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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re A.V., a Person Coming Under the  
Juvenile Court Law.**

**THE PEOPLE,**  
**Plaintiff and Respondent,**  
**v.**  
**A.V.,**  
**Defendant and Appellant.**

**A133762**  
**(Mendocino County**  
**Super. Ct. No. SCUJ-JDSQ-11-**  
**16250;**  
**Alameda County**  
**Super. Ct. No. SJ11176391)**

A.V. appeals from jurisdictional and dispositional orders of the juvenile court in a proceeding held pursuant to Welfare and Institution Code section 602. He contends: (1) the admission of his confession into evidence violated his privilege against self-incrimination, because his waiver of the privilege was not voluntary, intelligent, and knowing; (2) the admission of his confession into evidence violated his due process rights because his confession was not voluntary; (3) certain probation conditions, including conditions precluding him from being alone with other children and requiring him to be of “good conduct” and obey his caregiver, were unreasonable or unconstitutionally vague or overbroad; and (4) a minute order erroneously states that A.V. admitted the second count against him.

We will affirm the jurisdictional order. As to the dispositional order, we will order modification of one of the probation conditions, direct that two minute orders be corrected, and affirm the dispositional order in all other respects.

## I. FACTS AND PROCEDURAL HISTORY

A wardship petition filed in Mendocino Superior Court alleged that A.V. committed forcible sodomy with a person under the age of 14 (Pen. Code, § 286, subd. (c)(2)(B)), and lewd and lascivious acts with a person under the age of 14 (Pen. Code, § 288, subd. (a)). (See Welf. & Inst. Code, § 602.) A.V. denied the allegations.

### A. *Jurisdictional Hearing*

A contested jurisdictional hearing was held on August 24 and 25, 2011. The evidence included the following.

#### 1. *Petitioner's Case*

J.M.V. (the victim's father and A.V.'s uncle), testified that he arrived home after work and found A.V.'s brother trying to open a locked bedroom door. J.M.V. heard movement inside the bedroom and, unable to open the door, knocked. When the door opened, he saw his seven-year-old daughter N.V. "pulling up her clothes" and A.V. running out.

When J.M.V. asked his daughter what happened, she told him to ask A.V. Later she told him that A.V. had pulled down her underwear and had done so several times before. Angry, J.M.V. reported the matter to A.V.'s mother; then he confronted A.V. and slapped his face. A.V. denied that he had done anything.

Ukiah Police Sergeant Guzman arrived at A.V.'s home to investigate a report that an adult male had slapped a 12-year-old boy. When he arrived, Guzman was advised by A.V.'s mother that J.M.V. had slapped A.V. in the face.

Sergeant Guzman then spoke with J.M.V., who told the officer that 10 minutes before the officer's arrival he had opened the bedroom door and found his seven-year-old daughter N.V. standing near the closet and A.V. running into an adjoining bedroom.

Sergeant Guzman next spoke with N.V., who reported that A.V. entered her bedroom, closed the door, pulled down her pants and underwear, and had "sex" with her.

She demonstrated A.V.'s actions by moving her hips forward and backward to show that, in the officer's words, A.V. "was humping her." Sergeant Guzman arrested A.V. and transported him to the police station.

At the police station, Sergeant Guzman booked A.V. and, using a pre-printed card, advised him of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). Guzman asked A.V. if he understood those rights, and A.V. nodded his head affirmatively.

A.V. was not questioned at that time, but was held in the booking room while Detective Noble Waidelich interviewed N.V.

*a. Interview of N.V.*

Detective Waidelich interviewed N.V. for about an hour. She told the detective that A.V.'s penis was in her bottom while she was bent forward on the bed, with A.V. behind her. Initially N.V. said that this had happened a few times before, but as the detective continued to discuss the matter with her, it became apparent that such incidents had occurred approximately 10 times since the beginning of the school year. N.V. said that A.V.'s penis was "kind of soft," she felt it in her bottom only sometimes, and it did not hurt. N.V. was taken for a sexual assault examination and was found to have experienced no physical trauma.

*b. Interview of A.V.*

Detective Waidelich next questioned A.V. in an interview room at the police station. A video and transcript of the interview was introduced at the hearing. The detective testified that, at the time of the interview, he had already decided that A.V. was guilty and could be put in juvenile hall; the only purpose of the questioning was to elicit an admission. Detective Waidelich was wearing his full patrol uniform and was aware that A.V. was 12 years old.

Detective Waidelich read A.V. his *Miranda* rights from a pre-printed card. After each right was stated, A.V. indicated that he understood. (The details of the advisement and A.V.'s waiver are discussed *post.*)

After A.V. said that he understood his rights, he told Detective Waidelich that he did not know why he had been brought to the police station, and he even denied that it involved N.V. The detective told A.V. that A.V. could impact the “outcome of this” and asked A.V. to “be honest and tell me what happened with her.” When A.V. denied pulling down N.V.’s pants, the detective accused A.V. of lying. Eventually, A.V. acknowledged that he had pulled her pants down, but “not far.” The detective repeatedly asked A.V. why he pulled down N.V.’s pants, but A.V. remained silent or claimed not to know. Detective Waidelich exhorted A.V. not to try to think of a “crafty” reason for it, giving him the suggestions “I pulled her pants down because I wanted to see her butt” or “I pulled her pants down because I wanted to see her vagina.” A.V. responded: “Because I wanted to see her butt.” When A.V. claimed that nothing had happened after that, the detective warned him that he was “going to get into serious trouble” and that he should “come clean.” When A.V. again hesitated, the detective asked him what he was afraid of, and A.V. replied that he was scared of going to jail. The detective replied, “Well, right now we’re just – we’re not talking about jail, okay? We’re just talking about what happened.”

