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IN THE APPELLATE COURT OF ILLINOIS  
SECOND JUDICIAL DISTRICT

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**PEOPLE OF THE STATE OF ILLINOIS**

Plaintiff-Appellee

v.

**JUAN RIVERA,**

Defendant-Appellant.

Appeal from the Circuit  
Court of Lake County, Illinois,  
Second Judicial District

Case Number: 92 CF 2751

The Honorable  
Christopher C. Starck

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**BRIEF OF *AMICUS CURIAE* THE INNOCENCE NETWORK IN SUPPORT OF  
DEFENDANT-APPELLANT**

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## I. INTRODUCTION AND STATEMENT OF INTEREST

Juan Rivera's signed confessions to the rape and murder of an eleven-year-old girl were the crux of the prosecution's case against him. In order to convict Mr. Rivera, the jury had to credit his inculpatory statements over DNA and electronic monitoring evidence. To be sure, confessions constitute important—and persuasive—evidence. But their very persuasiveness compels careful attention to their veracity. The trial court erred in refusing to let the defense present expert testimony about the existence of false confessions and the circumstances under which they most frequently occur. The proffered testimony is thoroughly uncontroversial in the scientific community, and has been introduced into evidence in at least 37 state courts, including Illinois. By disallowing all mention of false confessions, the trial court denied Mr. Rivera's jury the tools to meaningfully assess the evidence before it and severely compromised Mr. Rivera's ability to present a defense.

Juan Rivera confessed to a horrific crime. He claims that he signed his confessions under duress and that they were false. The confessions followed four days of questioning, prolonged sleep deprivation, and placement in a padded room because he was pulling his hair out and banging his head against a wall. Dr. Robert Galatzer-Levy, a clinical and forensic psychiatrist, testified that Mr. Rivera's behavior was consistent with suffering an acute psychotic episode, and also catalogued Mr. Rivera's psychological characteristics, including an IQ bordering on mental retardation, high eagerness to please, and a history of suicidal behavior. But what Dr. Galatzer-Levy could not describe, what his counsel could not argue, and what the jury could not intuit, was *how* these psychological factors would have manifested in the interrogation room. A social scientist, such as Dr. Saul Kassin, the expert proffered by the defense, would have been able to

educate the jury about the interaction *between* Mr. Rivera’s psychological characteristics and the characteristics of the interrogation. Without this information, the jurors were left to their own devices to answer social science questions crucial to their evaluation of Mr. Rivera’s confession: How does the combination of low mental capacity and psychosis affect a person’s perception of reality? Would someone in Mr. Rivera’s mental and psychological condition simply be more prone to “cracking” during interrogation and say things that are not true? Absent physical abuse, why would a person *ever* confess to a crime he did not commit? As we detail below, these questions are easily answerable by social scientists, but counterintuitive to jurors. Without any evidence whatsoever about false confessions, it would have been extraordinarily difficult for jurors to evaluate Mr. Rivera’s confession.

By refusing to permit expert testimony to explain why an individual in Mr. Rivera’s situation might falsely confess to such a horrific crime, the Trial Court excluded competent and reliable evidence bearing on his claim of innocence. The Trial Court thus erroneously denied Mr. Rivera “a meaningful opportunity to present a complete defense” and that decision was in error.

The Innocence Network, an affiliation of more than sixty organizations dedicated to providing pro bono legal and investigative services to convicted individuals seeking to prove their innocence,<sup>1</sup> seeks status as *amicus curiae* because it believes that the Trial Court’s refusal to allow the testimony of Dr. Saul Kassin, a Distinguished Professor of Psychology at John Jay College of Criminal Justice, whose methods are accepted both within his field and in the

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<sup>1</sup> The Center on Wrongful Convictions at Northwestern University School of Law is a member of the Innocence Network but played no part in the decision to file this brief.

scientific community generally, was manifest error. Expert testimony concerning false confessions proffered by the defense, including similar testimony by the *very same expert*, has been accepted in multiple courts across the country including several states, which, like Illinois, adheres to the *Frye* standard, discussed below. (See Section III.A.2). Accordingly, the Trial Court abused its discretion. Mr. Rivera’s conviction should be reversed.

## II. THE TRIAL COURT RULING

In Mr. Rivera’s third trial, the judge excluded testimony from two key expert witnesses, psychiatrist Dr. Robert Galatzer-Levy and renowned false confession expert psychologist Dr. Saul Kassin; the testimony of the latter is the subject of this amicus. Dr. Kassin’s testimony was proffered to explain why Mr. Rivera, a borderline mentally retarded 19-year-old, would sign a murder confession at 1 a.m. after nearly four days of intense interrogation, little sleep, and being “hog-tied” in a “rubber room” to keep him from harming himself. Following Mr. Rivera’s second trial, this Court upheld the Trial Court’s decision to exclude certain expert testimony about false confessions that would have been given by Dr. Richard Ofshe, a sociologist. But in Mr. Rivera’s third trial, the trial judge treated Dr. Kassin’s proffered testimony as identical to that of Dr. Ofshe’s from years earlier—even though the topic of the testimony was different, their expertise differed, and the science had evolved substantively in the intervening years. In one fell swoop, the Trial Court simply disallowed *any* evidence about false confessions because “the subject matter...troubl[ed] the Court.” (Nov. 11, 2008 Offer of Proof Hearing Transcript (“Offer of Proof,” 154.)) An examination of the proffered testimony shows, however, that the Trial Court’s ruling was over-inclusive; it was mistaken to reject the testimony out of hand. The expert testimony Dr. Kassin would have given was not only crucial to evaluating Mr. Rivera’s confession, but was clearly admissible under *Frye*.

