

What do the courts say about the testimony of false confession experts?

For the past several years the courts have viewed with skepticism the testimony of “false confession experts”, repeatedly suggesting that there is no actual science to support their views but rather, anecdotal evidence. Here is what some of the courts have said:

Re: Dr. Richard Ofshe

- “Dr. Ofshe's testimony at the Daubert hearing suggested that there was no methodology about false confessions that could be tested, or that would permit an error rate to be determined. In this area of research, the result of the lack of any reliable testing format to establish predictors of when a false confession might occur is a methodology consisting of analyzing false confessions only after a confession has been determined to be false. The trial court did not err in finding Dr. Ofshe's proposed trial testimony inadmissible under Daubert.” *State v. Lamonica*, July 2010
- "Dr. Ofshe's testimony did not contain 'sufficient evidence to confirm that the principles upon which the expert based his conclusions are generally accepted by social scientists and psychologists working in the field. Therefore, his anticipated testimony that psychological coercion was employed during the interrogation of defendant, Argelis Rosario, which in his opinion would induce a person to falsely confess, does not meet the Frye standard for admissibility." *People v. Rosario*, March, 2008.
- "In essence, the military judge found that Dr. Ofshe's theory regarding coercive interrogations was not based on rigorous scientific analysis or even subject to scientific testing but was rather Dr. Ofshe's own subjective review of a group of particularly selected cases. By way of example, at one point Dr. Ofshe testified that his theory concerning the impact of certain police interrogation techniques on the danger of false confessions was as intuitive as the fact that the sun will come up each day. Essentially he argues that we can't necessarily prove causation but we just know how it works. Id. at 5, Record at 1202.” *US v Wilson*, February 2007
- "This Court further observed in Riley that the admission of expert testimony based on the theory of false confessions was premature and unreliable inasmuch as there was insufficient scientific support and too many unanswered questions regarding such theory. Id. at 682-683(4), 604 S.E.2d 488. In short, false confession theory does not satisfy the evidentiary test in criminal cases set forth in Harper v. State, 249 Ga. 519(1), 292 S.E.2d 389 (1982)." *Lyons v. State*, October 2007

Some of the other cases in which Dr. Ofshe’s testimony was excluded, limited or rejected* include:

People v. Balbuena, May 2010

People v. Ekblom, July 2010

State vs. Williams, February 2010

Brown v. Horell, February 2009

Smith v. State, March 2009

Contreras v. State, January 2009

People v. Rosario, March 2008

Fox,II, Appellee-Plaintiff v Indiana, February 2008

US v. Freeman, February 2008

People v. Cota, November 2007

Lyons v. State, October 2007

US v. Mamah, February 2002

State v. Tapke, September 2007

Re: Dr. Richard Leo

- The lower court had found that "Dr. Leo's testimony would not appreciably aid the jury in determining whether Vent made a false confession." The trial court judge was also "troubled by the fact that there was no way to quantify or test Dr. Leo's conclusions that certain techniques might lead to a false confession. He also concluded that jurors would be aware that some people do make false confessions and that this proposition could be developed by questioning and argument." *State vs. Williams*, February, 2010
- The trial court had refused to allow Dr. Leo to testify, concluding that nothing that the doctor had to say would assist the jury and that there was "not a shred of evidence before us at this point to render a basis for any opinion by Dr. Leo that the confession was false...." *People v. Lucas*, July 2009
- "Of particular significance to the Daubert analysis here, Dr. Leo has not formulated a specific theory or methodology about false confessions that could be tested, subjected to peer review, or permit an error rate to be determined. Dr. Leo's research on false confessions has consisted of analyzing false confessions, after they have been determined to be false..... Given the evidence before the trial court that Dr. Leo's expert testimony did not include a reliable scientific theory or anything outside the understanding of the jury that would assist it in assessing the reliability of Wooden's confession, the trial court did not abuse its discretion in refusing to admit Dr. Leo's testimony." *State v. Wooden*, July, 2008

Some of the other cases in which Dr. Leo's testimony was excluded, limited or rejected include:

