PREDICATE QUESTIONS: FALSE CONFESSION EXPERT

(CROSS-EXAMINATION)

PREDICATE QUESTIONS REGARDING RESEARCH METHODS:

1. Do you agree that the purpose of your testimony today is to present information that can be used by the jury to help them determine the reliability, or lack thereof, of the defendant’s confession?
2. You would agree that social scientists use empirical data and study to help make valid and reliable assessments and predictions about how the world works, correct?
3. To make a reliable assessment and prediction about how the world works regarding a particular issue, a social scientist studies a random selection of a population with a known error rate and then assign levels of statistical probability to the results, correct?
4. Specifically, in the area of coerced interrogation and false confessions, social scientists, have studied empirical data (via observation, anecdotal case review, and minimal laboratory study), correct?
5. Yet, there is no known error rate for the prediction of a false confession or an assigned level of statistical probability for such results, is there?
6. Therefore, the best guess, that you or anybody else can make, using the research, is to suggest whether there is a “likelihood” that a confession is false.
7. You cannot even state that it is “probably” false, correct?
8. In any study, isn’t it important to control the number of variables so some significance can be assigned to the variables that are known?
9. This is so you can truly determine cause and effect?
10. There are numerous variables to consider in studying whether a confession is potentially false, right?
11. Variables such as:

- Interrogation techniques used;

- Intensity of the interrogation;

- Length of the interrogation;

- Climate of the room;

- Arrangement of the room;

- Personality of the suspect;

- Intelligence of the suspect;

- Whether suspect is innocent or guilty;

- Or some combination of all of these.

1. It is a scientific and statistical problem in designing a “false confession” study, that a person simply cannot hold the many unusual and diverse variables constant in order to truly determine their effect on the confession?
2. It is impossible to quantify the number of false confessions obtained.
3. It is impossible to determine the frequency of false confessions obtained.
4. It is impossible to determine the rate at which false confessions lead to miscarriages or justice.
5. In fact, there is a very small number of documented cases of indispute false confessions?
6. In other words, false confessions are an anomaly, not the general rule, correct?
7. In fact, most confessions are true, regardless of the means or manner by which they are obtained.
8. For example, in a study by Dr. L., where 182 police interrogations were observed and analyzed, not a single false confession was reported, correct?
9. In fact, of those 182, only 2% were even coercive in nature, correct?
10. Dr. L and Dr. O. did another anecdotal study, consisting of 60 capital murder cases from 1973-1996, where they determined that based on coercion, 34 statements were “proven” false confessions, 18 statements were “highly probable” false confessions, and 8 statements were “probable” false confessions, right?
11. However, P. C., another authority on false confessions, looked at these same 60 cases and came to different determinations than Dr. L. and Dr. O.?
12. Different conclusions were reached, because there is no known error rate or levels for statistical probability, that any assessment is highly subjective?
13. At least 23 of these cases included interrogations that were in excess of 10 hours, contained threats, were of a youth, or were of a mentally ill person, right?
14. Some experts believe the people most likely to falsely confess are the young and mentally ill?
15. Now all 60 cases studied by Dr’s. L and O were capital murder cases, right?
16. But this “sample” of 60 cases chosen by Dr’s L and O was not “random”, was it?
17. Isn’t it true that P. C. estimated there were some 386,000-murder interrogations between 1973 and 1996, the time period from which the 60 cases were pulled? (statistic extrapolated from FBI and DOJ crime statistics nationwide)
18. And, given that number, P. C. calculated the odds of a false confession during a police interrogation in this country at between 1 in 2400 and 1 in 90,000, right?
19. Regardless of any study, it is impossible to determine the precise point at which a particular interrogation method creates a substantial risk of a false confession, correct?
20. It is impossible, or at least extremely difficult, to determine any degree of reliability that person “X”, under circumstances “Y”, will falsely confess to a crime that he did not commit?