A.V. eventually told the detective that he had put his penis “[i]n her butt” and demonstrated with his fingers that he had inserted it about one inch. He acknowledged that he knew what he was doing was wrong, and he did not get any pleasure from it.

A.V. denied that N.V. asked him to stop touching her, but admitted that she told him to stop removing her pants.

A.V. explained that, in a movie, he had seen a man put his penis in what A.V. thought was a woman’s butt, and he wanted to try it. He had tried this out with N.V. or placed his penis on her butt “maybe five times,” but their clothes were on for all but two of the times. A.V. never put his penis in N.V.’s vagina, he did not touch her vagina, she did not touch his penis, and he did not ejaculate.

A.V. admitted that he had lied to the detective previously in the interview “so [he] wouldn’t go to jail.”

### *c. N.V.'s Testimony at the Hearing*

N.V. testified that “at first I went into the [bed]room and [A.V.] said if I tell it’s a la muerte [death]. Then he locked the door and he pulled my pants down and pulled his pants down.” A.V. then “put his wiener in [her] butt” while he was standing with his arms around N.V.’s waist. While A.V.’s “wiener was inside [her] bottom,” he moved his body “back and forth.” Although N.V. “felt it a little,” she “didn’t think his wiener was hard.” N.V. told A.V. several times to stop, but he refused. When she tried to pull her pants back up, A.V. told her not to. After he finished, A.V. hid in the closet and then in the bathroom.

N.V. recalled that A.V. had committed this act “a whole bunch of times” – more than four – previously. N.V. “told [A.V.] a whole bunch of times [to stop] but he didn’t even stop.”

### *2. Defense Case*

Psychologist Kevin Kelly, who interviewed A.V. on a number of occasions and reviewed the video of the police interview of A.V., testified as an expert in child psychology.

Dr. Kelly opined that A.V. was not psychotic or otherwise emotionally disturbed. A.V. had a good vocabulary, but his ability to express himself was “immature for his age” and “regressed,” and he lacked the emotional vocabulary and insight expected of a 12-year-old. In terms of being able to communicate his needs, wants, wishes, and fears, A.V. “showed much less development than I would expect for someone age 12.”

Dr. Kelly found A.V. to be immature sexually, rarely experiencing erections and never knowingly ejaculating. A.V. was apparently concerned and confused about sex. He was embarrassed talking about sex, and he was unfamiliar with colloquial sexual expressions used by children his age.

From his interviews with A.V., Dr. Kelly believed that A.V. would have understood the words of the *Miranda* warnings, but he questioned whether A.V. had the emotional capacity to act on those warnings and assert his rights.

Dr. Kelly also found A.V. to be “overly respectful of authority” and “under-exercis[ed] his own ability to speak up for what he needed or wanted.” When confronted with something he did not want to do, Kelly asserted, A.V. would “fail to say he didn’t want to do this or he would just comply.” Thus, when the detective told A.V. that he could have a “huge impact” on the outcome if he confessed, A.V.’s emotional development was such that he would “override his own personal state and comply with the authority.” In Kelly’s view, A.V. would “contribute and divulge information even if he didn’t want to.”

Dr. Kelly theorized that, in molesting N.V., A.V. may have been “mimicking” sexual behavior he had seen or heard in his home or on films. Mimicking is different from physical conduct that is motivated by sexual desire. Given A.V.’s lack of emotional maturity and sex drive, Kelly “[found] it surprising that [A.V.] would try to engage in sexual behavior.” Although Kelly did not form a conclusive opinion as to whether A.V. was mimicking during his conduct with N.V., he noted several factors supporting such a conclusion: A.V. had been exposed to sexual conduct; he slept in the living room and was aware of sexual noises from the bedrooms; he had seen “an adult film [of a] sexual nature”; he did not appear to have any interest in other parts of the body, including the vagina; and he did not have a strong sex drive.

#### *C. Jurisdictional Order*

On August 25, 2011, the juvenile court denied A.V.’s motion to exclude his statement to the police on the grounds of *Miranda* and involuntariness. The court found the forcible sodomy allegation (count one) not true, but found the allegation of lewd and lascivious acts (count two) true. The matter was transferred to Alameda County, A.V.’s residence, for disposition.

#### *D. Dispositional Order*

On November 7, 2011, the Alameda County Superior Court declared A.V. a ward of the court, ordered him removed from his home, and committed him to the custody of the probation officer for placement in a foster home, private institution, group home or county facility. The court also ordered GPS monitoring, counseling, and an adolescent

sex offender treatment program. In addition, the court imposed a number of conditions of probation, as discussed *post*.

This appeal followed.

## II. DISCUSSION

We address each of A.V.'s contentions in turn.

### A. A.V.'s Waiver of His *Miranda* Rights

A.V. contends the juvenile court erred by admitting evidence of his statement to Detective Waidelich, because A.V.'s purported waiver of his Fifth Amendment privilege against self-incrimination was not voluntary, knowing, and intelligent. We disagree.

#### 1. *Background*

As mentioned, Sergeant Guzman advised A.V. of his *Miranda* rights when he arrested him, and A.V. indicated that he understood those rights. A second time before he was questioned, Detective Waidelich advised A.V. of his *Miranda* rights, also using a "preprinted *Miranda* card." This exchange, recorded on the video and as set forth in the transcript, reads: "Q. Well, I want to talk to you about why you're here. Is that okay? [¶] A. Um-hm. [¶] Q. Okay. Um, you have the right to remain silent. Do you understand that? [¶] A. (Nods head.) [¶] Q. Can you – I need you to speak up, Bud. [¶] A. Yeah. [¶] Q. Okay. Anything you say can be used against you in court. Do you understand that? [¶] A. Yeah. [¶] Q. Okay. You have the right to the presence of an attorney before and during any questioning. Do you understand that? [¶] A. Yeah. [¶] Q. If you cannot afford an attorney, one will be appointed to you free of charge before any questioning, if you want. Do you understand that? [¶] A. yeah. [¶] Okay. Those are what we call your *Miranda* rights. Have you ever heard that term before? [¶] A. No. [¶] Q. Okay. Those are what your legal rights are, okay? [¶] A. (Nods head.)"

