

NEW YORK COURT OF APPEALS ROUNDUP

IN ‘POWELL’, COURT REAFFIRMS ADMISSIBILITY OF EXPERT TESTIMONY ON FALSE CONFESSIONS

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Gov. Kathy Hochul began to make her mark on the Court of Appeals by nominating Justice Shirley Troutman to join the court. If confirmed, Justice Troutman will replace Judge Eugene Fahey, who reached the mandatory retirement age this year and will step down at the end of the month. Justice Troutman was first elected to the Buffalo City Court in 1994. She went on to serve as an Erie County Court judge, a Supreme Court justice in the 8th Judicial District, and is currently an Associate Justice of the Appellate Division, Fourth Department. Justice Troutman would be the second Black woman to serve on New York’s highest court.

The Court of Appeals recently considered the admissibility of expert testimony concerning the occurrence of false confessions. In a majority opinion written by Chief Judge Janet DiFiore and joined by Judges Garcia, Singas and Cannataro, the court reaffirmed that expert testimony may be admitted regarding the factors associated with false confessions and that the admissibility of such testimony should be left to the discretion of the trial court. In this instance, the court held that the trial court did not abuse its discretion in precluding the testimony from the defendant’s expert because, based on the majority’s analysis of the record, the expert did not link her research on the causes of false confessions to the specific circumstances of the defendant’s interrogation.

In *People v. Powell*, the defendant was charged with committing two robberies. After his arrest, the defendant wrote a statement admitting to committing the robberies. Later that day, according to the police, he gave an additional, oral statement that was then typewritten by a detective. The second statement reiterated his confession and provided more detail about the robberies. The defendant was indicted for robbery in the first degree.

Prior to trial, the defendant moved to suppress both statements. The trial court held a *Huntley* hearing where the defendant and the detective who took the statements testified to contrary narratives concerning the circumstances surrounding the defendant’s interrogation. According to the detective, the defendant was arrested around 2:20 p.m. and held in the precinct’s interrogation room with one hand handcuffed to the wall. Around 6:30 p.m., the detective advised the defendant of his *Miranda* rights. When told his arrest related to local robberies, the defendant denied any involvement and became visibly agitated. At the defendant’s request, the detective left to retrieve bottles of medication prescribed to the defendant. The detective retrieved the medications but could not recall whether the defendant took the medication.

The next morning, after the defendant had a coffee and a bagel, the detective began discussing the charges, informed the defendant that he had to participate in a lineup, and supplied the defendant with pen and paper before leaving him alone. The defendant used the pen and paper to write his first statement.

Two lineups were conducted and both victims identified the defendant. When asked by the defendant whether he had been identified by the victims, the detectives confirmed that he had and asked if he wanted to make any further statements. The defendant consented, but asked the detective to write out the statement for him since he was not a good writer. He then gave his oral confession over the course of the entire day. The defendant was provided with a meal from Burger King and did not request medical assistance or appear to be experiencing any type of narcotic withdrawal. While he did not take any notes during his conversation with the defendant, the detective typed the confession and the defendant signed on a blank second page.

The defendant testified to a very different version of events. According to the defendant, he has low intelligence, suffers from seizures, and has a history of schizophrenia, depression and substance abuse. While he has medication for certain of these conditions, he last took them the night before his arrest. After his arrest, the defendant was affected by heroin and crack cocaine he ingested that morning. As a result he became paranoid, scared and had a seizure and urinated on himself while he was handcuffed to the wall in the interrogation room. The detective hit him on the head several times and told him that he could not give the defendant his prescribed medication or treatment unless the defendant cooperated. The detective also told the defendant that he would make sure the defendant would not go before a judge for four or five days if the defendant asked to go to the hospital. The defendant testified that he received his medication only after providing the written statement, which he says was not true and only written to appease the detective who was depriving him of his medication and food. When shown the second, typewritten statement, the defendant repeatedly denied that he made those admissions; instead, he testified that he signed the blank second page without reviewing the statement.

After the *Huntley* hearing, the trial court denied the motion to suppress the statements. At a *Frye* hearing, the court considered the defendant's motion to admit the testimony of Dr. Allison Redlich to assist the jury "on factors that were generally accepted in the relevant scientific community as associated with false confessions." 2021 NY Slip Op 06424 at 9 (Nov. 18, 2021). In her report, Dr. Redlich credited defendant's account of the interrogation and attached several publications, including some she authored, to demonstrate the general acceptance of those factors in the field of false confession research. At the hearing, Dr. Redlich was found to be an expert in the field of false confession studies. She identified "dispositional" and "situational" factors that could have produced a false confession by the defendant. The dispositional factors included the defendant's mental illness, intellectual disability, and substance abuse. The situational factors included the fact that the defendant was in custody and questioned intermittently for more than 24 hours, that his statements were minimized by his references to drug abuse, and the purported confessions did not include any information that was not already known to the police.

On cross-examination, Dr. Redlich conceded that at least one of the studies she relied on was flawed and no longer used and that another study was distinguishable from the circumstances of a police interrogation. She noted that laboratory studies in the field of false confessions are not similar to the analysis done in other scientific fields where the tests are conducted pursuant to an accepted methodology that can be replicated to achieve the same results. Nor are the studies similar to those done in the field of misidentification because of the practical and ethical limitations in recreating the circumstances of custodial interrogations in a laboratory setting.