### III. Argument

The Trial Court abused its discretion in three ways when it summarily rejected Dr. Kassin's proffered testimony. First, the Trial Court's apprehension regarding Dr. Kassin's testimony was unfounded because, as we demonstrate below, this type of testimony is generally accepted and routinely admitted in courts across the country, including Illinois, negating any need to conduct an analysis, which we believe it does not, under *Frye*. Second, even if the proffered testimony warrants a *Frye* analysis, Dr. Kassin's methods are generally accepted in the field of social psychology. Third, the proffered testimony was highly relevant, crucial to Mr. Rivera's defense, and would have educated the jury on a phenomenon proven to be counterintuitive and outside the ken of the average juror.

**A. Expert Testimony about False Confessions is Well-Accepted in Its Field, and Is Commonly Admitted in Courts throughout the United States, Including Illinois.**

***1. Determining whether Frye should be applied***

In Illinois, scientific evidence is admissible once it is generally accepted in its applicable scientific field. *Donaldson v. Central Illinois Public Service Co.*, 199 Ill. 2d 63, 76-77 (2002), *overruled on other grounds*, *In re Commitment of Simons*, 213 Ill. 2d 523 (2004). Where scientific evidence is based upon tried-and-true scientific methods, a court need not apply a "test" *per se*, but rather must confirm that the underlying methods are sound and then declare the use of those methods in connection with the subject matter at issue admissible. *See People v. Hickey*, 178 Ill. 2d 256, 277-78 (1997) (concluding that DNA evidence was generally accepted by looking at decisions of other courts and recent published reports on the topic). It is only for "novel" science based upon evolving or new methods, that the court must conduct a *Frye* analysis. *In re Commitment of Simons*, 213 Ill. 2d at 529.

2. ***Testimony like the type in question is routinely admitted into evidence in trial courts throughout the United States, including Illinois.***

The expert testimony the defense sought to admit was neither novel, nor controversial as a matter of science. In an effort to quantify what is happening “in the field,” the Innocence Network gathered data about false confession testimony occurring in the lower courts. In part, this was done by administering a survey to dozens of the best-known social scientists who study interrogation and confessions (“Survey”). (See Survey attached hereto as Exhibit A in the Separate Appendix to Brief of *Amicus Curiae* The Innocence Network in Support of Defendant-Appellant, (“App. Ex. A”))<sup>2</sup> The Survey responses demonstrate that throughout the country, trial courts have decided that expert testimony about the psychology of false confessions is generally accepted, good science, and helpful to juries. (See Survey Results, App. Ex. B)

Specifically, the Survey revealed that this kind of expert testimony has been admitted in at least 37 states, totaling approximately 350 times. These statistics represent a conservative estimate, since there are scores of lesser-known false confession experts who have testified as well. At least 55 professionals from over 10 countries qualify as false confession experts by virtue of their research and/or publications on the subject of interviewing, interrogations, and confessions.<sup>3</sup> Dr. Kassin is among them. His testimony on false confessions has been admitted into evidence approximately 9 times, in 4 different states.

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<sup>2</sup> Citations to the Appendix hereinafter will be as follows: “App. Ex. \_\_\_\_”

<sup>3</sup> The Survey was sent out to the following experts, in alphabetical order: Lucy Akehurst (University of Portsmouth, United Kingdom), Elliott Aronson (University of California, Santa Cruz, United States), John Baldwin (University of Birmingham, United Kingdom), Peter Ball (University of Tasmania, Australia), Ray Bull (University of Leicester, United Kingdom), Sven Christianson (Stockholm University, Sweden), Isabel Clare (United Kingdom), Alan Costall (University of Portsmouth, United Kingdom), Mark Costanzo (Claremont McKenna College, United States), Graham Davies (University of Leicester, United Kingdom), Deborah Davis (University of Nevada at Reno, United States), Eitan Elaad (Israel National Police Headquarters, Israel), Krista Forrest (University of Nebraska,

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Notably, the responding experts reported that they had testified three times in Illinois courts. The results of this testimony underscore its importance: all three times a false confession expert testified, the defendant was either exonerated or convicted of a lesser charge. For example, in the case of Jason Copeland, who was tried in Macon County in 2001 for the murder of his son, Judge John J. Greanias permitted false confession expert testimony about why Mr. Copeland's confession, taken after a lengthy interrogation and promises of leniency, might not be reliable. Mr. Copeland was acquitted of first-degree murder and convicted of misdemeanor child endangerment. In the case of Jeremy Pontious, who was tried in Effingham County in 2003 for beating a middle-aged man to death during a burglary, Judge John P. Coady permitted a false confession expert to testify as to why Mr. Pontious' confession, taken after a lengthy interrogation and which included numerous discrepancies, was unreliable. Mr. Pontius was

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Kearney, United States), Solomon Fulero (Sinclair College, United States), Eugenio Garrido (University of Salamanca, Spain), Stephen Golding (University of Utah, United States), Naomi Goldstein (Drexel University, United States), Par-Anders Granhag (University of Gothenburg, Sweden), Thomas Grisso (University of Massachusetts, Medical, United States), Gisli Gudjonsson (King's College, London United States), Maria Hartwig (University of Gothenburg, Sweden), Linda Henkel (Fairfield University, USA), Martin Hill (Ponce School of Medicine, Puerto Rico), Ulf Holmberg (Stokholm University, Sweden), Ronald Huff (University of California, Irvine, United States), Barrie Irving (The Police Foundation, United Kingdom), Matthew Johnson (John Jay Criminal Justice, United States), Saul Kassin (Williams College, United States), Gunter Koehnken (Universitaet Kiel, Germany), Martha Komter (University of Amsterdam, Netherlands), Daniel Lassiter (Ohio University, United States), Richard Leo (University of California, Irvine, United States), Jaume Masip (University of Salamanca, Spain), Christian Meissner (Florida International University, United States), Amina Memon (University of Aberdeen, Scotland), Harald Merckelbach (Maastricht University, Netherlands), Rebecca Milne (University of Portsmouth, United Kingdom), Stephen Moston (University of Kent, United Kingdom), Lois Oberlander (University of Massachusetts, Medical, United States), Richard Ofshe (University of California, Berkeley, United States), James Ost (University of Portsmouth, United Kingdom), John Pearce (United Kingdom), Stephen Porter (Dalhousie University, Canada), Michael Radelet (University of Colorado, United States), Allison Redlich (Policy Research Associates, United States), Dick Reppuci (University of Virginia, United States), Melissa Russano (Roger Brown University, United States), Eric Shepherd (City of London Polytechnic, United Kingdom), John Fridrik Sigurdsson (University Hospital, Reykjavik, Iceland), Jerome Skolnick (New York University School of Law, United States), Geoffrey Stephenson (University of Kent, United States), Aldert Vrij (United States Portsmouth, United Kingdom), James Wood (University of Texas, United States), Lawrence Wrightsman

