

The Three Pathways to a False Confession



The **misclassification** error

“Why did police suspect Client?”

The **coercion** error

“How was Client convinced to confess?”

The **contamination** error

“How did Client know what to say?”

The Robert Davis Case

In February 2003, Nola Charles was stabbed to death in her bed. A cover-up fire caused her three-year-old son to die from smoke inhalation. Nola's two teenage daughters escaped from the home unharmed.

The suspects? Nola's teenage neighbors, Rocky & Jessica Fugett. Jessica suffered from mental illness and was friends with Nola's daughter Wendy.

Under police interrogation, Rocky and Jessica each gave statements implicating themselves in the crime. Both also implicated others, including their eighteen-year-old neighbor Robert Davis. The Fugetts had a history of picking on and bullying Robert.

Robert was arrested shortly after midnight on February 22, 2003. His videotaped interrogation began at 2 AM and lasted approximately five hours.

He eventually confessed to stabbing Nola Charles with Rocky & Jessica.

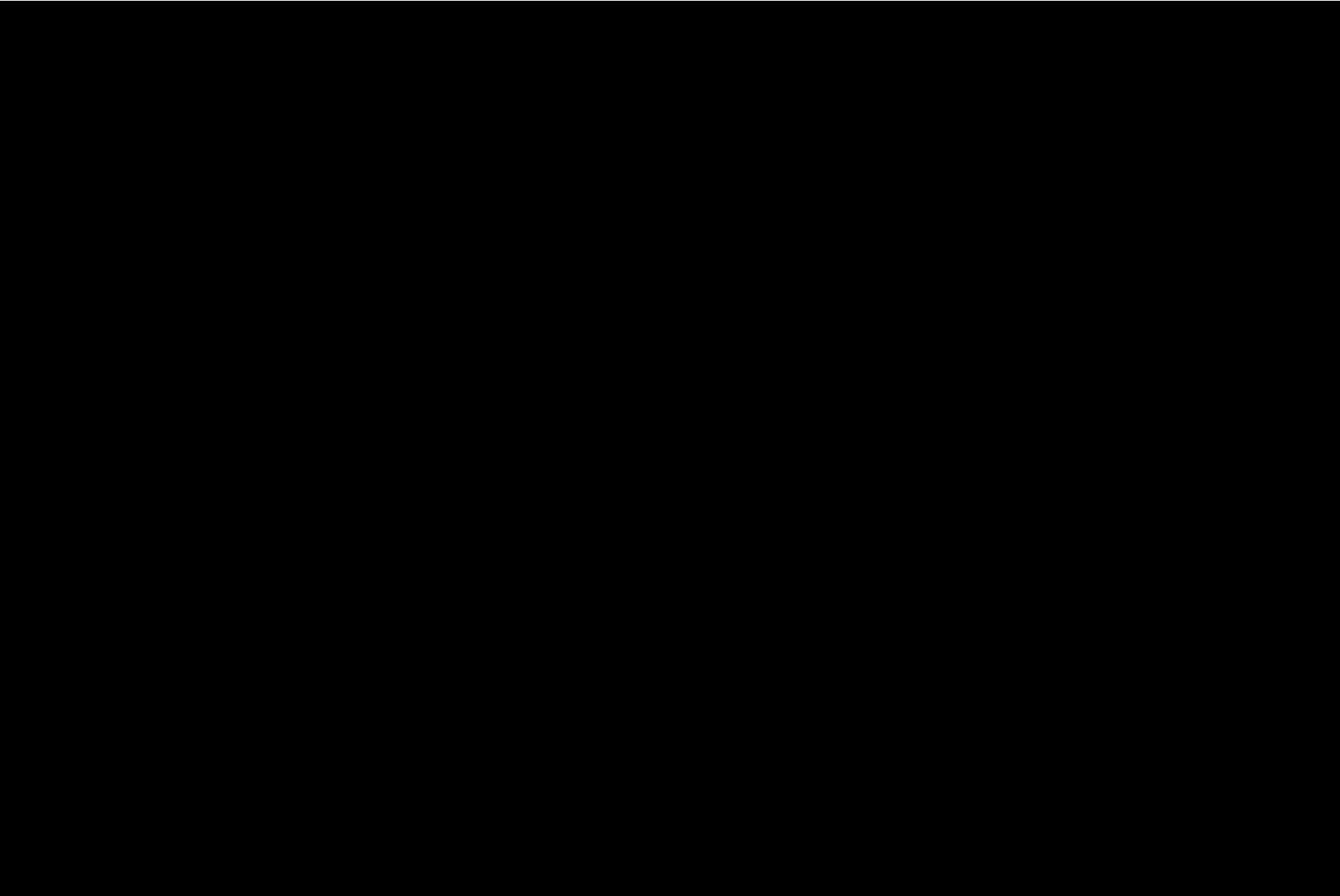


The Charles Home

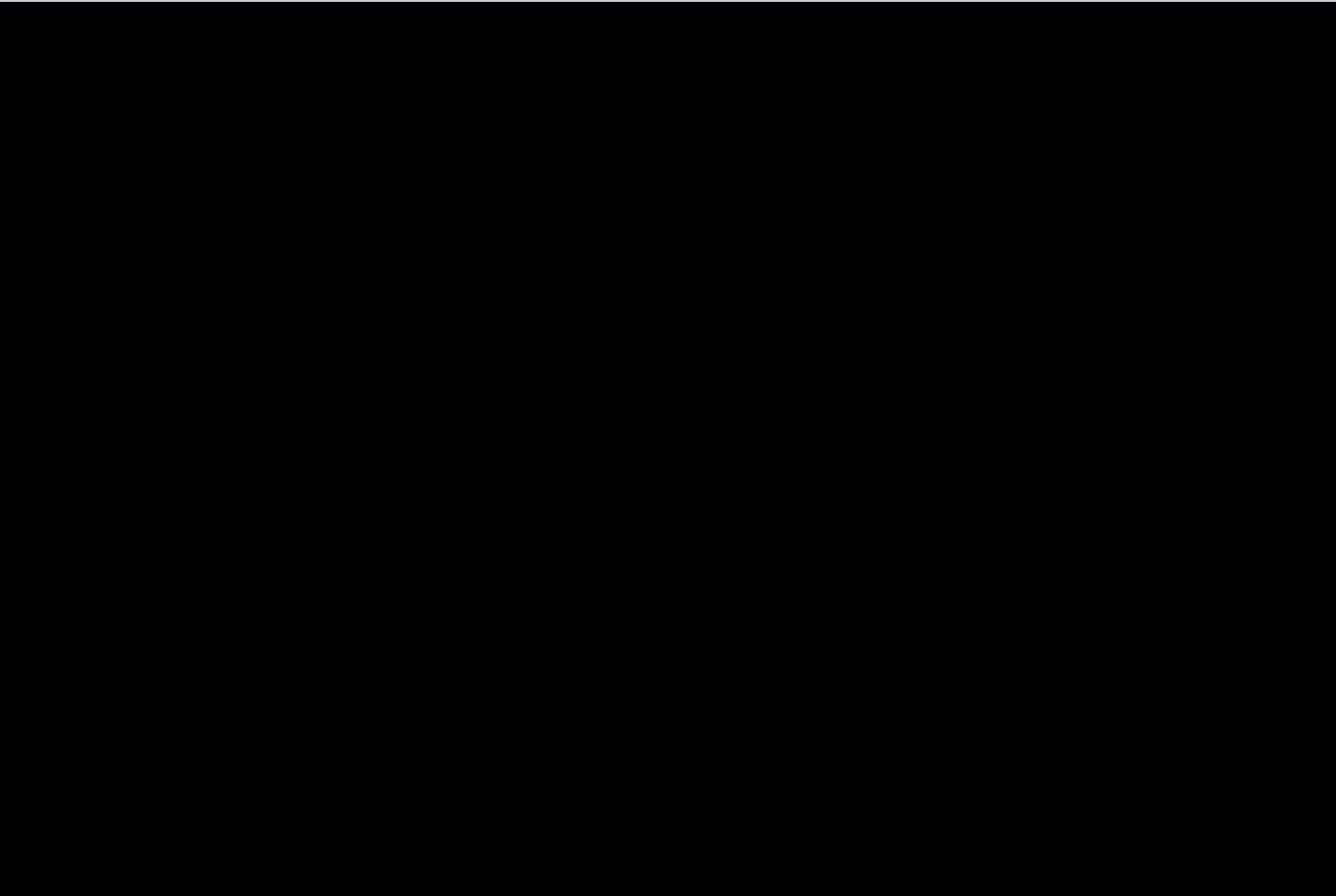


Robert Davis, 2011

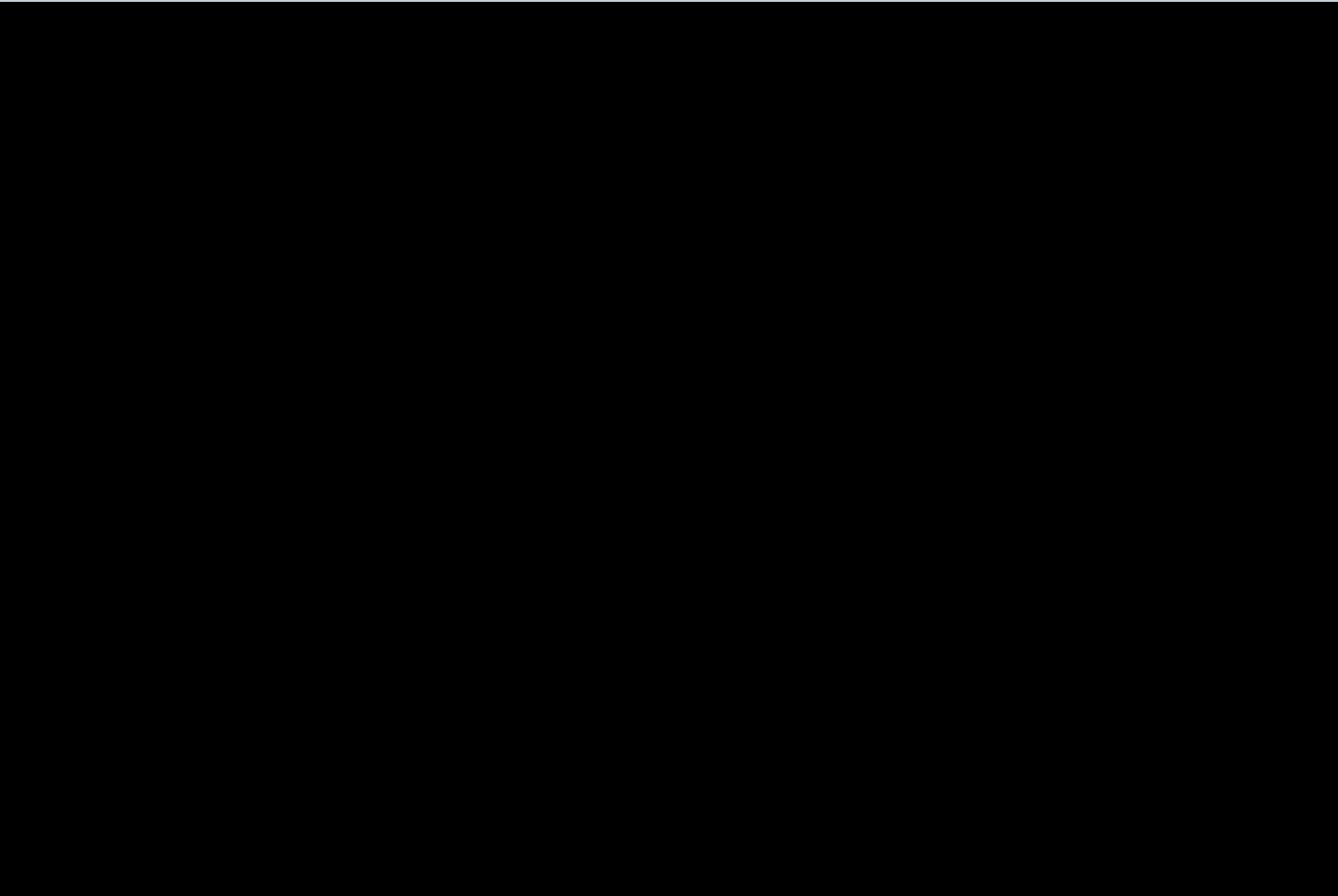
Robert Davis: Accusations & Denials