#### 2. *Court's Ruling*

The court found that A.V. understood and waived his *Miranda* rights. The court noted that A.V. was twice advised of his rights, once by the arresting sergeant and once by the detective, and both times A.V. indicated that he understood those rights. Further,

the court found, there was “absolutely no evidence . . . that he didn’t understand or that he was threatened in any way to force him to make that waiver,” and Dr. Kelly testified “very clearly [that A.V.] would have probably . . . understood the rights.” The court concluded: “So I think the People have met their burden of showing the *Miranda* requirements were met in this case and that there was a knowing and intelligent waiver by a preponderance of the evidence.”

### 3. *Law*

A statement made during custodial interrogation is not compelled for purposes of the Fifth Amendment if the individual voluntarily, knowingly, and intelligently waived his constitutional privilege. (*Colorado v. Spring* (1987) 479 U.S. 564.) The waiver must be voluntary – a free choice rather than the result of intimidation, coercion or deception – and with the understanding that he could stand mute and request a lawyer and that the state intended to use his statements to secure a conviction. (*Moran v. Burbine* (1986) 475 U.S. 412, 421-423.)

A minor can waive his *Miranda* rights. (*People v. Lara* (1967) 67 Cal.2d 365, 389-391 (*Lara*)). Whether a valid waiver occurred turns on a number of circumstances including: the minor’s age; the minor’s intelligence, education, experience, and ability to comprehend the meaning and effect of the *Miranda* warning; the nature of the minor’s Fifth Amendment rights; and the consequences of waiving them. (*Lara*, at p. 383; *People v. Nelson* (2012) 53 Cal.4th 367, 378 (*Nelson*); *People v. Lewis* (2001) 26 Cal.4th 334, 383 (*Lewis*)). The minor’s age is a factor because children will often feel pressured to submit to police questioning when an adult in the same circumstances would feel free to leave. (*J.D.B. v. North Carolina* (2011) \_\_\_ U.S. \_\_\_, 131 S.Ct. 2394, 2398, 2403 (*J.D.B.*)). We thus carefully scrutinize any purported waiver of a minor’s right against self-incrimination to ensure it was voluntary, intelligent, and knowledgeable. (See *In re Michael B.* (1983) 149 Cal.App.3d 1073, 1083.)

The prosecutor bears the burden to establish a valid *Miranda* waiver by a preponderance of the evidence. (*Colorado v. Connelly* (1986) 479 U.S. 157, 168 (*Connelly*)).

#### 4. *Analysis*

The court did not err in concluding that A.V. voluntarily, intelligently, and knowledgeably waived his *Miranda* rights. As to voluntariness, there is no question that A.V. was not threatened or coerced into waiving his rights. As to it being an intelligent and knowledgeable waiver, A.V. was already 12 years and eight months old, attended seventh grade at school, had a “good vocabulary,” was not developmentally delayed, was not emotionally or psychotically disturbed, displayed “adequate understanding” for his age, was able to understand instructions and proceed adequately through Dr. Kelly’s testing, and appeared to Kelly to be of “average intelligence.” The police read the *Miranda* warnings to him twice, and substantial evidence supported the conclusion that he understood those rights and had the capacity to assert them. Kelly acknowledged that A.V. understood the words of the *Miranda* warning, and A.V. told the police that he understood them. Although Kelly testified that he thought it “questionable” whether A.V. understood he had the capability of acting on those words, Kelly’s basis for that conclusion – as discussed *post* – was itself questionable and, in any event, not binding on the court. Furthermore, there was no evidence that A.V. ever claimed that he did not understand his rights or his ability to invoke them. In sum, ample evidence supported the conclusion that, by expressing that he understood his rights and proceeding to speak with the detective, A.V. voluntarily, intelligently, and knowingly waived them.

A.V.’s arguments to the contrary are not persuasive. Primarily, he points to Dr. Kelly’s testimony that A.V. was “regressed” and emotionally “immature” for his age. In this regard, Kelly stated that A.V.’s “ability to express himself and to talk about things appeared to be immature for his age, somewhat regressed,” and “he lacked an emotional vocabulary so to speak or emotional insight that would be expectable for age 12.” Although Kelly explained that A.V. showed less development than others *his age* in being able to express what he needs, wants, and fears, Kelly did *not* opine that A.V.’s relative ability to express his emotions would preclude him from understanding the *Miranda* warnings or invoking his *Miranda* rights.

Dr. Kelly did testify that, although A.V. probably understood the words of the *Miranda* warning, “whether or not he would understand that he had the actual capability of *acting* on those words in performance of his *Miranda* rights is *questionable* to me.” (Italics added.) But again, Kelly never testified that A.V. definitely lacked the ability to understand and invoke his *Miranda* rights. Moreover, Kelly’s uncertainty on this point was derived from assumptions that could reasonably be viewed as inconsistent with the record. Kelly claimed that A.V. was “overly respectful of authority,” “did what he was told” at school and home, and underutilized his “ability to speak up for what he needed or wanted,” but the record shows that A.V. had in fact disobeyed authority, since he asserted that his mother “grounds” him when he does something wrong and he had been in trouble at school before. Further, Kelly acknowledged that A.V. *was* able to say he did not want to do things unless “he’s consistently overruled and asked” to do it, particularly by authority figures; but here, A.V. was not “consistently overruled and asked” to waive his rights or even to speak with the detective. As the court found – and as the video and transcript of the interview show – the detective did not instruct A.V. that he was required to talk.

