant's husband, Glappa was assured that this would not be necessary. *Blackburn v Alabama*, 361 US 199, 208; 80 S Ct 274; 4 L Ed 2d 242 (1960) (observing that "the absence of . . . friends, relatives, or legal counsel" is a factor to be considered when considering the voluntariness of a confession). While such conduct alone would not be enough to support the conclusion that the statements were involuntary, they were not isolated occurrences in the case at hand.

The record also clearly indicates that at the time of the interrogation, defendant was under extreme emotional distress. The interrogating officer admitted that he was fully aware of defendant's precarious emotional state. Further, while the fact that defendant was told that she was free to leave is important, it is not decisive. *United States v Eccles*, 859 F2d 1357, 1361 (CA 9, 1988) (observing that "even those defendants who are free to leave may be exposed to coercion sufficient to keep their confession from being" voluntary). In the case at hand, the fact that defendant was told that she was free to leave was tempered by the threat that if she did, she and her family would certainly face far-reaching public humiliation.

Under these circumstances, I conclude that defendant's will was overborne, rendering her subsequent confession involuntary. Accordingly, I believe that the trial court erred in failing to suppress defendant's statement. Finding this error not to be harmless, I would reverse defendant's conviction and sentence.

/s/ Donald E. Holbrook, Jr.