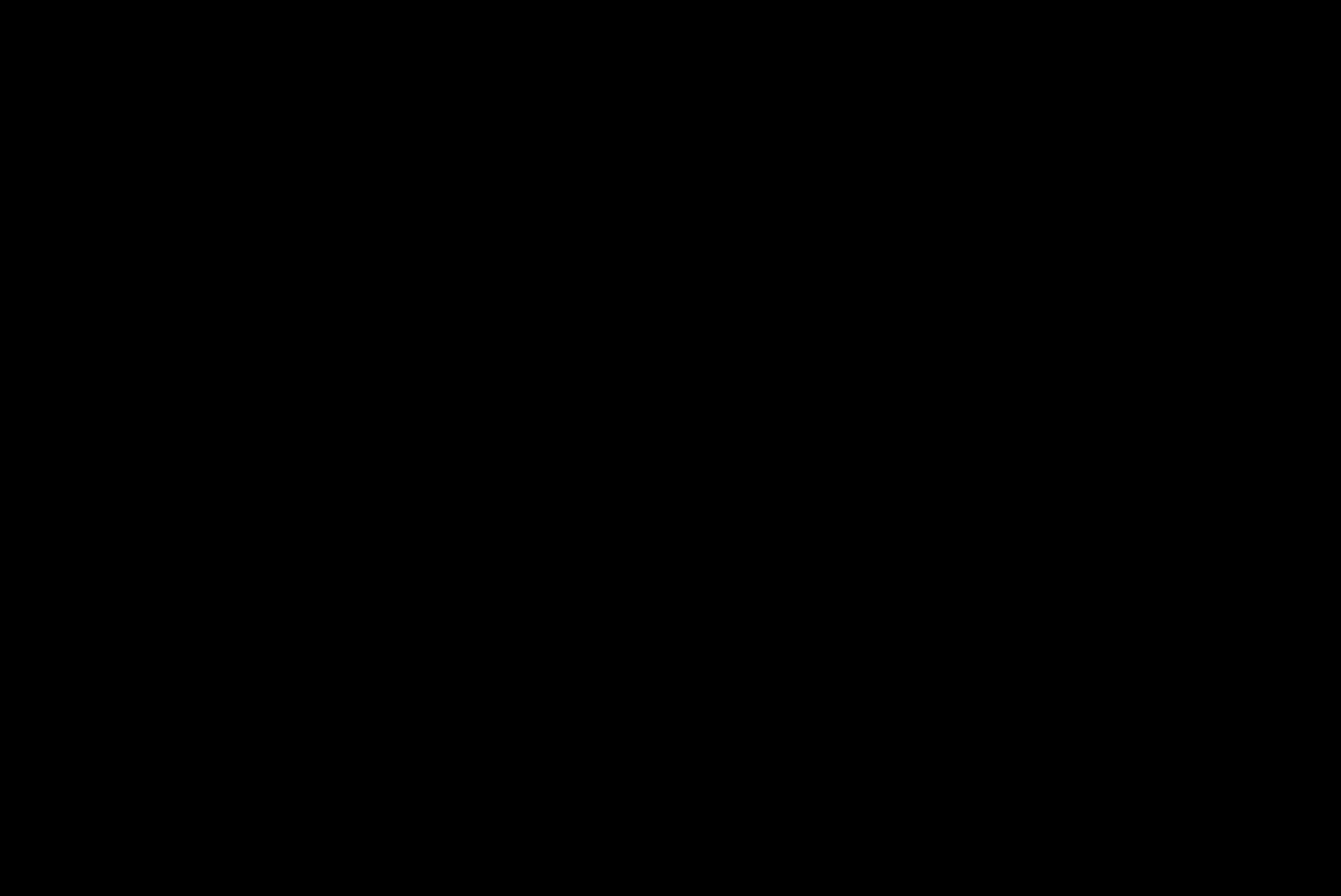
False Evidence Ploy



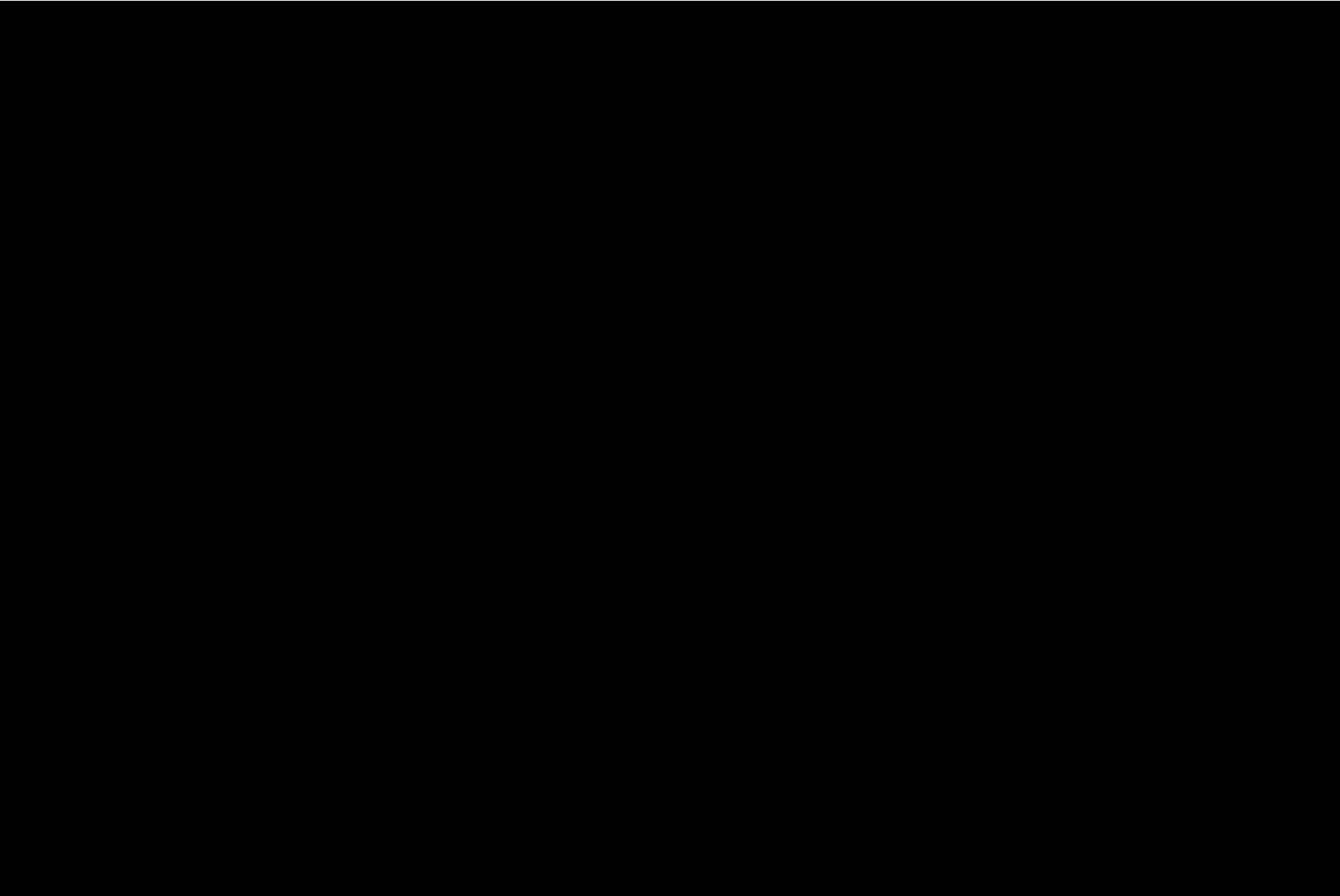
Request for Mother



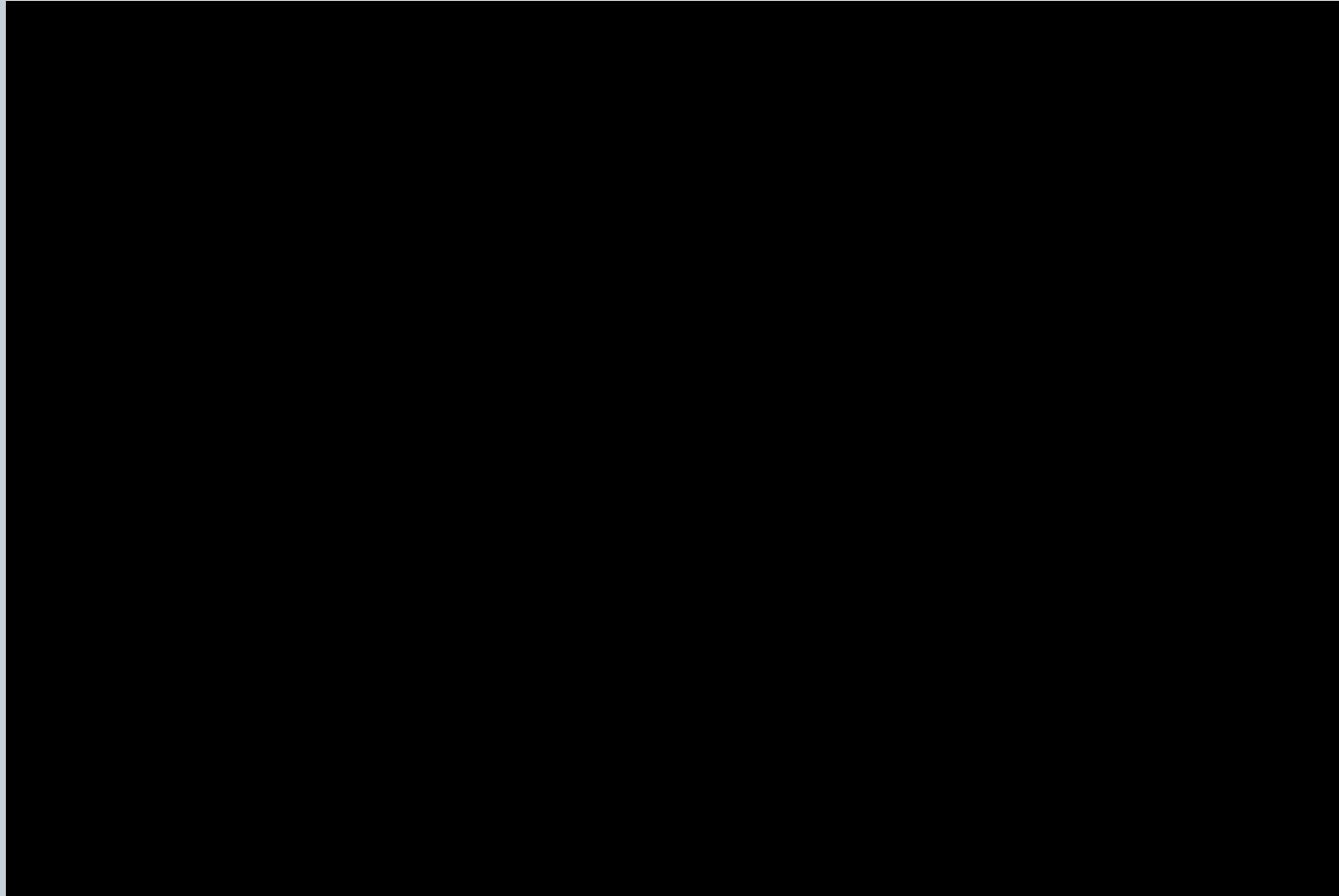
Threats & Promises



Contamination



Recantation



Interrogation of Elias V.



PEOPLE V. ELIAS V., 237 Ca. App. 4th 568 (1st. Dist. June 9, 2015)

Accusation:

- 13-year-old Elias is accused of inappropriately touching his friend's 3-year-old sister, Arlth, on the vagina. This allegedly occurred while Elias and his friend were in a bedroom playing a videogame together and Arlth joined them.

Non-statement evidence against Elias:

- Arlth's mother told police that she entered the bedroom and saw A.T.'s pants down
- Arlth's mother told police that Arlth said: "this boy, he touched me"
- During a Child Advocacy Center interview, Arlth stated that Elias had touched her and pointed to the stomach/vaginal area on a doll

Elias' defense:

- A.T. asked him to help take off her pants because she wanted to go to the bathroom; no inappropriate touching occurred
- A.T.'s mother waited 17 days to contact the police
- A.T.'s mother only contacted police because she had learned the previous day that she was being evicted and thought Elias' father had put the landlord up to the eviction.