In short, although Dr. Kelly’s testimony was uncontradicted (in the sense that his opinions were not refuted by another expert), the court was not obligated to accept it, and was certainly not obligated to accept the spin that the defense tried to put on it.

A.V. also argues that he told Detective Waidelich that he had not previously heard of *Miranda* rights (at least by that name – even though they had been read to him previously by Sergeant Guzman), he did not have a lawyer or parent with him, he lacked prior experience with the juvenile justice system that would familiarize him with the privilege against self-incrimination, Guzman did not ask A.V. if he waived each right after reading it or understood its substance, and Detective Waidelich read the rights quickly and did not ask additional questions to ensure that he understood the rights and wanted to waive them. However, all of these matters, even combined with Dr. Kelly’s testimony, do not demonstrate that the juvenile court erred in concluding that, in light of all the evidence, A.V. understood the words of the *Miranda* warning, had the capacity to

exercise his rights, and voluntarily waived them. (See *Lewis, supra*, 26 Cal.4th at pp. 383-384 [fact that minor was a paranoid schizophrenic under the age of 14 did not preclude finding that he validly waived his *Miranda* rights].)

A.V. fails to establish that his statement was admitted in violation of *Miranda*.

B. *Voluntariness of Confession*

A.V. argues that the admission of his statement to Detective Waidelich violated his due process rights under the Fourteenth Amendment of the United States Constitution, because it was not freely and voluntarily given. Again, we must disagree.

1. *Law*

For purposes of due process, a confession is voluntary if it is the product of free will, without compulsion or promise of reward. (*People v. Thompson* (1980) 27 Cal.3d 303, 327-328.) Conversely, an involuntary confession is one “obtained by physical or psychological coercion, by promises of leniency or benefit, or when the ‘totality of the circumstances’ indicates the confession was not a product of the defendant’s ‘free and rational choice.’” (*People v. Cahill* (1993) 5 Cal.4th 478, 482, fn. 1.) No confession is deemed involuntary in this context, however, unless there is a causal nexus between the confession and police misconduct. (*Connelly, supra*, 479 U.S. at p. 163; *People v. Benson* (1990) 52 Cal.3d 754, 778.) The People bear the burden of establishing the voluntariness of a confession by a preponderance of the evidence. (*Connelly*, at p. 168; *People v. Boyette* (2002) 29 Cal.4th 381, 411 (*Boyette*).)

In determining whether a minor’s confession was voluntary, we consider a number of factors including: the characteristics of the minor, including his or her maturity, education, physical condition, mental health, emotional state, and prior experience with the criminal justice system; and the circumstances of the questioning, including the location, length and continuity of the interrogation and any police coercion, threats, promises of leniency, lies or deception. (*Boyette, supra*, 29 Cal.4th at p. 411; *In re Shawn D.* (1993) 20 Cal.App.4th 200, 209 (*Shawn D.*).) “Threats, promises, confinement, lack of food or sleep, are all likely to have a more coercive effect on a child than on an adult.” (*In re Aven S.* (1991) 1 Cal.App.4th 69, 75.) Thus, courts must “take

particular care to ensure that [minors'] incriminating statements were not obtained involuntarily." (*J.D.B.*, *supra*, 131 S.Ct. at p. 2408.) We therefore apply heightened scrutiny to the voluntariness of A.V.'s statement. (*Nelson*, *supra*, 53 Cal.4th at p. 379.)

## 2. *Court's Ruling*

In finding that A.V.'s statement was voluntary, the court considered A.V.'s age and intelligence, whether there were improper promises or threats, whether the police employed falsehoods or deceptions, the length of the interrogation, and the possibility of any other police misconduct. Specifically, the court found that 12-year-old A.V. was "bright and pretty savvy" and seemed to "understand and respond to questions quite well." The court determined that the police did not make any express or implied promises to induce A.V.'s cooperation, and Detective Waidelich did not threaten or lie to A.V. Although "[t]here was some discussion of the positive effects of being honest," the court concluded that "the main thrust of the officer's questioning was to get him to be honest and to push him to be honest." Further, the court noted, the interrogation was not lengthy, lasting only about 40 minutes, and although Detective Waidelich was "persistent" in encouraging A.V. to tell the truth, he did not promise, threaten, or engage in similar misconduct. Lastly, the court observed, there was no testimony from anyone that A.V. was forced to confess or did so because of promises, threats, or the circumstances of his confinement; to the contrary, the video showed that A.V.'s statement was voluntary.

## 3. *Analysis*

Substantial evidence supports the court's factual findings, and we agree those findings support the court's legal conclusion that A.V.'s statement was voluntary.

As to the characteristics of the accused, the court's observations that A.V. was bright, understood questions, and responded to them quite well is supported by substantial evidence. As Dr. Kelly opined, A.V. – at nearly 13 years old and in seventh grade – was not developmentally delayed or emotionally or psychotically disturbed, he displayed "adequate understanding" for his age, he was able to understand instructions, and he appeared to be of "average intelligence." The video of the interview confirms that

A.V. understood the detective's questions, was able to articulate responses, and was "pretty savvy" in the sense that he knew right from wrong and knew he could go to jail if he admitted what he had done.

As to the circumstances of the interrogation, there was only one detective in the room, the questioning took only about 40 minutes, and there is no indication that A.V. was deprived of food, water, or sleep, or otherwise subjected to physical discomfort. Although Detective Waidelich described generally the benefits of telling the truth, there were no threats or express or implied promises that would make A.V. think that, if he confessed, he would receive more beneficial treatment. The detective did not lie to A.V. And the video of the interrogation does not indicate any intimidating behavior by the detective whatsoever.

A.V.'s arguments to the contrary are unpersuasive. A.V. refers us again to Dr. Kelly's testimony that A.V. was emotionally regressed and immature for a 12-year-old, and that he was overly respectful of authority and might have lacked the capacity to assert his right to end the interrogation. For all the reasons we found that testimony unimpressive in the context of the *Miranda* warning, we find it unconvincing here too.