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acquitted. These cases are powerful examples of the impact false confession expert testimony can have on the way a jury views the evidence.

In addition to cases in Illinois, our Survey revealed that false confession testimony has been admitted in several states that, like Illinois, adhere to the *Frye* standard. Those states include: New York, Florida, Arizona, California, Kansas, Maryland, Minnesota, Missouri, Pennsylvania, and Washington.

The Survey yielded responses from varied jurisdictions and under varied circumstances. The steadfast themes, however, were that this testimony explains generally accepted scientific principles to jurors who may improperly assume that only guilty persons confess to crimes. It is common for trial courts to admit false confession testimony from expert witnesses. These kinds of “given” admissions of such evidence, of course, never reach an appellate court.

This empirical evidence contextualizes Mr. Rivera’s request to present expert testimony about the circumstances that make false confessions more likely, the empirically proven indicia of a confession’s veracity, and the existence of false confessions more generally. The prevalence of this kind of testimony demonstrates that Mr. Rivera did not seek to admit psychological evidence that was “cutting-edge;” rather, he sought to admit a basic variety of expert psychological testimony that is routinely admitted in courts across the nation every day.

The Survey demonstrates that false confession expert testimony is neither “new” nor “novel” and should therefore not even be subject to a reevaluation of its general acceptance. The scientific community, and trial courts throughout the nation, have already determined this

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(University of Kansas, United States), and Philip Zimbardo (Stanford University, United States).

evidence meets the requisite threshold and that the methods underlying false confession research qualify it for admission into evidence. The inquiry should end there. The judicial system does not require commonly used scientific evidence to be reevaluated every time a party seeks its admission. False confession testimony has earned its place in the courtroom.

**B. Even if This Court Finds It Necessary to Conduct a *Frye* Analysis, the Testimony in Question Meets the *Frye* Standard, Because It Is Well-Accepted in Its Field.**

**1. *Frye* generally**

The *Frye* standard, commonly called the “general acceptance test,” “dictates that scientific evidence is admissible only if the methodology or scientific principle upon which the opinion is based is ‘sufficiently established to have gained general acceptance in the particular field in which it belongs.’” *In re Commitment of Simons*, 213 Ill. 2d 523, 529-30 (2004) (citing *Frye v. United States*, 293 F. at 1013, 1014 (D.C. Cir. 1923)). “General acceptance” does not mean that the methodology in question is universally accepted in the field, only that it is accepted by “unanimity, consensus, or even a majority of experts.” *Id.* at 530 (citations omitted); *see also* *People v. Vercolio*, 363 Ill. App. 3d 232, 236 (2006). It is also sufficient that the underlying method used to generate an expert’s opinion is “reasonably relied upon by experts in the relevant field.” *Simons*, 213 Ill. 2d at 530. The *Frye* test applies only to “new” or “novel” scientific methodologies, ones that are “original or striking” or do not “resemble something formerly known or used.” *Id.* (citations omitted).

**2. *The relevant field for Frye analysis in the case at bar***

The scientific basis for the phenomena of false confessions has been thoroughly peer reviewed. Social scientists have studied false confessions for decades using standard scientific methods resulting in reliable, objective data to explain why an innocent person would confess to

a crime he did not commit. *See, e.g.,* Nadia Soree, *When the Innocent Speak: False Confessions, Constitutional Safeguards, and the Role of Expert Testimony*, 32 Am. J. Crim. L. 191, 235 (2005) (App. Ex. C). Numerous articles describing this research have been published in the top social science journals in the United States. Only an expert in the field has the requisite knowledge, training, and experience to aid the jury in understanding the interactions between situational aspects of interrogation techniques and psychological conditions on the human brain. Mr. Rivera was denied the opportunity to present such expertise, even though false confession testimony is sound and tested sufficiently to warrant admission. This is *especially* true in cases such as Mr. Rivera's, where a defendant suffers from psychosis and multiple mental illnesses – the presence of which, coupled with situational factors such as sleep deprivation, have been empirically proven to cause a suspect to act in counterintuitive ways, even agreeing to fabricated information in an effort to make the interrogation end.

False confession experts' specialized knowledge is based on a body of empirical research, case study data, and controlled experiments in areas of social persuasion and psychological coercion, obedience to authority, and the effects of suggestive techniques on certain individuals. *See* Mark Costanzo, Netta Shaked-Schroer & Katherine Vinson, *Juror Beliefs About Police Interrogations, False Confessions, and Expert Testimony*, 7 J. Empirical Legal Studies 231, 231-32 (2010) (App. Ex. D) (detailing the variety of research methods scientists have used over the past two decades to deepen our understanding of the phenomenon of false confessions). “Because of the ethical restraints on actual laboratory experimentation,” social scientists must analyze data from real-world confessions. Soree *supra*, at 235. “Studies based upon [such] observational data are subjected to a process of peer review within the social psychologist community” for testing and validation of the processes and conclusions. *Id.*

(quoting *United States v. Hall*, 974 F. Supp. 1198, 1204-05 (C.D. Ill. 1997)). Importantly, “**there is no dispute in the scientific community** that false confessions do exist and that studying things like coercion and the post-admission narrative statement is the proper method of analyzing whether they occur.” *Id.* (emphasis added).