Circumstances of Elias' Interrogation



Who: Elias is 13 years old. Lead interrogator was female detective; school principal and a second officer were also present. Both detectives were armed with guns. A uniformed deputy stood outside the door.

Where: At Elias' elementary school. After the officers arrived, the principal brought Elias to a small counselor's room containing a single desk and three chairs. The lead interrogator directed Elias to sit across from her and next to the principal, while the second officer in the room stood behind Elias.

When: February 6, 2013, during the school day. The entire interrogation was 22 minutes long; Elias' admission occurred after only 12 minutes of questioning.



I do want to talk just for a few minutes about the interview. I do appreciate the brief that I received from Mr. Scott. I think it's definitely on point. However, I don't see anything inappropriate with the interview. Before I heard it, I had questions in my mind, with the discussions I heard from counsel. But once I heard the video -- the tape. I don't know what we're supposed to call those anymore. The CD, I guess, is the correct term. This was very gentle questioning by a female detective who was calm, her questions were short. They weren't convoluted questions where a younger person might be confused as to how they were supposed to answer. In other words, the questions weren't split where there would be two responses you'd have to use to the same single question. Her language usage for someone of Elias' age was appropriate and, in fact, Elias was the one that was using the bigger words, rather than the detective.

Just the totality of where the interview took place was, in the Court's view, not intimidating. It was very short. It was only a 20-minute interview. And it complied with the current case law. I don't have a problem with the way the interview was conducted.

- ✓ Female detective
- ✓ Calm, gentle questioning
- ✓ Environment wasn't intimidating
- ✓ Questions weren't convoluted or confusing
- ✓ Elias was intelligent, using big words
- ✓ Only 20 minutes long

Scrutinizing Elias V.'s Confession



What exactly is the admission?

Identify the three errors:

- Misclassification
- Coercion
 - Accusations & denials
 - Bringing down to hopelessness
 - Allusions to consequences (a.k.a. promises of leniency/threats of harm)
- Contamination

How was Elias V. convinced to confess?

- Make it relatable!



Scrutinizing Elias V.'s Confession



ACCUSATION
& REJECTION
OF DENIALS

DECEPTION

CONTAMINATION

22 O: So, I'm going to give you an out here, okay?
23 EV: Yeah.
24 O: You're obviously nervous because you're not telling me the truth about what happened. happened.
25 EV: Why?
26 O: And here's, things happen. People have urges, things happen, okay? So what
27 we need to do right now is to find out why you're having these urges and why you feel
28 like you want to touch a three-year-old little girl. Okay? Cause it did happen. She
1 explained it perfectly. So, my question...
2
3 EV: Who?
4 O: A.T. did. So, my question to you is how many fingers did you put inside of her?
5 EV: I'm serious, I didn't put any.
6 O: So, you're telling me that you touched the outside of her but you did not put
7 fingers inside of her?
8 EV: No.



Scrutinizing Elias V.'s Confession

ACCUSATION
& REJECTION
OF DENIALS

CONTAMINATION

LENIENCY

1 O: You're almost there, you're almost being honest with me and the best thing for
2 you right now is to be honest with me so we can figure out what's going on with you.

3 Okay, cause something's going on with you that's not healthy for you. Okay? So, I
4 know that you touched her bare vagina and you know that you touched her bare vagina.

5 EV: No. Not like full hand no like dude, no, I never did that.

6 O: But you put your fingers on her bare vagina.

7 EV: No.



Scrutinizing Elias V.'s Confession

CONTAMINATION

11 O: Why were you curious about her? Why would you want to touch her?

12 EV: How?

13 O: The way you touched her.

14 EV: How did I touch her?

15 O: You put your hand on her vagina.

16 EV: No, I didn't.

17 O: Her mom walked in and saw you.

DECEPTION

CONTAMINATION

ACCUSATION
& REJECTION
OF DENIALS



Scrutinizing Elias V.'s Confession



14 O: What if we put you on a lie detector? Would that help? We could hook you up to
15 a machine and it would read all your body movements and your heart rate. You know
16 what happens when people lie?

17 EV: What?

18 O: They change inside. Their heart rate increases. They start to sweat. Little
19 things that you might not notice. Like the way that you look at your feet when you lie.