Dr. Kelly testified that, if A.V. were "consistently overruled and asked to do [something he did not want to do] . . . , he would either fail to say he didn't want to do this or he would just comply." In the context of questioning by police, Kelly suggested, A.V. would "override his own personal state and comply with the authority," "divulg[ing] information even if he didn't want to." Notably, however, Kelly did not point to one specific thing in the video of the interrogation that supported his opinions, and indeed the video tells a different story. From the video, it is apparent that A.V. was not divulging information just to please the detective, because on most occasions he resisted making a substantive response to the detective's questions and, as the detective noted, seemed to be trying to calculate how to answer. Nor is there any indication that Detective Waidelich (or any other officer) had any reason to suspect that A.V. was less able to withstand the questioning than the average 12-year-old that A.V. appeared to be: nervous, soft-spoken,

but fully able to understand the questions and reticent to speak only because he knew he had done something wrong and did not want to go to jail.

A.V. also complains that the court did not adequately consider A.V.'s emotional state, insisting that A.V. was "pressured to submit by multiple authority figures" and "his will was overborne." A.V. points out that he had been slapped by J.M.V., taken to the police station, made to wait an hour, and then questioned by a uniformed detective. He provides no authority, however, for the proposition that any of those events constitutes police misconduct. Moreover, A.V.'s characterization of his emotional state is not supported by the record. Sergeant Guzman testified that A.V. was *calm* when he was arrested (even after being slapped by J.M.V.), and there was no evidence to the contrary. The video and transcript of the police interrogation disclose no adverse impact of any of these matters on A.V.'s emotional state at the time of his questioning: his demeanor was the same throughout the interview, and he did not cry or appear distraught or overly anxious under the circumstances. Although we consider seriously the fact that these events occurred to 12-year-old A.V. rather than to an adult, nothing in the record remotely suggests that A.V.'s will was overborne.

Turning to the circumstances of the interrogation, A.V. urges there were a number of improprieties. He argues, for example, that Detective Waidelich impliedly *promised him leniency* in exchange for his confession, based on the following exchange: "Q [Waidelich]. So the fact that you're here isn't going to change based on what you've said. But the outcome of this, you can have a huge impact on, okay? [¶] A [A.V.]. Yeah. [¶] Q. So, you and I both know there's a reason that you're down here, okay? And you and I both know that it has something to do with – with Natalia. What I would rather see you do is *be honest and tell me what happened* with her and have a *positive effect on the outcome here*, rather than saying, 'Oh, I don't know what happened,' which we both know isn't true. [¶] Make sense? [¶] A. Yeah." (Italics added.)

Detective Waidelich made no promise of leniency or other benefit. He did not promise A.V.'s release, reduced charges, or a shorter sentence, or any other more lenient treatment at the hands of police, the prosecution, or the court. Moreover, A.V. was not

promised that he would obtain such things in exchange for a *confession*. Detective Waidelich merely observed that A.V. could have a “positive effect on the outcome here” if he honestly said what happened; this vague, general, and isolated reference to some positive ramification of honesty cannot be said to so permeate the interrogation that it rendered A.V.’s statement involuntary. (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1236-1237 [detective’s statement that he wanted the record to show defendant’s “degree of cooperation” was “too brief and insubstantial to qualify as an inducement” and “convey[ed] no suggestion of any benefit in exchange for defendant’s ‘cooperation’”]; see *Shawn D.*, *supra*, 20 Cal.App.4th at pp. 204-207, 214-216 [distinguishing between “one isolated instance” of an implied promise of a benefit for confessing, and repeated promises that “permeated the entire interrogation” by telling the minor that his honesty and “cooperation” with police would be noted in the police report, if he lied he would go to jail but if he told the truth he would see his girlfriend and baby, and if he helped police retrieve stolen property the officer would personally talk to the district attorney so the minor would not be tried as an adult].)

A.V. next contends that Detective Waidelich *threatened* him with “trouble” in the criminal justice system if he did not admit that he molested N.V. In the passage he relies upon, A.V. admitted that he pulled down N.V.’s pants to see her “butt,” A.V. claimed that he did “nothing else after that,” and the detective stated: “[A.V.], you’re going to get into serious trouble, okay? Listen to me. Do you want to be the kind of guy, the 12-year-old who says, ‘Hey, look, you know, I – this is what I did and this is why I did it, and I’m sorry, I shouldn’t have done it,’ or do you want to be the 12-year-old who sits in here and goes, ‘Nope, didn’t do it, didn’t do it, didn’t do it? [¶] Which looks better? Which do you think looks better? Which looks more honest? Which is honest?’”

By this comment, Detective Waidelich essentially pointed out that A.V. could admit or deny what he did, but asked him which looked “better” and “more honest” and what “kind of 12-year-old” he wanted to be. That is an exhortation to honesty and integrity, not a threat. Although the detective did say that A.V. was going to get into “serious trouble,” it is by no means clear that the detective was threatening A.V. with

“trouble” if he did not *confess*, as opposed to simply reminding him of the trouble he was already about to experience due to what he had done to N.V. In any event, the detective’s statement was not a threat that would have likely overcome A.V.’s will – and apparently it did not overcome his will – since right after the detective’s comment A.V. simply repeated his story and continued to deny that he did not pull down his pants.

A.V. next argues that he was under “*sustained pressure*” during questioning, complaining that Detective Waidelich accused him of lying and suggested admissions he sought to obtain. But this “pressure” was not particularly “sustained,” and it was certainly not impermissibly extraordinary: the questioning lasted only about 40 minutes, with the first six pages of the 23-page transcript devoted to background information; Detective Waidelich was the only officer in the room; he asked questions from his own chair on the other side of the table from A.V.; he did not engage in any menacing gestures, yelling, or other acts of intimidation; and A.V. maintained the same demeanor throughout the interview – whether the detective was in the room or not – without tears or extreme anxiety.