After the hearing, the trial court precluded Dr. Redlich from testifying because the defendant failed to meet his burden of establishing that the proposed testimony was “readily acceptable in the scientific community.” 38 N.Y.S.3d 374, 379 (Sup. Ct., Queens Cty. 2014). The court found Dr. Redlich’s testimony “unpersuasive” including because she failed to establish a rate of error and she relied on studies that had been discredited or that were inapplicable. *Id.* at 380.

At trial, the defendant gave testimony consistent with his testimony at the *Huntley* hearing. One of the victims testified and identified the defendant as the robber and surveillance footage of the robberies was played for the jury. With respect to the conflicting accounts of the interrogation and the voluntariness of the statement, the jury was instructed that they had to find that the People proved beyond a reasonable doubt that the statement was voluntarily made before they could consider the defendant’s statement as evidence. The jury convicted the defendant. The Appellate Division, Second Department unanimously affirmed, holding that it was not an abuse discretion for the Supreme Court to preclude the expert’s testimony because the defendant failed to demonstrate the proposed testimony was relevant to the circumstances of his case. 166 A.D.3d 660, 661 (2d Dept. 2018). The Court of Appeals granted leave to appeal.

In her majority opinion, Chief Judge DiFiore reiterated that the admissibility and scope of expert testimony are subject to the discretion of the trial court. Thus, the Court of Appeals’ scope of review is limited to “whether the determination to exclude the proffered expert testimony was an abuse of that discretion as a matter of law.” The majority began with a general explication of the *Frye* standard. Under *Frye*, the trial court is tasked with determining whether the proposed expert testimony is based on principles and methodologies generally accepted within the relevant scientific community. However, that does not end the analysis. Even when the testimony meets this standard, expert opinion may be precluded if it presents too great an analytical gap between the data and the opinion proffered. “Further, particularly in the social science arena, we have measured the reliability of novel hypotheses and theories—not just methodologies—against the *Frye* standard.” Specifically with respect to the “phenomenon of false confessions,” the majority reaffirmed the requirement laid out in its 2012 decision in *People v. Bedessie*, 19 N.Y. 3d 147 (2012), that the trial court must determine “whether the same proffered testimony was relevant to the defendant and interrogation before the court” and whether the testimony would be helpful to the jury in reaching a verdict.

In this case, the majority concluded that the trial court did not abuse its discretion in finding that the proposed testimony would not have assisted the jury. While recognizing Dr. Redlich’s impressive credentials and qualifications as an expert in her field, the majority agreed that she did not explain how her general testimony regarding false confessions was relevant to the specific circumstances of the defendant’s interrogation. The defendant testified that his first statement was the product of coercion (including lack of food and medicine) rather than the types of psychologically coercive tactics by police that create the risk of false confession that the expert was prepared to describe to the jury. The defendant also testified that he did not make the second, more detailed confession; accordingly, “expert testimony regarding dispositional and situational factors that create a risk of a false confession has no relevance” to that statement.

Given the “speculative nature of [Dr. Redlich’s] testimony and the lack of relevance to the particular circumstances of defendant’s interrogation presented the risk that the jury might have been confused or misled, rather than aided, by the testimony,” the court affirmed and held that “there is no abuse of discretion when the trial court disallows expert psychological testimony as to false confessions when it is not relevant to the circumstances of the custodial interrogation in the case at hand.”

Judge Jenny Rivera, joined by Judges Fahey and Wilson, wrote a lengthy dissent—nearly twice as long as the majority opinion—arguing that the expert’s proffered testimony satisfies the standards for admissibility under *Bedessie* and *Frye* because the defendant established that the science of false confessions was generally accepted in the relevant scientific community. According to the dissent, the majority and the courts below erred by “focusing on questions of foundation, the fit between the proffered testimony and the facts of the case, and the methodologies used by social science researchers—none of which are relevant at a *Frye* hearing.” The dissent argues that “whether the scientific analysis must fit the facts of the case is a distinct question from general acceptance.” “Instead of determining solely whether Dr. Redlich’s testimony and the additional documentary evidence established acceptance within the scientific community of the dispositional and situational factors that lead to false confessions, the majority assesses matters of foundation and fit” and “usurps the jury’s role by weighing the evidence and assessing whether Dr. Redlich was credible.” In response to the majority’s contention that the expert failed to connect her general opinions to the defendant’s specific interrogation, the dissent contends that “it was not Dr. Redlich’s role at the *Frye* hearing to apply the science to the facts of the case; matters going to trial foundation or the weight of the evidence are not properly addressed in the pretrial *Frye* proceeding.”

Whether one agrees with the dissent that the science behind false confessions is sufficiently accepted to withstand scrutiny under *Frye* on its own, the majority has now made clear that “the scientific principles involve more complexity than the general conclusion that false confessions do occur, and the expert is supposed to articulate those principles so a jury can apply the information to the actual evidence in the case.” No matter how comprehensive an expert’s research regarding the science backing false confessions, such testimony may be excluded when it does not also tie the analysis to the circumstances of the custodial interrogation in the case at hand.

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