20 EV: Oh.

21 O: Would you do well on a lie detector test when we asked you if you touched
22 Arlith's vagina? What would you say?

23 EV: No.

24 O: And it would come back deceptive because you're lying. Right? Why don't we
25 just get this over with and get this out there so we can get you the help you need. You
26 touched her bare vagina.

27 EV: Like touch it?

28 O: You put your hands on her skin. Your fingers touched her skin of her vagina.

ACCUSATION
& REJECTION
OF DENIALS

LENIENCY

CONTAMINATION

Using Three Pathways, Appellate Ct Found Confession Involuntary and (Likely) False



Misclassification:

- “The voluntariness of inculpatory statements made during an interrogation conducted on the basis of no more than the interrogator’s speculative, intuitive, and risky guess that the subject is guilty warrants particularly careful judicial scrutiny. A confession resulting from an interrogation undertaken in the absence of evidence strongly indicative of guilt is not necessarily inadmissible, but it is a circumstance to be carefully considered in evaluating the voluntariness of the resulting confession.”

Child-Sensitive Application of Three Pathways Analysis in Voluntariness Context



Coercion:

- “Chief Justice Warren’s analysis in *Miranda* pertains to the psychological techniques involved in the ‘active persuasion’ commonly employed in the custodial interrogation of *adults*. **There appears to be a growing consensus—among the supporters of those techniques, not just the critics—about the need for extreme caution in applying them to juveniles.**”
- “At 13 years of age, Elias was a young adolescent, there is no indication in the record he was particularly sophisticated, and he had no prior confrontations with the police. [Detective] interrogated him in a small room at his school, with the school principal and a second officer present, and another officer outside the door. **There is every reason to believe the aggressive, deceptive, and unduly suggestive tactics [Detective] employed** would have been particularly intimidating in these circumstances.”
- “[The detective’s] **accusatory** interrogation was **dominating, unyielding, and intimidating.**”
- “The **use of deceptive techniques** is significantly more indicative of involuntariness where, as here, the subject is a 13-year-old adolescent.”
- Distinguish other voluntariness cases because they did not involve juveniles

Court: Child-Sensitive Application of Three Pathways Analysis in Voluntariness Context



Contamination:

- **“Elias’s admissions did not even amount to an ‘I did it.’** Internal indicia of reliability were absent, as Elias said nothing during his interrogation that only a guilty suspect would know. Rather, all of the differing descriptions of where and how the alleged improper touching took place were first offered by [Detective].”
- “One of the ways police facilitate false confessions is by disclosing specific facts regarding the crime during the interrogation process, inducing the suspect to adopt these facts and thus accurately confirm the preconceived story the police seek to have him describe. **The use of this suggestive technique—referred to as contamination—has been found to be coercive and to have overcome the will of subjects, particularly those who are young or otherwise vulnerable.**”

Detective's Fact-Feeding



All inculpatory facts came from detective, not Elias

- (1) “A[]’s pants were down” when the mom walked in (App. A at 3);
- (2) E.V. was on the bed with the girl when A[]’s mom walked in (App. A at 3, 6);
- (3) E.V. inappropriately touched this three-year-old girl (App. A at 4-6);
- (4) E.V. inserted fingers inside of this girl (App. A at 4);
- (5) E.V.’s hand touched the three-year-old’s bare vagina (App. A at 4, 5, 10)¹⁸ and
- put “fingers . . . inside of her” (App. A at 4);
- (6) E.V. is and was attracted to the young girl (App. A at 6, 9, 10);
- (7) the girl’s mom saw E.V. touching her daughter’s vagina (App. A at 6);
- (8) the three-year-old stated to her mom that E.V. touched her and her mom asked E.V. to leave (App. A at 7);
- (9) the three-year-old said E.V. touched her stomach (App. A at 10), and
- (10) E.V. had previously kissed the three-year-old on the lips. (App. A at 5, 10.)

Elias V.: A Call For Rigorous Scrutiny



Lessons from *Elias V.*

“The vindication of the *Miranda* court’s concern about the increasing number of false confessions, which is of particular concern with adolescent suspects, may depend upon the willingness of trial judges to engage in vigorous individual assessment of the voluntariness of a statement despite the suspect’s *Miranda* waiver.”

-- *In re Elias V.*