Indeed, A.V.’s bases for contending there was “sustained pressure” in the interview are flatly refuted by the video. A.V. argues that Detective Waidelich was much larger than A.V., but the video shows quite clearly that the detective never attempted to use his relative size to any advantage. A.V. contends that Detective Waidelich suggested to A.V. the statements he wanted A.V. to make, but actually the detective just gave A.V. a couple of examples why he might have pulled down N.V.’s pants, after A.V. claimed that he did not know why he did it. A.V. claims the detective called him a liar in a “raised voice” and accused him of lying about “24 times,” but the video and transcript show that these aspersions are untrue. Except for a slight increase in volume on one or two occasions, the detective maintained a calm and soft tone and never yelled. He accused A.V. of lying just *four* times and merely encouraged him to “be honest” or tell the truth five times. Otherwise, the detective stated that A.V. was not going to be able to lie to him, he had no reason to lie, should not think about trying to lie, and, *after* A.V. confessed, asked why he had lied originally and noted that A.V. had lied “briefly.” In

sum, it is simply untenable to watch the video of the interview and conclude that the interview was, as A.V. now calls it, “a browbeating that this emotionally regressed 12-year-old was incapable of withstanding.”

Lastly, A.V. contends that Detective Waidelich engaged in *deception* because, after A.V. refused to respond when asked why he pulled his own pants down, the following exchange ensued: “Q. What are you scared of? [¶] A. Going to jail. [¶] Q. Okay. *Well, right now we’re just – we’re not talking about jail, okay? We’re just talking about what happened. Be the big person here. Be – be the – the honest person here and be honest about what happened, okay? There’s no reason to lie, okay? It’s out. I know what happened, okay? And I want to hear it from you, because you may have some really good explanation for some of this. Or maybe – maybe the person – the other person who’s looking at this and goes, ‘wow, that seems really wrong and un’ – may not understand it from your perspective, okay?”*

By this exchange, Detective Waidelich did not engage in any deception. He did not say or even imply that A.V. was not going to jail; in context, he was merely saying that A.V. should focus on what they were discussing: doing the right thing and telling the truth about what happened. That is exactly how Detective Waidelich explained it at the hearing, and there was no evidence to the contrary. Indeed, when the detective told A.V. at the end of the interview that A.V. was going to juvenile hall, A.V. did not protest or express any surprise.

None of the circumstances A.V. brings to our attention – alone *or in combination* – indicates that A.V.’s statement was involuntary for purposes of the Fourteenth Amendment. And the case on which A.V. primarily relies – *Shawn D.* – only confirms our conclusion.

In *Shawn D.*, the minor was described as “unsophisticated” and “naïve” and suffered from posttraumatic stress disorder. (*Shawn D.*, *supra*, 20 Cal.App.4th at p. 212.) He was interrogated by police for about three hours, with the last 15-20 minutes of the interrogation conducted by two officers with the video recorder turned off. (*Id.* at pp. 203-204, 207.) The first officer repeatedly lied to the minor, misled him into thinking

that he might be tried as an adult, and implied that his pregnant girlfriend would get into trouble unless he confessed. (*Id.* at pp. 204-207, 213-214.) When left alone in the interrogation room, the minor was visibly agitated, mumbled to himself, and said: “I don’t need to get in trouble . . . 2 years, 7 years . . . San Quentin . . . Like father, like son. I change my life and now see what happens.” (*Id.* at p. 206.) These circumstances, the court observed, were probably *not* sufficient to show that the minor’s will was overborne. (*Id.* at p. 214.) Nonetheless, the court concluded that the minor’s confession was involuntary because, in addition to these circumstances, the police repeatedly suggested that he would be treated more leniently if he confessed, to the point that the interrogation was permeated with promises of leniency such as: the minor’s honesty and *cooperation* would be recorded in the police report; if he lied he would go to jail but if he told the truth he would be able to see his girlfriend and baby; he would receive more lenient treatment if he explained his role in the burglary; and if he helped the police retrieve stolen property, the officer would “personally talk to the D.A. or persons who do the juvenile” so he would not be tried as an adult. (*Id.* at pp. 204-207, 214-216.)

*Shawn D.* is readily distinguishable from the matter at hand. A.V. did not suffer from posttraumatic stress disorder. The detective did not lie to him. He was questioned by only one officer, for only about 40 minutes. He displayed no signs of unusual distress. Although Detective Waidelich exhorted A.V. to be honest, he did not say that A.V.’s cooperation would be recorded in a police report or that he would communicate with the district attorney so A.V. could avoid prison time as an adult. While the promise of leniency in exchange for a confession permeated the entire interrogation in *Shawn D.* (*Shawn D.*, *supra*, at p. 216; *Musselwhite*, *supra*, 17 Cal.4th at p. 1237), the circumstances in the matter before us are vastly different.

A.V. fails to establish error in the admission of his statement to Detective Waidelich.

### C. Probation Conditions

A.V. asks us to modify or strike probation conditions that he not be alone with younger males and females under the age of 14, and that he “be of good conduct” and

“[o]bey his caregiver.” He also contends the purported probation conditions stated on the probation department’s “Conditions of Probation and Court Orders” should be stricken. We agree that one of the probation conditions, as it appears in the minute order from the dispositional hearing, should be modified.

1. *Law*

A juvenile court may impose “any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (Welf. & Inst. Code, § 730, subd. (b).)

A probation condition is unreasonable only if it bears no relationship to the offender’s crime, relates to conduct not itself criminal, and requires or forbids conduct not reasonably related to future criminality. (*People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*)). “Conversely, a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to deter future criminality.” (*Ibid.*) We review the reasonableness of a probation condition for an abuse of discretion: “A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile. [Citation.] That discretion will not be disturbed in the absence of manifest abuse. [Citation.]” (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5 (*Josh W.*)).