Courts are not limited to “hard” science. *See Hall*, 974 F. Supp. at 1201. Social sciences are a judicially recognized means of studying human behavior. *See* Daniel T. Gilbert, Susan F. Fiske & Gardner Lindzey, *THE HANDBOOK OF SOCIAL PSYCHOLOGY* 5 (G. Lindzey & E. Aronson eds., 1998). Social science includes the study of influence and how external social pressures can shape decision making. *See, e.g.*, Dieter Frey, *Recent Research on Selective Exposure to Information*, in *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 41-42 (1986). (App. Ex E) Social psychologists also study social influence, compliance, and vulnerability to pressures under many different sets of conditions. *See, e.g.*, Danielle E. Chojnacki, Michael D. Cicchini, & Lawrence T. White, *An Empirical Basis for the Admission of Expert Testimony on False Confessions*, 40 *Ariz. St L.J.* 1, 15-17 (2008) (App. Ex. F). Analyzing false confession testimony under *Frye*, therefore, requires determining whether the methodology underpinning Dr. Kassin’s opinion is reasonably relied upon by experts in the field of *social psychology*. *People v. Vercolio*, 363 Ill. App. 232, 236 (2006).

**3. The methodologies on which Dr. Kassin relied are generally accepted in social psychology.**

Dr. Kassin’s proffered testimony was based on extensive psychological research showing that the risk of false confessions is correlated with certain psychological and situational factors. *See Soree, supra*, at 235. For example, harsh interrogation techniques and physical deprivations or discomfort can combine with the psychological makeup of a particular confessor, to increase the likelihood that a confession is untrue. *See Chojnacki et al., supra*, at 15-20. Dr. Kassin is

well-known in his field. He has researched false confessions extensively and is a leader among the many social scientists who study the dynamics of police interrogations.

Numerous academic articles and books draw upon empirical data to identify both the coercive techniques common to false confessions and the characteristics of individuals most vulnerable to those techniques. *See e.g.*, Gisli H. Gudjonsson, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* 631-32 (1992) (App. Ex. G) (citing nearly 800 articles in areas relating to false confessions and police interrogations). The principles detailed in the most respected journals are generally recognized and accepted in the field of social psychology. *See* Deborah Davis & William T. O'Donohue, *On the Road to Perdition: Extreme Influence Tactics in the Interrogation Room*, in *HANDBOOK OF FORENSIC PSYCHOLOGY* 897-996 (William T. O'Donohue et al. eds., 2004), (App. Ex. H) *available at* <http://www.sierratrialandopinion.com/papers>. The science also supports the methods developed to assess the reliability of confessions. *See* Chojnacki et al., *supra*, at 15-20; Saul M. Kassin & Lawrence S. Wrightsman, *Confession Evidence*, in *THE PSYCHOLOGY OF EVIDENCE AND TRIAL PROCEDURE* 70-73 (S. Kassin & L. Wrightsman eds., 1985); Richard A. Leo & Richard J. Ofshe, *The Social Psychology of Police Interrogation*, *Studies in Law*, 16 *Pol. & Soc'y*, 191-207 (1997) (App. Ex. I).

Additionally, the study of false confessions has developed significantly in just the past decade. In the mid-to-late 1990s, much of the literature addressed the phenomenon of false confessions generally, merely documenting that they existed or suggesting situations in which they might happen. *See, e.g.*, Saul Kassin, 52 *The Psychology of Confession Evidence*, *Am. Psychol.* 221-233 (1997) (App. Ex. J) (detailing, in relevant part, the shortcomings of the research on false confessions up to that point); Daniel Givelber, *Meaningless Acquittals*,

*Meaningless Convictions: Do We Reliably Acquit the Innocent?*, 49 Rutgers L. Rev. 1317 (1997); Welsh S. White, *Confessions Induced by Broken Government Promises*, 43 Duke L. J. 947, 985-986 (1994). However, in the subsequent decade, this area of research grew tenfold, and rigorous, accepted methodologies have emerged. Expert testimony concerning the influence of police interrogation and false confessions is now “amply supported” by research and “extensive forensic science literature.” Saul M. Kassin & Gisli H. Gudjonsson, *The Psychology of Confessions: A Review of the Literature and Issues*, 5 Psychol. Sci. Pub. Int. 2 (2004) (App. Ex. K). Psychological research has shed light on the phenomena that give rise to false confessions—and, most pertinent in the case at bar, on how the individual characteristics of a defendant affect his response to police interrogation. See, e.g., Ronald Roesch, Patricia A. Zapf, Stephen D. Hart, FORENSIC PSYCHOLOGY AND LAW 147-53 (2009) (detailing the factors that lead to false confessions); Richard A. Leo, POLICE INTERROGATION AND AMERICAN JUSTICE 195-236 (2008) (detailing factors that psychological and psychiatric research have found make false confessions more likely, including sleep deprivation, youth, and mental illness); David E. Zulawski & Douglas E. Wicklander, PRACTICAL ASPECTS OF INTERVIEW AND INTERROGATION 76-90 (2d ed. 2002) (cataloguing types of false confessions and the effects of different psychological factors on how suspects perceive interrogation).

