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#### JUVENILES WHO FALSELY CONFESS

By Leonard Post, Staff reporter

When a beleaguered 13-year-old confessed to murder after hours of interrogation in a Mississippi sheriff's station in 2003, he had been isolated from his mother and had never met with a lawyer.

Tyler Edmonds later recanted, becoming a national poster boy for those who question the reliability of child confessions—a concern that has long roiled courts nationwide.

Last month, the Mississippi court of appeals heard arguments in the Edmonds case, which raised, among other issues, whether expert testimony on factors that could contribute to the making of false confessions should have been allowed. *Edmonds v. State*, No. 2004-TS-02081.

A repudiated confession by a Long Island, N.Y., 17-year-old, Martin H. Tankleff, was key to his 1990 conviction for murdering his parents. He never signed the confession that was handwritten by a detective. A judge is expected to rule on new evidence shortly in his efforts to reopen the case. *New York v. Tankleff*, No. 1535-88/1290-88.

Although there have been many high-profile juvenile false confession cases—such as the Central Park Jogger case in New York, in which five teenagers falsely confessed to raping a woman but years later were exonerated by DNA evidence—many courts have not recognized a heightened risk that a juvenile's confession could be false.

Nationwide, the relatively few appeals courts that have addressed the issue don't all agree. The trend, though, allows generalized expert testimony about factors that can lead to false confessions, but forbids experts from drawing conclusions about a particular defendant's circumstances.

But studies are helping to define the scope of the issue.

An analysis of 125 proven false-confessions cases done by Richard Leo, a University of California at Irvine criminology professor, and [Steven Drizin](#), a clinical professor at Chicago's Northwestern University School of Law and the director of the school's Innocence Project, found that 32% of them involved juveniles.

It's important to allow experts to testify on the reliability of juvenile confessions, said [Simmie Baer](#), co-chairwoman of the National Association of Criminal Defense Lawyers' juvenile justice committee, and senior attorney at the [Children and Family Justice Center](#) at the Bluhm Legal Clinic at Northwestern's law school.

"The research has been done—we know that juveniles as a group are more suggestible and gullible, not just in an interrogation, but of course in an interrogation," said Baer. "Sure they're capable of telling the truth, but their truth may be a different truth."

She added that when the U.S. Supreme Court decided that juveniles should never be executed, they came to that conclusion because experts from the medical, legal and social sciences fields came together and described the science of adolescent thinking and behavior to the court.

"If they needed assistance, how could a jury hearing a juvenile case not?" she said.

Mississippi morass

In Edmonds, the defense asked the trial judge, James T. Kitchens, to allow a developmental psychologist to testify about factors that contribute to false confessions among juveniles.

In a pretrial hearing, Allison Dyan Redlich of Delmar, N.Y.'s Policy Research Associates, described a 2003 laboratory study she co-authored in which subjects were told that pressing a prohibited key would cause their computers to crash.

Although none pressed that key, all were told they had. Seventy-eight percent of 12- to 13-year-olds, 72% of 15- to 16-year-olds and 59% of those between the ages of 18 and 26 falsely confessed.

The prosecution rebutted her testimony with that of Dr. Michael Welner, a forensic psychiatrist and an associate professor of clinical psychiatry at the New York University School of Medicine. He testified that "research relating to false confessions is extremely limited, and as it relates to juveniles, it is virtually nonexistent."

The prosecution takes the position in Edmonds that children's confessions should be judged by the same standards as those of adults.

"There should be no scepticism [sic] toward the testimony of children or young people more than adults," argues Mississippi Special Assistant Attorney General W. Glenn Watts in the state's appellate reply brief.

The attorney general's office did not return calls for comment.

Jury is still out

Mississippi's position reflects that of the National District Attorneys Association 2002 Resource Manual and Policy Positions on Juvenile Crime Issues.

"You have to look at the totality of the circumstances to determine whether a statement has been made freely, voluntarily and competently," said James Backstrom, co-chair of the National District Attorneys Association's juvenile justice and family law committee. "Age, experience and prior contact with law enforcement are some of the factors that have to be considered when the test is applied appropriately.

"I think the jury is still out on whether expert testimony [about factors that contribute to false confessions] should be allowed. You have to be cautious. Generalities about psychology are just that," added Backstrom, the Dakota County, Minn., district attorney.

