Recent Case Report

Date posted: November 5, 2008

U.S. v. Boskic

(1st Cir. 2008) __ F.3d __ [2008 WL 4648326]

Issue

Did federal agents engage in coercive interview tactics by lying to the defendant about the purpose of their interview?

Facts

A war crimes investigator obtained information that Boskic had participated in the so-called "military farm" massacre of over 8,000 people in Bosnia and Herzegovina while he served with the 10th Sabotage Detachment of the Serb Republic. He also learned that Boskic had immigrated to the United States and was currently living in Massachusetts. The investigator notified federal agents assigned to the Joint Terrorism Task Force in Boston.

Hoping to obtain a confession or admission, the agents devised a plan whereby they would meet with Boskic in the federal building to ostensibly discuss his immigration status. Then, at some point during the meeting, they would confront him with the evidence against him. Meanwhile, they determined that Boskic had lied on his immigration applications when he failed to disclose his criminal record and service with the Sabotage Detachment.

During the interview, Boskic denied that he had a criminal record in Bosnia, and he denied fighting in the Bosnian war. When an agent told him that he knew about his criminal record, Boskic responded by saying the charges had been fabricated by Muslims. About then, the war crimes investigator entered the room, said he was investigating the military farm massacre, and explained that he knew Boskic had served with the Sabotage Detachment. And to prove it, he showed him a videotape of Boskic participating in one of the Detachment's awards ceremonies. The investigator then told Boskic that he was not the target of his investigation, at which point Boskic decided to cooperate by describing his involvement in the massacre.

Boskic's statements were used against him at his trial on charges of making false declarations on immigration documents, and he was convicted.

Discussion

Boskic contended that his statements should have been suppressed because they were involuntary. What made them involuntary, said Boskic, was that the agents and war crimes investigator "misled him as to the true nature of their investigation," and that they engaged in a "carefully contrived and executed plan" to deceive him into believing he was not the target of any investigation. While Boskic was certainly deceived, the court ruled it did not render his statements involuntary.

A statement is involuntary if officers obtained it by means of coercion, such as violence or threats. Thus, the United States Supreme Court explained that a statement is

involuntary and will be suppressed if it was obtained "by techniques and methods offensive to due process, or under circumstances in which the suspect clearly had no opportunity to exercise a free and unconstrained will."[1]

Mere deception, however, seldom has this effect because tricking someone into making a statement is a far cry from coercing him into doing so. As the Supreme Court explained in *Illinois* v. *Perkins,* there is nothing inherently coercive about "mere strategic deception.[2] Similarly, the California Supreme Court noted that "[n]umerous California decisions confirm that deception does not necessarily invalidate a confession."[3] For example, the courts have ruled that the following lies did not produce coercion:

- A witness saw the suspect leaving the victim's home on the night of the murder.[4]
- The suspect's fingerprints were found on the victim's neck.[5]
- The victim positively identified the suspect.[6]
- The suspect's accomplice was captured and had confessed.[7]

Deception may, however, result in an involuntary statement if the nature of the deception was such that it was reasonably likely to have produced a false admission or confession.[8] But this will not happen unless the suspect's mind was so disordered that he was unusually susceptible to the influences of others. Under those circumstances, the suspect's lack of confidence in his mind's ability to apprehend reality may cause him to eventually accept the officer's repeated lies as the truth.[9]

---

[1] *Oregon* v. *Elstad* (1985) 470 U.S. 298, 304. ALSO SEE *Culombe* v. *Connecticut* (1961) 367 U.S. 568, 601-2 ["The ultimate test" of voluntariness is as follows: "Is the confession the product of an essentially free and unconstrained choice by its maker?"].

[2] (1990) 496 U.S. 292, 297.

[3] *People* v. *Thompson* (1990) 50 Cal.3d 134, 167. ALSO SEE *Oregon* v. *Elstad* (1985) 470 U.S. 298, 317 [Court noted that it "has refused to find that a defendant who confesses, after being falsely told that his codefendant has turned State's evidence, does so involuntarily."]; *People* v. *Maury* (2003) 30 Cal.4th 342, 411 ["Deception does not necessarily invalidate an incriminating statement."].

[4] *People* v. *Richardson* (2008) 43 Cal.4th 959, 992.

[5] *People* v. *Farnam* (2002) 28 Cal.4th 107, 181-82; *People* v. *Connelly* (1925) 195 Cal. 584, 597; *People* v. *Watkins* (1970) 6 Cal.App.3d 119, 124; *People* v. *Musselwhite* (1998) 17 Cal.4th 1216, 1240.

[6] *People* v. *Pendarvis* (1961) 189 Cal.App.2d 180, 186; *Amaya-Ruiz* v. *Stewart* (9th Cir. 1997) 121 F.3d 486, 495.

[7] *Frazier* v. *Cupp* (1969) 394 U.S. 731, 739.

[8] See *People* v. *Cahill* (1994) 22 Cal.App.4th 296, 315; *People* v. *Chutan* (1999) 72 Cal.App.4th 1276, 1280; *People* v. *Azure* (1986) 178 Cal.App.3d 591, 601; *People* v. *Maury* (2003) 30 Cal.4th 342, 411; *People* v. *Felix* (1977) 72 Cal.App.3d 879, 886 ["The general rule throughout the country is that a confession obtained through use of subterfuge is admissible, as long as the subterfuge used is not one likely to produce an untrue statement."]; *People* v. *Farnam* (2002) 28 Cal.4th 107, 182 ["Where the deception is not of a type reasonably likely to procure an untrue statement, a finding of involuntariness is unwarranted."]; *People* v. *Lee* (2002) 95 Cal.App.4th 772, 785 ["[A] deception which produces a confession does not preclude admissibility of the confession unless the deception is of such a nature to produce an untrue statement."].

[9] See *People* v. *Hogan* (1982) 31 Cal.3d 815; *People* v. *Esqueda* (1993) 17 Cal.App.4th 1450, 1485-87. COMPARE *P* v. *Kelly* (1990) 51 C3 931, 953-54 ["[The detective's] single, oblique reference to defendant's state of mind falls well short, however, of the egregious misconduct in *Hogan*, where the defendant repeatedly expressed anxiety that he might be 'crazy' and the police exploited that weakness by promising psychiatric treatment."].

In light of these principles and Boskic's lucid mental state, it was apparent that the deception utilized by the agents and investigator in *Boskic* were not likely to produce an untrue statement. As the court pointed out:

> Here, there were no such extrinsic factors that distorted Boskic's judgment about the evidence implicating him in making false statements to immigration authorities or that cast doubt on the reliability of his statements. Although the fact that the agents allowed him to believe that he was not under investigation may have made him less guarded and self-protective, that deception alone did not make his statements involuntary.

Accordingly, the court ruled that, although Boskic might not have made the statements if he had known he was under investigation, his statements were properly admitted into evidence. POV