

No. 16-3397

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We attach no nefarious purposes to the investigators who were using established interrogation techniques.<sup>10</sup> And, in any event, the investigator's purpose or subjective view of the coercive nature of the interrogation is not relevant. It is how those interrogation techniques interact with the defendant's characteristics that determines the voluntariness of a confession. A seasoned criminal who has volleyed with interrogators many times before may not be swayed at all by an explicit but false claim of leniency, but a young, unsophisticated juvenile might believe, with just the slightest hint of an offer of leniency, that if he confesses to murder "God and the police would forgive him and he could go home in time for his brother's birthday party." *A.M.*, 360 F.3d at 794.

The Constitution requires that a confession be voluntarily given. The dissent criticizes the panel opinion for relying on the subjective perception of a defendant in determining the voluntariness of his confession, but this is, in fact, what the totality of the circumstances test requires. A thirty-year-old with a law degree would not believe a police officer's assurance that if he confesses to murder he will go punishment free, but yet the ten-year-old, *A.M.* did just that. *Id.* A consideration of the totality of the circumstances requires the

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<sup>10</sup> Apparently these techniques are not still *de rigueur*, as Dassey's interrogation is now used as a "what not to do" in at least one certified interrogation course. See Brief of Amici Curiae, Juvenile Law Center, Wicklander-Zulawski & Associates, Inc. and Professor Brandon Garrett, In Support of Appellee and Affirmance, at p. 5-6 (citing <https://www.w-z.com/2016/08/19/netflixs-making-a-murderer-involuntary-confession-an-interrogators-perspective/#comment-1266>). Of course our consideration of the constitutionality of the interrogation does not hinge on whether companies teaching these courses believe the technique to be effective or proper.