In addition, a probation condition must not be impermissibly vague or overbroad. It may be too vague if it is not “ ‘sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated.’ ” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890 (*Sheena K.*)). Only reasonable specificity is required, however, and the context in which the condition is imposed may render the condition sufficiently concrete. (*People v. Lopez* (1998) 66 Cal.App.4th 615, 630.) A probation condition may be overbroad if it imposes limitations on a person’s constitutional rights without being closely tailored to the purpose of the condition. (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.)

## 2. Probation Condition Limiting Presence With Other Children

The court's minute order of October 5, 2011, from the hearing at which the court accepted transfer of the case, included the following directive: "Minor not [to] be in the presence of any children under the age of 13 years without adult supervision." At the dispositional hearing on November 7, 2011, the judge initially announced a different restriction as a probation condition, as follows: "As before, not to be alone with any *female* under the age of 13. Actually, say under the age of *14* years old." (Italics added.) Apparently based on this language, the minute order of November 7, 2011, states: "Minor not to presence [sic] of any Female under the age of 14 years."

The reporter's transcript of the November 7 dispositional hearing indicates, however, that the court clarified or changed the probation condition later in the hearing, such that it also pertained to A.V.'s presence with younger males (like the October 5 minute order). The court and defense counsel engaged in the following exchange: "[DEFENSE COUNSEL]: The other question I have, since he is just 13, he's going to have difficulty staying away from 14 years old or under since they're going to be classmates of his. [¶] THE COURT: I think that's in class, that's supervised. If he's not in class, he's got to stay away from females. [¶] [DEFENSE COUNSEL]: You said any children [apparently referring to the October 5 order rather than the court's earlier statement at the November 7 hearing]. You didn't limit to females. [¶] THE COURT: Females. [¶] [DEFENSE COUNSEL]: Going to the bathroom or whatever at school, things of those sorts, at lunch, be in contact. [¶] THE COURT: Males if they're classmates; anyone younger than that, no. Younger than him, no. Lower grades, no. [¶] [DEFENSE COUNSEL]: And no female under the age of 14. Supervised by adult. [¶] THE COURT: Right."

The upshot is that A.V. was prohibited from being alone with a male younger than him, and prohibited from being alone with a female under 14, unless supervised by an adult. To the extent there is a discrepancy between the court's oral pronouncement and

the minute order, the oral pronouncement controls. (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385 (*Zackery*).)<sup>1</sup>

A.V. argues that the probation condition is unconstitutionally vague. He also argues that the probation condition is overbroad, because it infringes on his constitutional right to freedom of association, in that there are “many legitimate reasons why [he] would find himself alone with another child,” such as being alone in a restroom when another boy enters, participating in sports or school activities, walking in the hallway on the way to class, or sharing a room in his group home. Respondent counters that those situations would not give rise to a violation of the probation condition, because they would occur within the structured environment of a school or residence facility with the adult supervision contemplated by the court. In his reply brief, A.V. argues: “Certainly, it is appropriate for A.V. to be restricted from being alone with other children in clandestine environments. But when it comes to his living facility and school environment, the condition must be narrowly tailored to address his reasonable, daily needs.”

To address the vagueness and overbreadth concerns raised by A.V., and to effect what the record suggests the court had in mind, the statement of the probation condition should be clarified so that it reads: “Minor not to be in the presence of any younger male, or any female under 14 years of age, except in his living facility, in school, or with adult supervision.” The dispositional order must be modified accordingly.<sup>2</sup>

A.V. contends the probation condition is nonetheless unreasonable under *Lent*, *supra*, 15 Cal.3d 481, because A.V. committed lewd and lascivious acts only with his

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<sup>1</sup> The Alameda County Juvenile Probation Department’s Conditions of Probation and Court Orders form, dated November 7, 2011, and ostensibly signed by A.V. and his mother on that date, states the relevant probation condition as follows: “Minor not to be in the presence of any children under the age of 14 without adult supervision.”

<sup>2</sup> We invited the parties to address this proposed articulation of the probation condition. At oral argument, respondent advised that it was acceptable. A.V. expressed just two concerns: that it limited A.V.’s ability to be with males, which we discuss *post*; and that “adult supervision” is impermissibly vague, which we find unpersuasive.

younger female cousin in the home they shared, not with a younger male or other child or in public. However, the probation condition (as we have clarified it) is reasonably related to A.V.'s offense and the deterrence of future criminality. A.V.'s offense was lewd and lascivious conduct with a child under 14; it was not unreasonable for the juvenile court to conclude that, in the future, A.V. might sexually assault a child other than N.V. in a different location. A.V.'s molestation of N.V. was not directed to female genitalia, and there was no evidence that A.V. would not try to mimic a sex act on another child or at a location other than home.

We will order the juvenile court to amend the November 7 minute order to reflect the probation condition as we have articulated it.

### 3. *Probation Condition To Be of Good Conduct and Obey Caregiver*

A.V. contends that two other probation conditions are vague and overbroad: that he be "of good conduct" and that he obey his caregiver. We conclude that the former is not an independent probation condition, and the latter is appropriate.

The minute order of November 7, 2011, states: "Obey all city, county, state, and federal laws and ordinances. [¶] *Obey parent, legal guardian, or caregiver.*" (Italics added.) It does not use the words, "be of good conduct." That phrase was uttered by the judge at the hearing, when he said: "Obey all laws of the community and *be of good conduct*. Obey your caregiver."