Four generally accepted methods for studying false confessions dominate the field. Dr. Kassin helped design one of these methods and utilizes the others in his research. The first method involves the use of controlled, easily replicated laboratory experiments that test individual suggestibility and vulnerability to authority. This allows scientists to examine the coerciveness of different psychological tactics and assess a confession’s reliability. Saul Kassin & K. Kiechel, *The Social Psychology of False Confessions: Compliance, Internalization, and*

*Confabulation*, 7 Psychol. Sci. 125-28 (1996) (App. Ex. L); Mark Blagrove, *Effects of Length of Sleep Deprivation on Interrogative Suggestibility*, 2 J. Experimental Psychol. Applied 48-59 (1996) (App. Ex. M).

The second method involves the collection of empirical data to develop valid, reliable theories about police interrogation tactics and contextual factors by observing police interrogations. This observational method allows the researcher to observe a naturally occurring phenomenon in its context. The researcher subsequently attempts to explain what was observed. He codes the data for statistical purposes, subjecting the data to systematic scientific peer review.<sup>4</sup> See Richard A. Leo, *Inside the Interrogation Room*, 86 J Crim. L. & Criminology 266 (Winter 1996) (App. Ex. N) (describing an observational study of 182 suspects interrogated by detectives in Northern California police departments). In any documented interrogation the methods used to assess the reliability of a resulting confession can be replicated by other experts to verify the observations.<sup>5</sup>

The third method of studying false confessions involves analyzing actual cases of known or suspected false confessions. Steven A. Drizin and Richard A. Leo, *The Problem of False Confessions in the Post-DNA Age*, 82 N.C. L. Rev. 891, 921-23, 960-61 (2004) (App. Ex. P)

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<sup>4</sup> See also, Gudjonsson, Clare, Rutter & Pearse, *Persons at Risk During Interviews in Police Custody*, Royal Commission on Criminal Justice (1993). An observational study in England involved over 170 suspects interrogated at English police stations. The suspects were assessed by clinical psychologists prior to police interrogations. Tapes of the interrogations were subsequently analyzed to determine what factors were attributed to resulting confessions. *Id.*

<sup>5</sup> Because England has had a mandatory audio or video taping requirement since 1986, researchers have more accessibility to documented interrogations in England. The number of known false confessions available for study in the United States is limited because police do not keep records of all interrogations, and even where recordings are available, the full interrogation is not always documented. Richard A. Leo & Richard J. Ofshe, *Missing the Forest for the Trees: A Response to Paul Cassell's "Balanced Approach" to the False Confession Problem*, 74 Denv. U. L. Rev. 1135, 1137 (1997).

(“Drizin & Leo”); Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. Crim. L. & Criminology 429, 435-36 (1998) (App. Ex. Q) (“Leo & Ofshe”). Here, the expert obtains documented cases where DNA or other evidence exonerated the accused. *Id.* Drawing on principles of rational decision making, perception, and interpersonal influence, the expert identifies psychologically coercive factors common in each interrogation. *Id.* By isolating these factors in known false confessions, experts can assess the reliability of disputed confessions. *See* Chojnacki et al., *supra*, at 15-20. Expert testimony is critical to explaining what those factors are, and why they are significant.

The fourth well-accepted method for determining the reliability of a confession is examining post-admission narrative statements. Researchers look for a “fit” between a suspect’s post-admission narrative and the facts of the crime to evaluate the level of actual knowledge about what happened. The researcher further analyzes the interrogation process through audio or videotape, or interview notes, to see if the statement is internally consistent, leads investigators to discover new evidence and contains details of the crime that only the perpetrator could know. Saul Kassin, *How to Evaluate a Defendant’s Statement: A Four-Step Inquiry* (2003) (App. Ex. R) <<http://www.williams.edu/Psychology/Faculty/Kassin/files/confessions.checklist.howto.pdf>> (accessed Jun. 9, 2010). This is one of the methods Dr. Kassin was prepared to evaluate Mr. Rivera’s confession. (Offer of Proof, 73-75.) Dr. Kassin would not have testified to the ultimate question about whether Mr. Rivera’s confession was true, but would have explained how the factors present in Mr. Rivera’s interrogation, such as lack of sleep, intellectual impairment, youth, mental illness and police presentation of false evidence, may lead to false confessions. *Id.* at 76.

Each of these four methods is regularly relied on in the social psychological literature to examine interrogations, confessions, and countless other social phenomena. The conclusions Dr. Kassin has reached in his research, and to which he would have testified in Mr. Rivera's trial, are well-accepted within the field of social psychology. Indeed, the expert opinion Dr. Kassin would have given in Mr. Rivera's trial is not only commonly accepted in his field; it is wholly uncontroversial in the world of psychological research.

**C. The Testimony at Issue is Relevant; It Would Assist the Jury in Understanding the Evidence.**

As detailed above, the crux of the prosecution's case against Mr. Rivera was his two signed confessions. Therefore, the circumstances of his interrogation and his psychological condition are necessarily relevant. *See, e.g., Crane*, 476 U.S. at 683; *Hannon v. State*, 84 P.3d 320, 347 (Wyo. 2004) ("there is no question that [the] testimony [on defendant's psychological makeup] related to the circumstances of [the] confession"). Testimony illuminating a confession is "especially" important in a case where there is "no physical evidence to link [the defendant] to the crime." *Crane*, 476 U.S. at 683. This was precisely so in Mr. Rivera's trial. Indeed, the physical evidence actually *exculpated* Mr. Rivera. As the *Crane* Court acknowledged, a lack of physical evidence renders a confession crucial.

