

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

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DISTRICT ATTORNEY
PALMER, ALASKA

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 Scott F. Williams,)
)
 Defendant.)



Case No. 3PA-09-828 CR

Order Granting Motion to Preclude Defense Expert – Dr. Ofshe

Considering the State of Alaska’s *Motion to Preclude Defense Expert – Dr. Ofshe*, Defendant’s Opposition, and testimony taken before this court on February 12, 2010, the motion is granted. Defendant offers the expert opinion on the issue of whether his statement made to the interrogating officer was voluntary. The testimony would not appreciably aid the court or the jury in determining this issue as explained below, therefore the motion is granted

Dr. Richard Ofshe, a professor of sociology from the University of California, Berkeley, offered to testify on the issue of psychological coercion during the police interrogation of the defendant. Dr. Ofshe reviewed the transcripts of the interrogation of the defendant, telephone calls between the defendant and the named victim, and the interview of the named victim. Based upon Dr. Ofshe’s review of these written materials and his education and research, Dr. Ofshe formed the opinion that the interrogating officer relied on psychologically coercive motivational tactics to manipulate defendant to admit that he had sexual relations with the named victim. Dr. Ofshe identified a problematic police interrogation tactic used and pointed to specific language in the transcript of the interrogation; specifically, Dr. Ofshe found coercive police tactics were

used when the interrogating officer promised the defendant that confessing would contribute to his obtaining lenient treatment. Dr. Ofshe did not offer an opinion as to the truth or falsity of the defendant's confession; however, his testimony would explain that false confessions occur because of the interrogation tactics in addition to the individual vulnerabilities of the accused. Dr. Ofshe did not assess nor offer an opinion concerning the defendant's vulnerabilities.

Expert testimony should be admitted only if it is both relevant and reliable. Evidence Rule 702(a). The issue of voluntariness is not a jury question and therefore, the proposed expert testimony is not relevant for the jury.¹ The question of whether Dr. Ofshe's testimony is relevant for the court turns on whether it will appreciably assist this court in making a determination as to the issue of the voluntariness of the defendant's interrogation. The court, in considering a challenge to the voluntariness of a defendant's statement, must consider "the age, mentality, and prior criminal experience of the accused; the length, intensity and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement."²

Under circumstances similar to this case, the Alaska Court of Appeals in *Vent v. State*³ affirmed Superior Court Judge Esch's preclusion of Dr. Richard Leo⁴, an expert witness prepared to testify in the field of police interrogation practices and the psychology of false confessions. Judge Esch found that "Dr. Leo's testimony would not appreciably aid the jury in determining whether Vent made a false confession. He

¹ *Stobaugh v. State*, 614 P.2d 767, 773 (Alaska 1980).

² *Sprague v. State*, 590 P.2d 410, 414 (Alaska 1979).

³ 67 P.3d 661 (Alaska App. 2003).

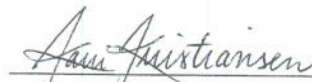
⁴ Dr. Ofshe's opinions are based, in part, on his collaborative work with Dr. Richard Leo as reported in *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 Denv. U.L.Rev. 979 (1997).

indicated that he was troubled by the fact that there was no way to quantify or test Dr. Leo's conclusions that certain techniques might lead to false confessions. He also concluded that jurors would be aware that some people do make false confessions and that this proposition could be developed by questioning and argument."⁵

Dr. Ofshe's testimony will not appreciably aid this court in determining whether Williams' statement to police was voluntary. This court is similarly troubled by the lack of testing or data to support Dr. Ofshe's opinions. Dr. Ofshe testified that he relied upon studies conducted by M.B. Russano in support of his opinion.⁶ Yet, neither the materials supplied to the court nor the materials referenced in Dr. Ofshe's written report provide further detail in order to evaluate the reliability of the opinion. This court is capable of considering the defendant's statement and the factors that impact the voluntariness of the statement without the assistance of the proposed expert opinion. The court is aware that it must consider whether the confession was a "product of a free will or was the product of a mind overborne by coercion".⁷ The defendant's proposition that his statement was not voluntarily given may be developed by questioning and argument.

For these reasons, the motion is GRANTED.

Dated at Palmer, Alaska on February 17, 2010.



Kari Kristiansen
Superior Court Judge

⁵ *Vent* at 669.

⁶ Russano, M.B., Meissner, C.A., Narchet, F.M., & Kassin, S.M. (2005) Investigating True and False Confessions Within a Novel Experimental Paradigm. *Psychological Science*, 481-486.

⁷ *Beavers v. State*, 998 P.2d 1040, 1044 (Alaska 1980).