"Such generalities may not apply to a specific individual . . . . You would have to let the facts of each case dictate the relevancy of expert testimony."

At the conclusion of Edmonds' pretrial hearing, after reviewing the social sciences literature the defense had provided, Kitchens refused to let Redlich testify.

"[T]he false confession theory needs further study and refinement," he ruled, calling it a "new," as yet "unreliable," theory.

Nonsense, said Edmonds' lead counsel, Jim Waide of Tupelo, Miss.'s Waide & Associates.

"To judge the voluntariness and the truthfulness of Tyler's quote unquote confession under the same standards as that of an adult directly contradicts the U.S. Supreme Court," he said, citing *In re Gault*, 387 U.S. 1 (1967).

In that case, the court held that "authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of 'confessions' by children."

The Edmonds case is fairly straightforward. After his adult half-sister was arrested for the murder of her estranged husband, she accused him of the killing. His mother brought Edmonds to the sheriff's office, where he repeatedly denied knowledge of the murder. After deputies separated him from his mother, they told him they didn't believe him, and that his sister had already pinned the murder on him.

The deputies brought the sister in to meet with him. After she left the room, he confessed on tape that he and his sister had pulled the trigger at the same time-her finger over his-when they shot the victim in his bed. He described white blood-splattered pillowcases. They were neither white, nor blood-splattered. The weapon was never recovered by police.

In his subsequent recantation, Edmonds said that his sister had told him before her arrest that she had murdered her husband, but that if he confessed, nothing would happen to him, while she feared being executed. A deputy would later testify that the sister had "come to some kind of hold on the child."

'McMartin' revisited

Redlich said that after the unraveling of the rash of bizarre, illogical ritual daycare sexual abuse allegations, such as in the McMartin preschool cases in Los Angeles County, it became clear that certain interview techniques could implant false memories in children.

"In McMartin, [police and psychologists] kept telling the children that the abuse did happen until they believed it or just wanted to please their interrogators. Now it's the opposite, belief is not automatic except when children confess to a crime . . . .Certain juveniles are at risk in interrogation because of their incomplete development. Separating Tyler from his mother was inexcusable."

Redlich's study piggybacked on the groundbreaking work of Williams College Professor Saul M. Kassin who, in 1996, was the first to provide an experimental proof of the phenomenon of false confessions. "Expert testimony is designed to educate a judge or jury about the psychology of interviewing, interrogations and confessions," said Kassin.

"People believe false confessions . . . . They look like true confessions," he said.

"They contain all the ingredients of a real confession-details, motivation, re-enactments, expressions of remorse," Kassin said. "Police know how to create an illusion of credibility. In the majority of cases, the investigator believes them to be true. It's why it's so important that all questioning be taped from beginning to end, without interruption."

Solomon Fulero, an attorney and a forensic psychology professor at Dayton, Ohio's Sinclair Community College, follows the research on false confessions and tracks developing case law on expert testimony.

In 1986, in *Crane v. Kentucky*, 476 U.S. 683, the U.S. Supreme Court reversed and remanded a murder conviction in which the government's case rested mainly on a juvenile's confession.

It held that evidence of the circumstances surrounding the confession should not have been excluded, even though the trial court had determined that the confession was voluntary. It said that "the physical and psychological environment that yielded the confession can also be of substantial relevance . . . . Confessions, even those found to be voluntary . . . may be shown 'unworthy of belief.' "

That, Fulero said, left open the question of what kinds of evidence a defendant could present.

In 1991, in *California v. Page*, 2 Cal. App. 4th 161, the state 1st District Court of Appeal affirmed a trial court's decision that had allowed expert testimony about the general psychological factors that might cause someone to confess falsely, and also allowed descriptions of supporting experiments.

The court, though, also affirmed the lower court's refusal to allow the expert to reach specific conclusions about the defendant's murder confession.

Two federal appeals court panels-in the 7th and the 1st circuits-have come to similar conclusions, as have many state courts, including high courts in Indiana, Nebraska, Ohio and Virginia.

But other courts have gone the other way: for example, those in Florida, Illinois, Maine, Wyoming and the military. Still, none of these courts has forbidden trial courts from admitting such evidence. They merely reviewed trial court denials under abuse of discretion standards.

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