A.V. argues that the phrase "good conduct" is vague and, since he is already prohibited from violating the law and is required to obey his caregiver and school rules, the condition that he be of "good conduct" is unnecessary and should be stricken. Respondent concurs that the phrase "of good conduct" is a "curious locution" that is absent from the minute order, and agrees that the issue is resolved if it is assumed that the court simply meant that A.V. was required to obey all laws. We will interpret the court's reference to being "of good conduct" as subsumed within the conditions stated in the minute order and, as such, no modification to the minute order is required on this ground.

As to the court's order that A.V. "obey . . . [his] caregiver," A.V. argues that the phrase is vague as to what it prohibits and overbroad in its restriction of conduct beyond

what is necessary to achieve the state’s interest. (He asks rhetorically, “Must A.V. do absolutely everything his caregiver directs him to do? What constitutes a caregiver directive? What level, or how many instances, of disobedience would yield a probation violation?”) To eliminate this purported vagueness and overbreadth, A.V. urges, the probation condition should be rewritten with language from Welfare and Institutions Code section 601, such that he need obey only “reasonable and proper orders,” and his failure to do so would not violate his probation unless it gets to the point that he “persistently or habitually refuses to obey.” (Welf. & Inst. Code, § 601, subd. (a).)<sup>3</sup>

A.V.’s argument is meritless. The purpose of the probation condition that A.V. obey his caregiver is distinct from the purpose of Welfare and Institutions Code section 601, subdivision (a), which defines when a minor may fall within the juvenile court’s jurisdiction. Although A.V. argues that his proposed modification would provide the certainty necessary to inform A.V. and the court what behavior constitutes a violation, we find no need for the modification and, in any event, the inclusion of phrases like “reasonable and proper orders” and “persistently or habitually refuses to obey” would not accomplish the task. Nor is there any indication that the court, in imposing the probation condition, contemplated that it would be alright for A.V. to disobey his caregivers as long as he not do so persistently or habitually. In the final analysis, A.V. fails to establish unconstitutional vagueness, overbreadth or other insufficiency in the condition that he “[o]bey parent, legal guardian, or caregiver.”

#### 4. *Other Purported Probation Conditions*

A.V. next contends that a document in the clerk’s transcript entitled “Conditions of Probation and Court Orders” (Probation Document), apparently prepared by the Alameda County Juvenile Probation Department and signed by A.V. and his mother, contains additional probation conditions not ordered by the court, as well as conditions

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<sup>3</sup> Welfare and Institutions Code section 601, subdivision (a) reads: “Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian . . . is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.”

that are variations on the ones the court ordered. He contends that two of them should be stricken.

One of the purported conditions reads: “Do not frequent any campus or be within \_\_\_ feet of any campus other than the school in which currently enrolled.” A.V. asserts that this condition must be stricken because it was not mentioned by the court at the dispositional hearing, and a court’s oral statements ordinarily prevail against a minute order (*Zackery, supra*, 147 Cal.App.4th at p. 385); respondent counters that the Probation Document is not a minute order, but a list of probation conditions signed by A.V. and his mother, so it should prevail. A.V. further contends this condition is vague because it uses the word “frequent” (*In re H.C.* (2009) 175 Cal.App.4th 1067, 1072-1073) and fails to specify the number of feet A.V. must stay from a school campus.

Based on the record on appeal, we conclude that the statement in the Probation Document has no effect as a probation condition. The Probation Document is dated and signed November 7, 2011, before the minute order was prepared (November 8) and served (November 9). The restriction does not appear in the court’s minute order, it was not among the conditions imposed orally by the judge at the dispositional hearing, and there was no mention of it at the hearing. The record is insufficient to infer that A.V. and his mother agreed to this restriction as an additional probation condition beyond what the court had ordered. Moreover, the absence of any indication of how many feet A.V. must stay away from campus makes the restriction largely meaningless and unenforceable, and there is no suggestion why A.V. would have to stay away from a campus since he is already prohibited from being in the presence of a younger male or female under 14 except in his living facility, in school, or with adult supervision.

Another purported condition appearing in the Probation Document reads: “Minor not to be in the presence of any children under the age of 14 without adult supervision.” A.V. contends that this misstates the probation condition ordered by the court, because the court did not mention a requirement of “adult supervision” at the hearing. In this regard, A.V. is incorrect: the court expressly required that A.V. not be in the presence of a female under 14 without adult supervision, and implied a requirement of adult

supervision with respect to A.V. being in the presence of a younger male. In any event, we have already concluded that the proper articulation of the probation condition is as follows: A.V. cannot be in the presence of any younger male or female under 14 except in his living facility, in school, or with adult supervision. To the extent the Probation Document purports to state the probation condition differently, it shall be deemed in error.

#### *D. Minute Order*

A.V. contends that the minute order of October 5, 2011, erroneously states that he admitted count two, while in fact count two was found true by the court after a contested jurisdictional hearing, not by his admission. Respondent does not object to our correction of the order. We also note that the same statement is made in the minute order of November 7, 2011. Both orders shall be corrected to read that count two was found true, but not that A.V. admitted it. (See *Zackery, supra*, 147 Cal.App.4th at pp. 385-386.)

### III. DISPOSITION

The jurisdictional order is affirmed. As to the dispositional order, the probation condition that presently reads (in the November 7, 2011, minute order from the dispositional hearing), “Minor not to presence of any Female under the age of 14 years” shall be replaced with the following: “Minor not to be in the presence of any younger male, or any female under 14 years of age, except in his living facility, in school, or with adult supervision.” The juvenile court is directed to prepare amended minutes of the hearing on November 7, 2011, to make this correction. In addition, the juvenile court is directed to prepare amended minutes of the hearing on October 5, 2011, and to provide

further amendment to the minutes of the hearing on November 7, 2011, to make the following correction: count two was found true, but A.V. did not admit the count. In all other respects, the dispositional order is affirmed.

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NEEDHAM, J.

We concur.

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JONES, P. J.

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SIMONS, J.