Discrediting Mr. Rivera's confession was the keystone of the defense's case, since no other evidence connected Mr. Rivera to the crime. The Trial Court's ruling left Mr. Rivera no way to educate the jury about how his psychological conditions affect his perception of the interrogation, nor about the relationship between false confessions and the borderline mental retardation and the acute psychosis from which he suffered. The jurors in Mr. Rivera's case were asked to weigh exculpatory DNA evidence, electronic monitoring records, and other persuasive evidence against his confession but were denied the tools to assess his confession

fairly. See *People v. Melock*, 149 Ill. 2d 423, 458 (Ill. 1992) (citing *Crane*, 476 U.S. at 689) (holding that excluding evidence of the circumstances surrounding defendant's polygraph examination was reversible error where offered by the defendant on the issue of reliability of his subsequent confession).

Mr. Rivera was stripped of the ability to answer the question on every juror's mind: If he was innocent, why would he confess? While the prosecution hammered away at the confession as the trump card over DNA, the electronic monitoring bracelet, and other witness testimony, Mr. Rivera was deprived of his ability to explain it. The prosecution wielded a sword against which Mr. Rivera was allowed no shield. Expert testimony to explain the impact of the circumstances surrounding Mr. Rivera's confession was relevant and crucial to his defense. *Crane*, *Melock* and a legion of other state decisions firmly establish a defendant's right to defend himself, including asserting that a confession was false and explaining, including by scientific means, why it was false.<sup>6</sup> Excluding Dr. Kassin's proffered testimony was error and warrants reversal.

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<sup>6</sup> See, e.g., *United States v. Belyea II*, No. 04-4415, 2005 WL 3542410, at \* 4 (4th Cir. Dec. 28, 2005) (holding that the trial court's exclusion of proffered expert testimony on particular characteristics of the person interrogated that can affect the likelihood that a confession is false was an abuse of discretion warranting a new trial); *United States v. Shay*, 57 F.3d 126, 133-34 (1st Cir. 1995) (finding that the trial court's exclusion of expert who would testify regarding the reliability of the defendant's incriminating statements was "clear error" warranting reversal of conviction and a new trial); *United States v. Raposo*, No. 98 CR. 185(DAB), 1998 WL 879723, at \*6 (S.D.N.Y Dec. 16, 1998) (permitting expert testimony on the psychological makeup of the defendant in relation to both the voluntariness and falsity of the defendant's confession); *United States v. Hall*, 974 F. Supp. 1198, 1205-06 (C.D. Ill. 1997) (permitting expert to testify on false confessions and the psychological factors which contribute to false confessions); *People v. Ledesma*, 39 Cal. 4th 641, 659 (2006) (upholding trial court's admission of expert testimony on the psychological makeup of the defendant and how it may have contributed defendant's exaggerations, "such as admitting a killing he did not commit"); *Boyer v. State*, 825 So.2d 418, 419 (Fla. Dist. Ct. App. 2002) (holding that the exclusion of expert witness testimony on false

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**1. Expert Testimony Has Significant Educational Value for the Jury.**

The arena of false confessions is one where jurors need assistance to understand the phenomenon. A false confession expert, like Dr. Kassin, will not “invade the province” of the jury, but will aid them in reaching their decision. *People v. Masor*, 218 Ill. App. 3d 884, 887 (1991). Numerous studies demonstrate that juries, as a rule, do not understand that a defendant might ever confess to a crime he did not commit, let alone the psychological and circumstantial

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confessions, what causes innocent people to confess, and police techniques used to secure false confessions under certain circumstances was reversible error); *State v. Oliver*, 124 P.3d 493, 505 (Kan. 2005) (“a criminal defendant ordinarily should be permitted to introduce evidence” about “the defendant’s psychological makeup.”); *Miller v. State*, 770 N.E.2d 763, 775 (Ind. 2002) (holding that trial court’s action of excluding proffered expert’s testimony concerning the psychology of relevant aspects of police interrogation in its entirety deprived defendant of an opportunity to present a defense); *State v. King*, 387 N.J. Super. 522, 546 (2006) (holding that an expert’s proposed testimony regarding defendant’s psychological makeup and whether or not defendant’s psychological makeup was consistent with his claim of false confession was admissible under the *Frye* standard); *People v. Kogut*, 806 N.Y.S.2d 366, 372-73 (2005) (social psychologist allowed to testify concerning the psychological research concerning voluntariness of confessions); *State v. Stringham*, No. 2002-CA-9, 2003 WL 950957, at \*14 (Ohio Mar. 7, 2003) (finding that wholesale exclusion of expert witness testimony regarding the psychologically traits observed in people who falsely confess and the expert’s testing and observation of the defendant which revealed those traits, violated defendant’s constitutional right to present a defense); *State v. Romero*, 191 Or. App. 164, 178-79 (2003) (holding that expert testimony that the defendant was subject to suggestion during police interrogation was not excludable as a direct comment on defendant’s credibility); *Commonwealth v. Cornelius*, 856 A.2d 62, 77 (Pa. Super. Ct. 2004) (permitting expert witness testimony on false confessions); *Jackson v. Commonwealth*, 266 Va. 423, 439-440 (2003) (upholding trial court’s decision to allow expert to testify about the psychological makeup of the defendant and how that makeup could affect the reliability of the defendant’s statements); *Pritchett II v. Commonwealth*, 263 Va. 182, 187-88 (2002) (holding that testimony of defendant’s expert witness on the issue of defendant’s psychological makeup and the susceptibility of those with the defendant’s psychological makeup to suggestive police interrogation was admissible); *State v. Miller*, No. 15279-1-III, 1997 WL 328740, at \* 8 (Wash. App. Div. June 17, 1997) (finding that the trial court’s denial of funds to obtain an expert witness on false confessions who would have challenged the reliability of the defendant’s confession was an abuse of discretion).

