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## Judge Rejects Expert Opinion On Confessions

BY VESSELIN MITREV

A COUNTY COURT judge has declined to allow expert testimony about why a defendant might confess to a murder he did not commit.

Judge C. Randall Hinrichs of Suffolk County determined in *People v. Crews*, 2353A-06, that the testimony of Solomon Fulero, an Ohio psychologist, would not be helpful to the jury in the upcoming murder trial of Tracy



Judge Hinrichs

The decision will be published Tuesday.

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Crews. Mr. Fulero is also a lawyer and community college professor who frequently testifies as an expert witness for the defense.

"[T]he Court is of the opinion that the evaluation of the truthfulness of a statement is a subject for which jurors may easily draw on their day-to-day experience, their common observation and their everyday knowledge," Judge Hinrichs concluded.

Mr. Crews was arrested on Aug. 7, 2006, and charged with second-degree murder after confessing to participating in a 2001 robbery during which a night gas station attendant was killed by a shotgun blast to the chest.

Michael J. Brown, Mr. Crews' attorney, argued that his client is innocent and was psychologically coerced into admitting to the crime.

In a written application to the court, the defense attorney asked permission to offer testimony by Mr. Fulero to "educate the trier of fact about the scientific research on false confessions, the fact that they occur, and some of the reasons why they occur." Otherwise, he contended that lay jurors might be expected to assume that "an innocent person will not confess to a crime he did not commit."

The prevalence of false confessions is a controversial issue in criminal justice circles. The Innocence Project at Benjamin N. Cardozo School of Law has reported that in 25 percent of DNA exonerated cases, the defendant "made incriminating statements or pleaded guilty, delivered outright confessions or pled guilty."

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According to the Innocence Project, among the factors influencing a false confession are coercion, intoxication, diminished capacity, mental impairment, ignorance of the law, police violence or the fear of violence, the threat of a harsh sentence, and misunderstanding the situation.

Martin Tankleff provides a recent, high-profile example. As a 17-year-old in 1988 on Long Island, he confessed to killing his parents after a detective falsely told him his father was still alive and had implicated him. Mr. Tankleff quickly recanted but was convicted in 1990 and spent 17 years in prison before his conviction was overturned late last year (NYLJ, Dec. 24, 2007).

In the present case, Judge Hinrichs did not rule on the issue of whether Mr. Crews' confession was coerced. Rather, after hearing oral arguments and reading the "extensive filings of the defendant as well as additional research on the subject," he said the jury did not need specialized scientific or professional knowledge about social psychology, Mr. Fulero's field, to evaluate the issue.

Judge Hinrichs cited several opinions by judges who declined to admit such expert testimony but could find only one decision permitting the evidence, *People v. Kogut*, 10 Misc. 3d 305. In that case, Supreme Court Justice Victor M. Ort of Nassau County subsequently discounted the videotaped confession of John Kogut and found him not guilty of the 1994 rape and murder of a Lynbrook teen

(NYLJ, Sept. 27, Dec. 22, 2005).

Judge Hinrichs referred to the recent decision of *People v. LeGrand*, 8 NY3d 449 (2007), in which the Court of Appeals found that judges may admit expert testimony about the reliability of eyewitness identification and that, in some cases, it would be an abuse of discretion to exclude that testimony.

But he noted the *LeGrand* Court held that the existence of sufficient corroborating evidence could lead to the disallowance of expert testimony. The judge said the guilty pleas of Mr. Crews' two codefendants and their agreement to testify against him provided "ample" corroboration to warrant excluding Mr. Fulero's testimony. Moreover, the judge said he had been influenced by the fact that Mr. Crews was 34 years old at the time of his confession.

### Role of the Jury

The judge said New York's criminal jury instructions make clear that the evaluation of the truthfulness of a confession is a subject well within jurors' knowledge and experience. Those instructions provide that: "There is no particular formula for evaluating the truthfulness and accuracy of another person's statements or testimony. You bring to this process all of your varied experiences. In life, you frequently decide the truthfulness and accuracy of statements made to you by other people. The same factors used to make those decisions, should be used in this case when evaluating the testimony."

The judge said the jury instructions could be modified to take into account the circumstances underlying any false confession claim. He also said that factors contributing to a false confession by Mr. Crews could be raised on cross examination.

Mr. Brown said in an interview that Mr. Crews was "psychologically coerced" into signing a confession written out by the police after detectives advised him that his two codefendants had implicated him. He said the interrogation lasted seven hours.

"He was in an 8-by-8 room, chained to the floor with two detectives in his face—it was a hostile environment," said Mr. Brown. "It just wears you down.... False confessions are not voodoo science. This is real stuff."

Mr. Brown said his client has an alibi: He claims he was at home sleeping with his wife. Further, according to Mr. Brown, eyewitnesses saw two white men fleeing the scene of the crime, while his client is black.

"The only piece of evidence is this alleged confession, which is the exact reason we wanted an expert to explain to the jury that people do falsely confess," Mr. Brown said. "I am very disappointed."

If Mr. Crews is found guilty, Mr. Brown said the denial of the expert's testimony would be a "very significant appellate issue."

Mr. Crews has been incarcerated while awaiting trial, which has been scheduled for March 3.

Assistant District Attorney Kerrigan Kelly is prosecuting the case.

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