People v. Vargas, June 2010

State v. Law, June 2008

People v. Cerda, May 2008

State v. Law, June 2008

People v. Steele, June 2008

People v. Wroten, December 2007

People v. Muratalla, December 2007

People v. Rathbun, August 2007

Scott v. State, March 2005

Vent v. State, February 2007

Re: Professor Saul Kassin

- Pragmatic implication is a theory proposed by Professor Saul Kassin which posits that a subject of an interrogation may cognitively perceive threats or promises even though the investigator never threatened the suspect or offered the suspect a promise of leniency. In the case of *People v. Benson* (2010) the Court of Appeal, Third District, California rejected this premise. In this case the court found the following:

“Here, Detective Rodriguez did tell defendant there was “a big difference between ... someone getting hurt and trying to shoot someone.” However, the detectives made no promises or representations that defendant's cooperation would garner more lenient treatment or lesser charges. “No specific benefit in terms of lesser charges was promised or even discussed, and [the detective's] general assertion that the circumstances of a killing could ‘make a lot of difference’ to the punishment, while perhaps optimistic, was not materially deceptive.” The general assertion that the circumstances of a killing could make a difference was not materially deceptive. It is not deceptive to state that an accomplice to murder may be better off than the shooter.” *People v. Benson*, January 2010

- "The judge concluded that [Saul] Kassin's testimony did not meet the requirements set forth in the Lanigan case. We agree. As the judge stated, Kassin conceded that his opinions are not generally accepted, require further testing, and are not yet a subject of "scientific knowledge." One of his own publications admitted as much. Accordingly, his proposed testimony that certain interrogation techniques have previously produced false confessions does not meet either the

general acceptance or reliability criteria established by the Lanigan case. The judge did not abuse her discretion in refusing to admit Professor Kassin's testimony." *Commonwealth v. Robinson*, April 2007

Some of the other cases in which Professor Kassin's testimony was excluded, limited or rejected include:

State v. Cope, 2009

Bell, Petitioner v. Ercole, et al., June 2008.

Re: Mark Castanza

- "Expert opinion is not admissible if it consists of inferences and conclusions which can be drawn as easily and intelligently by the trier of fact as by the witness.'... A trial court may exclude the testimony of a false confessions expert where the defendant's testimony about why he falsely confessed is easily understood by jurors." *People v. Martinez*, March, 2008

Re: Dr. Solomon Fulero

- The Court held "that the subject of whether a person has falsely confessed 'does not depend upon professional or scientific knowledge or skill not within the range of ordinary training or intelligence,' and therefore, 'there is no occasion to resort to expert testimony.'" *People v. Crews*, February 2008

Also see *Downs v. Virginia*, May 2006

Re: Dr. Jarvis Wright

- "Based on our evaluation of the testimony and application of the Kelly factors for reliability of scientific theory, we find that the Appellant did not meet his burden of providing by clear and convincing evidence that Dr. Wright's testimony was reliable and therefore relevant. Dr. Wright's testimony [on false confessions] could not have assisted the jury in understanding the evidence or in making a determination of a fact issue." *Munoz v. State*, August 2009

Re: Dr. Robert Latimer

- In the case of *State v. Rosales*, (July 2010), the Supreme Court of New Jersey stated that, "In rejecting the proposed expert testimony of Dr. Latimer, the trial court stated: [Dr. Latimer] would be telling the jury that people have given false confessions in the past. Nothing else that he could say to the jury would be in any way scientifically established or accepted by the scientific community. We agree. Because that testimony was not about a field that is at a "state of the art" to be considered sufficiently reliable, the trial court properly denied Dr. Latimer's proposed testimony."

Dr. Allison Redlich

Edmonds v. State, April 2006

Re: Dr. Rosalyn Shultz

State v. Wright, March 2008

Re: Dr. Deborah Davis

People v. Gallo, July 2008

US v. Benally, September 2008

Zhao v. City of New York, et al., August 2008.

Re: Dr. Christian Meissner

Dodson v. State, March 2008

Re: Dr. Christopher Lamps

T.C., a minor, Appellant v. State, September 2009

Re: Dr. Gregory DeClue

US v. Dixon, January 2008

Re: Dr. Avak A. Howsepian

People v. Madrigal, January 2008

Re: Dr. Bruce Frumkin

State v. Bennett, September 2007

* Rejected also includes cases in which the expert offered some testimony but their argument was rejected by the judge or jury