

Slip Copy, 2002 WL 34358182 (N.D.Ill.)

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United States District Court,
N.D. Illinois,
Eastern Division.
UNITED STATES of America, Plaintiff,
v.
Abdul Raimi MAMAH, Defendant.
No. 00 CR 396.
Feb. 4, 2002.

Named Expert: Dr. Richard Ofshe

***RULING ON GOVERNMENT'S MOTION TO BAR THE TESTIMONY OF DR.
RICHARD OFSHE***

[CHARLES P. KOCORAS](#), District Judge.

*1 The defendant has filed a notice of expert testimony concerning the existence and characteristics of false confessions. The defense's proffered expert is Dr. Richard Ofshe, a sociologist "who has spent his career studying police interrogation and the reliability of confessions." *Notice of Expert Testimony Concerning the Existence and Characteristics of False Confessions*, p. 1. Dr. Ofshe is prepared to testify that experts in his field agree that false confessions do occur, and will describe for the jury what indicia are considered significant by experts in distinguishing between reliable and unreliable confessions. *Id.* at p. 1.

The Government has moved to bar Dr. Ofshe's testimony, claiming it fails to meet the test of [Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 \(1993\)](#) and its progeny. In *Daubert*, the Supreme Court set forth the trial court's obligations when considering expert scientific testimony. It must consider "whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue. *Id.* At 592.

The principles of *Daubert* were later extended to the consideration of non-scientific expert testimony. [Kumho Tire Co., Ltd. v. Carmichael, 119 S.Ct. 1167 \(1999\)](#). The difficulties in applying *Daubert* and Rule 702 to the social sciences in general, and psychological evidence in particular, have been remarked about in a variety of articles and circumstances and have been duly noted by a number of courts. Indeed, in the case of

[United States v. Hall, 93 F.3d 1337 \(7th Cir.1996\)](#), Judge Wood's opinion for the Seventh Circuit deals with, among other things, the proffered testimony of Dr. Richard Ofshe.

Part of the Government's *Daubert* challenge in the instant case involves the nature of Dr. Ofshe's putative testimony. It is pointed out that Dr. Ofshe, a sociologist, does not appear to be qualified as a psychologist or able to address Mr. Mamah's psychological condition or his susceptibility, if any, to any of the allegedly persuasive or coercive techniques of interrogation. We agree. Not only is he unable to do so by virtue of his particular discipline, no psychological or similar testing has apparently been done by anybody. Additionally, no other expert has been proffered by the defense to link, causally or otherwise, the perceived interrogation tactics by law enforcement officers to any ensuing oral or written confession the defendant may have made as a result thereof. That false confessions do occur in certain circumstances requires both a detailed description of the interrogation circumstances and, at least, its arguable effect on Mr. Mamah. Dr. Ofshe can apparently supply neither. The fact finder in this case cannot be permitted to speculate as to a possible reaction by the defendant to the officers methods, whatever they may have been.

This very nexus, lacking here, was present in *Hall*. Indeed, Judge Wood's opinion reads, in part, as follows:

*2 Because the fields of psychology and psychiatry deal with human behavior and mental disorders, it may be more difficult at times to distinguish between testimony that reflects genuine expertise-and something that is nothing more than fancy phrases for common sense. It is nevertheless true that disorders exist, and the very fact that a layperson will not always be aware of the disorder, its symptoms, or its consequences, means that expert testimony may be particularly important when the facts suggest a person is suffering from a psychological disorder.

Id. at 1343.

As the Government has succinctly stated, without a threshold link between Mamah and the possibility of a false confession, Dr. Ofshe's testimony, if allowed, would serve only to confuse and mislead the jury and would not assist the weight to be given Mamah's confession. The barrenness of his opinions, and their unhelpfulness to the jury's respective determination, both as to the reliability of the confession and as to guilt or innocence, is manifest. In his expert's report, Dr. Ofshe's states, in part, the following:

Mr, Mamah's account of interrogation is in fundamental disagreement with the SA's account on the questions of what he told the agents and what he was allowed to know about the contents of the statement he signed. According to Mr. Mamah's account of the interrogation the statement he signed was never reviewed with him, was never read to him and he was prohibited from reading it before being told to affix his signature to it. According to Mr. Mamah, the document he was instructed to sign was represented to him as being consistent with the verbal statements he had been given to the agents. Mr. Mamah reports the verbal statements supposedly memorialized in the written statement

were his repeated absolute denials of any knowledge of drugs being in the hotel room he had just rented and his absolute denials of any involvement in drug trafficking.

The jury will not be, and cannot be, assisted in any way by Dr. Ofshe's views in determining whether Mr. Mamah's version of the interrogation is more accurate than that of the interviewing agents, assuming material conflict. It is a classic jury function to determine the credibility of witnesses. That Dr. Ofshe can say some people confess falsely when faced with certain stimuli is not relevant to the jury's credibility determination function. Nor can Dr. Ofshe testify, as part of his work, what the specifics of the interrogation consisted of as related to him by Mr. Mamah. Mr. Mamah's statements to him about the interview would be inadmissible hearsay and could not be disclosed by Dr. Ofshe to the jury pursuant to Rule 703.

Beyond that, Dr. Ofshe employs mere conclusory statements in his report about tactics used without specifics or elaboration. As is recited in *Hall* at p. 1344, conclusory statements without any explanation why the expert can contribute to the jury's understanding of the subject are also subject to exclusion. That is also the situation here.

*3 Cases dealing with the voluntariness of confessions involve an analysis of the specific facts and circumstances surrounding the interview and statements of culpability or confession. Relevant factors include the following:

1. the nature and duration of questioning used to secure a confession;
2. whether the defendant was under the influence of drugs or alcohol; [Watson v. Detella, 122 F.3d 450 \(7th Cir.1997\)](#).

Put another way, confession is voluntary if the totality of the circumstances demonstrates that it was the product of rational intellect and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics calculated to overcome the defendant's free will. Hearsay problems aside, the proffer supplies no basis for the court or jury to analyze the claimed circumstances surrounding the confession.

Because Dr. Ofshe's proposed expert testimony will not assist the trier of fact to understand or determine a fact in issue, it is not admissible. Were it to be received, the jury's ability to speculate would be exalted and the risk of jury confusion apparent. This prejudice overrides any possible probative value attendant to the proffered evidence. For all of the above reasons, the Government's motion to bar Dr. Ofshe's testimony is granted.

N.D.III.,2002.
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- [1:00cr00396](#) (Docket) (Nov. 2, 2000)

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