# PREDICATE QUESTIONS REGARDING THEORY OF FALSE CONFESSIONS:

1. Isn’t it true that you believe that psychological methods of interrogation have evolved for the purpose of influencing a rational person to alter his initial decision to deny culpability and instead decide to confess, right?
2. You argue that the police accomplish this change in a person’s behavior by strategically manipulating the suspect’s analysis of his immediate situation, structuring the choices before him and dwelling on the likely consequences that attach to these choices, correct?
3. In other words, the tactics the interrogator uses in response to a denial of guilt are intended to lead the suspect to perceive confession as the optimal choice among the alternatives that he is considering, regardless as to whether the suspect is innocent or guilty, right?
4. These “tactics” do not affect an innocent accused and a guilty accused the same way?
5. Isn’t it true that guilt renders a suspect genuinely vulnerable to an interrogator’s tactics and ploys?
6. This makes the interrogators more likely to succeed at convincing a guilty suspect that he has been caught, and therefore, must confess, right?
7. An in fact, it is the guilty suspect that these tactics were designed to affect, correct?
8. Yet, only under the rarest of circumstances does an interrogator’s tactics persuade an innocent suspect that he is in fact guilty and has been caught, and must confess.
9. Isn’t it true an innocent suspect has a valid reason for denying involvement?
10. An interrogator is forced to contend with the heartfelt resistance of someone who knows he is being falsely accused, right?
11. As it relates to a person’s emotional reaction to such an interrogation, isn’t it the case that the innocent suspect is likely to be more emotionally distressed than the guilty party, who has only to accept the fact that he has been found out?
12. The innocent person will usually act shocked, or state “ there must be a mistake”, etc, correct?
13. So when dealing with a truly innocent person, eliciting a false confession takes strong incentive, intense pressure, and prolonged questioning for many, many, hours?

# PREDICATE QUESTIONS REGARDING THE INTERROGATION PROCESS:

1. Some experts believe that the interrogation process can be broken down into basically 2 phases, the pre-admission phase and the post-admission phase, correct?
2. The pre-admission phase purpose is to change the suspect’s decision to deny responsibility and elicit the statement, “I did it,” right?
3. Normally, an analysis of this phase is only done to make a determination as to whether an admission was voluntary, correct?
4. This has nothing to do with falsity, right?
5. In other words, one would never infer from the pre-admission techniques that a confession was false, correct?
6. On the other hand, the goal of the post-admission phase is to obtain from the suspect a narrative of the crime that proves his guilt, correct?
7. The analysis of the post-admission narrative is the linchpin of determining the falsity of a confession, correct?
8. In fact, some believe this analysis is the best and only objective method of analyzing a confession to make any determination as to the likelihood of its falsity, correct?
9. The main thing to look for is fact-fit, whether the suspects statement matches the facts known by the police, right?
10. The interrogation techniques used are extremely secondary to the analysis; they only lend some support to the analysis, right?
11. They are only a fallback if the confession doesn’t fit the facts, correct?
12. Isn’t it true, if there is fact-fit, the tactics involved mean relatively nothing, even if they were coercive?
13. Accordingly, one should never make a falsity determination solely by looking at the interrogation techniques used in the pre-admission phase, correct?
14. These pre-admission tactics are relatively irrelevant in determining whether a confession is unreliable or false, right?
15. However, some believe that certain evidence ploys or techniques can correlate with the success of an interrogation, correct?
16. But, assuming arguendo that interrogation tactics could lead to a false confession, rarely will a single or even multiple techniques or ploys be sufficient to cause a false confession?
17. Usually, a combination of many ploy or factors is necessary, correct?

# PREDICATE QUESTIONS REGARDING FALSE CONFESSION CONCLUSIONS:

Considering everything has been testified to on direct and cross-examination, if an expert was to conduct an analysis of this case…

1. It would be impossible to determine that, beyond a reasonable doubt that the defendant’s confession is false?

2. It would be impossible, based on the lack of available scientific evidence, to state that the defendant’s confession is more probably than not false?

3. And in fact, you cannot state that the defendant’s confession even has a high possibility of being false?