

Three Bites of the Apple

A defendant may challenge the reliability of the statement during both the pretrial and trial phases of the criminal matter, as well as in a postconviction relief application. The ability to make such challenges, of course, would be waived by the defendant in the event of a plea agreement, the most prevalent of outcomes. The following discussion suggests uses of expert testimony in cases in which a false-confession claim is made.

First Bite: Pretrial

During the pretrial phase, a motion to suppress the confession may be initiated by the defense to prevent it from reaching the jury at trial. Such a motion is supported by the defendant's constitutional right to a judicial determination of the voluntariness of the confession. In response to this motion, a judicial hearing is held to determine, in light of the totality of the circumstances, whether the statement was voluntary. If the judge determines that the preponderance of the evidence supports a finding of voluntariness, then the defendant's motion is denied, and the confession is admissible at the trial phase. The importance of the false-confession phenomenon becomes magnified when the confession is the key evidence in the prosecution. It comes as no surprise, then, that expert testimony regarding the defendant's cognitive, emotional, or motivational state may come into play. In our experience, judges in evidence-suppression (Miranda) hearings are reluctant to rule on the reliability of alleged false confessions; the decision is relegated to the jury. Beyond that is the question of what kinds of expert testimony might be helpful to the jury without prejudicing them or invading their domain.

Second Bite: Trial

Notwithstanding the pretrial judicial determination permitting the jury to hear the confession, the defendant may still challenge its reliability through expert testimony at trial (there is no second bite if a jury trial is waived). Under such circumstances, the prosecution customarily presents a motion to exclude the defense expert's testimony. The trial judge, guided by the applicable admissibility standards for scientific expert testimony, then determines whether the expert's testimony is admissible. If the judge finds that the expert's testimony is inadmissible, the jury must weigh the incriminating statement without hearing the expert's testimony. If the judge finds that the defense expert's testimony is admissible, then the jury may consider the defendant's confession in light of the expert's opinion regarding its reliability.

Third Bite: After Conviction

Confessions are so persuasive that appellate courts, in our experience, are reluctant to overturn a conviction by revisiting a Miranda issue, except on procedural grounds (whether or when the suspect was mirandized). Psychiatric and psychological expert opinions may be useful, however, when there was ineffective assistance of counsel by failure to explore bites one and two, and DNA or other scientific evidence needs to be bolstered by a credible explanation of how a false confession came about.

False Confessions, Expert Testimony, and Admissibility.

Watson et al. 2010.

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