factors that could cause him to do so. *See Costanzo et al., supra*, at 243-44 (finding that in a study of mock jurors, 52 percent believed that if someone falsely confesses to a crime, he or she will be convicted, even if there was no other evidence against the person; whereas research findings on actual false confession cases revealed that when a suspect falsely confesses to a crime, then pleads “not guilty” and proceeds to trial, he or she is convicted 81 percent of the time); Chojnacki, et al., *supra*, at 30-37 (finding that in a study of potential jury candidates, 73 percent believed that “an innocent person . . . would either ‘never confess’ or would only confess after ‘strenuous interrogation pressure,’” which shows, again, that the phenomenon is counterintuitive, since in many documented cases false confessions followed minimal pressure). The lack of understanding can have grave results. According to data collected and analyzed by the Innocence Project, “33 of the first 123 post-conviction DNA exonerations involve false confessions or admissions. Thirty-seven of those 123 exonerations involve homicides, and of those, two-thirds involve the use of false confessions or admissions to secure convictions.” Soree, *supra* at 195. Evidence of the circumstances underlying a confession is not merely relevant; it is critical.

The studies above have looked at jurors’ knowledge of false confessions as a general matter. If mental illness or unusual situational factors are involved—both of which were present in the case at bar—the dynamics of interrogation are infinitely more complicated. Mr. Rivera’s case is a textbook confluence of interrogation factors that risked eliciting a false confession including intellectual impairment and youth. *See* Saul M. Kassin, Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo, and Allison D. Redlich, *Police Induced Confessions: Risk Factors and Recommendations*, 34 *Law & Hum. Behav.* 533, 534 (2010) (App. Ex. S); Chojnacki et al., *supra* at 16.

As if the foregoing factors were not enough, Mr. Rivera suffered an acute psychotic breakdown during the interrogation. His psychosis was so severe that he was tearing out chunks of his own hair and scalp. (Offer of Proof, 82-83.) Because all expert testimony about confessions was excluded, how or whether the combination of factors affected the veracity of Mr. Rivera's confessions was left to the jurors' imagination. Understanding the false confession phenomenon, and analyzing whether Mr. Rivera's confession might have been false was practically impossible without expertise.

a. Jurors are Unfamiliar with Police Interrogations

The average juror is not familiar with police interrogations. *See* Chojnacki et al., *supra*, at 42. Jurors are not often familiar with permissible interrogation techniques that include insults, lies, and often a high level of verbal abuse. *See id.*, Deborah Davis & Richard Leo, *Strategies for Preventing False Confessions and Their Consequences*, in PRACTICAL PSYCHOLOGY FOR FORENSIC INVESTIGATIONS AND PROSECUTIONS, 129 (Mark R. Kebbell & Graham M. Davis eds., 2006) (App. Ex. T). Most people are not aware that interrogators may ignore or stop short suspects' denials of guilt, blatantly lie about the evidence, overstate the likelihood that a defendant will be convicted or even executed, or in Mr. Rivera's case, deprive him of sleep for multiple days at a time and subject him to harsh and repeated questioning for hours on end. *See* Chojnacki et al., *supra*, at 42. It is not common knowledge that interrogations that lead to confessions may have involved extreme sleep deprivation and overt promises and threats. *Id.* As detailed above, in the instant matter, Mr. Rivera experienced an actual "psychotic episode" immediately before signing the confession written by the police interrogators themselves. (Offer of Proof, 82-83.)

b. Jurors Cannot Understand How Innocent People Confess to Crimes

As an empirical matter, without expert assistance, jurors do not understand the psychological effect that a combination of the tactics described above can have on an innocent person in the emotionally charged atmosphere of an interrogation room. *See Soree, supra*, at 202-204 (quoting chilling excerpts from an actual interrogation in which an innocent young man went from vehemently denying he committed his sister's murder to admitting participation after a grueling eight-hour interrogation; he was later completely exonerated by DNA evidence). The high percentage of proven wrongful convictions based primarily on confessions later shown to be false demonstrates that the psychologically coercive circumstances surrounding an interrogation are both common and also not understood by fact witnesses alone. Drizin & Leo, *supra*, at 891-1007 (analyzing 125 cases of proven false confessions in the United States) (App. Ex. P) (finding that 81 percent of false confessors who went to trial were wrongfully convicted despite the fact that little or no other credible evidence supported their confessions). Excluding expert testimony in respect of false confessions under these circumstances fails to protect the defendant's constitutional rights.

c. Expert Witnesses Explain the Psychological Impact of Interrogations and Why They Sometimes Lead Suspects to Confess to Crimes They Did Not Commit

Juries tend to give more weight to confessions than nearly any other type of evidence, even if a confession is uncorroborated and inconsistent with the facts of the crime. “[C]onfession evidence has more impact in court proceedings than eyewitness testimony, alibis, and other forms of evidence. Even when it is logical and appropriate to discount a confession, people tend to be overwhelmed by the presence of a confession in their deliberations regarding guilt or innocence.” Chojnacki et al., *supra*, at 15; *see also* Richard J Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 *Denv. U. L. Rev.*

979, 984 (1997) (App. Ex. U). A common misperception among the public is that once a person confesses, he must be guilty. Chojnacki et al., *supra*, at 5; *see also Arizona v. Fulminate*, 499 U.S. 279, 296 (1991) (“[a] confession is like no other evidence....the defendant’s own confession is probably the most probative and damaging evidence that can be admitted against him”). An expert’s testimony challenges the misperception with specialized knowledge and systematic observation of data to which the common juror is not privy. *Hall*, 974 F. Supp. at 1205. Such testimony is also counterbalances the common police temptation to “cross over the line to obtain a confession, knowing of the power it will possess before a jury.

False confession experts’ extensive research confirms reliable methods for identifying factors common to false confessions. Chojnacki et al., *supra*, at 15-20 (detailing the generally agreed upon dispositional, situational, and contextual factors contributing to false confessions). Qualified experts assist the trier of fact in understanding scientific research and data regarding the interrogation process, as well as how a defendant’s particular psychological condition may make him or her vulnerable to falsely confess. *Id.* Especially in a case like Mr. Rivera’s – a veritable poster case for the factors that make a false confession likely – the exclusion of expert testimony regarding confessions unfairly deprives defendants of their constitutionally guaranteed right to defend themselves.

d. Expert Witnesses Can Disabuse Jurors of the Notion That No Person Would Confess to a Murder or Murder-Rape Case

Even jurors who accept that false confessions happen, many will have a hard time accepting that someone would confess to a murder and sexual assault of a child, a crime that can carry the death penalty or life without parole upon conviction. Experts are needed to explain to jurors that the overwhelming majority of documented false confessions, have indeed, occurred in

the most heinous of crimes, including several cases where men have confessed to murdering and sexually assaulting children.<sup>7</sup> In Drizin & Leo's study of 125 proven false confession cases, 81 percent of the false confessions were to murder or murder rape cases. Drizin & Leo, *supra*, at 891-1007. This is because these crimes are investigated by the most experienced investigators in the ranks of law enforcement, those with the most training in sophisticated psychological interrogation techniques. With each passing hour, pressure on law enforcement to solve a brutal murder or rape increases and the more that a suspect asserts his innocence, the more likely the interrogator will up the pressure by employing tactics that have been linked to false confessions.

e. Illinois Has Recognized the Value of Testimony in Critical Circumstances

Expert testimony explaining factors that may impact the credibility of particular witness statements is not new in Illinois. Illinois courts reject claims that such testimony invades the purview of the jury by opining on the ultimate issue in the case. Specifically, Illinois courts have recognized the educational value to a jury of such expert testimony in connection with sexual abuse cases. *See People v. Butler*, 377 Ill. App. 3d 1050, 1064-65 (2008). In *Butler*, two teen sexual abuse victims delayed reporting the abuse and when they did report it, they only reported one or two instances at a time. *Id.* at 1063-64. The prosecution presented expert testimony to explain the phenomenon of delayed and intermittent reporting. On appeal, the defendant argued

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<sup>7</sup> One example is the case of Rolando Cruz who spent 11 years on death row for the abduction and murder of a child in DuPage County in 1993. He confessed to the crime and was tried and convicted twice and twice sentenced to death. In this third trial in 1995, a key State's witness, Lieutenant James Montesano, recanted his earlier testimony that he was informed by Cruz's interrogators that Cruz gave a "dream statement" in which he related details of the crime only the killer could know. Montesano testified that he had actually been out of the state at the time of Cruz's interrogation, so could not have been told of the alleged statement, a confession which was neither videotaped nor even mentioned in police records. Additionally, there was no other physical evidence nor any witnesses linking Cruz to the crime. After hearing Montesano's recantation, Judge Ronald Mehling delivered a verdict in Cruz's favor, ending the whole ordeal. In addition to being officially pardoned by Governor George Ryan in 2002, Cruz won a multi-million dollar settlement against the DuPage County Board and the State's

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that the trial court erred by allowing in such testimony because it merely “bolstered” the victims’ testimony and “removed the task of determining credibility from the jury.” *Id.* at 1064. The appellate court disagreed. The defense emphasized the discrepancies in, and the development of, the victims’ statements and the expert’s testimony “pointed out, in a neutral way,” that “the discrepancies did not necessarily mean the [victims] were lying.” *Id.* at 1064-65. By providing an explanation for delayed reporting, the expert testimony “aided the trier of fact, while leaving that trier of fact to determine the issue of credibility.” *Id.* at 1065.

Consistent with *Butler*, Illinois courts have also held that it is reversible error to summarily exclude expert witness testimony proffered by a defendant on memory generally on false memory, on proper interviewing techniques for children who allege sexual abuse, and on memory suggestion in a case where a defendant was charged with aggravated sexual abuse against several children. *People v. Cardamone*, 381 Ill. App. 3d 462 (2008). On appeal, the court held that the trial court had abused its discretion in excluding the testimony because such information is not within the common knowledge of the ordinary juror given that most of the experts’ findings conflict with common sense. *Id.* at 502..

Both *Butler* and *Cardamone* illustrate the evolving acceptance of testimony regarding social psychological phenomena. Such phenomena, like the delayed reporting of sexual abuse, is commonly dismissed by a juror’s so-called common sense, when in fact such common intuition can lead to the exact opposite of the truth and a conclusion that “the victim must be lying.” The victim’s delayed and piecemeal report of sexual abuse is a scientifically studied phenomenon

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Attorney’s Office. See Northwestern Law, Bluhm Legal Clinic, False Confessions,  
<http://www.law.northwestern.edu/cfjc/falseconfessions.html> (last visited July 11, 2010).

and, in fact, is often the way victims report their abuse. *Butler*, 377 Ill. App. 3d at 1063. The many research studies and published articles (some of which are cited herein) on false confessions demonstrate that, counter to common sense, the phenomenon of false confessions exists, and is prevalent in response to certain interrogation techniques and more common in individuals with certain personal characteristics. Illinois Courts consistently conclude that expert testimony explaining phenomena that might run counter to commonly-accepted uninformed belief is relevant, and accepted science and false confession expert testimony should be treated no differently. Mr. Rivera was entitled to present expert testimony regarding his circumstances and endeavor to prove that the confession he signed was false and to deny him that right was an abuse of discretion.

#### **IV. CONCLUSION**

For the foregoing reasons, the amici respectfully request that this Court find that the Trial Court abused its discretion when it summarily rejected the testimony of Dr. Kassin and reverse Mr. Rivera's conviction. The Court should remand this matter for a new trial with an opinion directing the trial court to admit the previously excluded expert testimony.

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Respectfully submitted,

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