

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APPEAL FROM SPARTANBURG COUNTY JAN 14 2019
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge S.C. SUPREME COURT

Appellate Case No. 2018-001498
Lower Court Case No. 2015-CP-42-0996

JAMES BENJAMIN IRBY, #352507,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

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July, 2017

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**Applicant's
Exhibit**

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POSITIONS HELD

7/06-Present	Hamill Family Professor of Law and Psychology University of San Francisco
8/05-Present	Fellow, Institute for Legal Research Criminal Justice Studies Program University of California, Berkeley School of Law
9/14-6/15	Fellow, Center for the Advanced Study in the Behavioral Sciences Stanford University
7/13-6/14	Visiting Professor of Law and Co-Director, Program on Understanding Law, Science and Evidence University of California, Los Angeles
7/97 – 6/06	Associate Professor of Psychology and Social Behavior; and Associate Professor of Criminology, Law and Society University of California, Irvine (Tenured in 2001)
8/94 - 5/97	Assistant Professor of Sociology and Adjunct Professor of Law University of Colorado, Boulder

EDUCATION

- 8/90 - 8/94 Ph.D. in Jurisprudence and Social Policy
 Specialization: Criminology and Social Psychology
 University of California, Berkeley
- 8/92 - 5/94 J.D., Boalt Hall School of Law
 University of California, Berkeley
- 9/87 - 6/89 M.A. in Sociology
 University of Chicago
- 9/81 - 5/85 A.B. in Sociology, with Honors
 University of California, Berkeley

ACADEMIC SPECIALIZATION

Criminal Procedure/Criminal Law	Psychology and Law	Social Psychology
Criminology and Criminal Justice	Law and Social Science	Police Organization/Behavior

RESEARCH SPECIALIZATION

Police Interrogation	Wrongful Convictions	Coercive Persuasion
False Confessions	Miscarriages of Justice	Influence and Decision-Making

AWARDS

Academic Excellence Award (2017). International Investigative Interviewing Research Group (In recognition of outstanding achievements to ethical investigative interviewing).

Lifetime Achievement Award (2014). Society for the Study of Social Problems, Crime and Juvenile Delinquency Division. (For distinguished scholarship in the fields of crime and delinquency).

Paul Tappan Lifetime Achievement Award (2014). Western Society of Criminology. (For outstanding contributions to the field of criminology).

The President's Award (2014). Western Society of Criminology. (For contributions to the field of criminology and positive influence on the current Western Society of Criminology President's career).

Fellowship, Center for the Advanced Study in the Behavioral Sciences (2014-2015). Stanford University.

William J. Chambliss Lifetime Achievement Award (2013). Society for the Study of Social Problems, Law and Society Division. (For career-spanning excellence and achievement in the area of law and society).

Guggenheim Fellowship (2011). John Simon Guggenheim Memorial Foundation. (For men and women who have already demonstrated exceptional capacity for productive scholarship or exceptional creative ability in the arts). New York, N.Y.

Edwin H. Sutherland Outstanding Scholarship Award from the Society for the Study of Social Problems, Law and Society Division (2010) for *Police Interrogation and American Justice* (Harvard University Press, 2008). Inaugural award.

Outstanding Book Award (2010) from the Academy of Criminal Justice Sciences for *Police Interrogation and American Justice* (Harvard University Press, 2008).

Herbert Jacob Book Prize (2009) from the Law and Society Association for *Police Interrogation and American Justice* (Harvard University Press, 2008)

Distinguished Scholarship Award (2009) from the Pacific Sociological Association for *Police Interrogation and American Justice* (Harvard University Press, 2008). Honorable Mention.

Soros Senior Justice Fellowship (2004). Open Society Institute. Soros Foundation. New York, N.Y.

The Saleem Shah Career Achievement Award (2000). Given by The American Psychology-Law Society (Division 41 of the American Psychological Association) and the American Academy of Forensic Psychology for early career excellence and contributions to psychology, law and public policy.

The Ruth Shonle Cavan Young Scholar Award (1999). Given by The American Society of Criminology to recognize outstanding scholarly contributions to the discipline of criminology.

Distinguished Assistant Professor Award for Research (2000-2001). University of California, Irvine. Conferred by the Academic Senate of the University of California, Irvine for distinguished research.

Faculty Career Development Award (1998-1999). University of California, Irvine.

Graduate Student Paper Award, Honorable Mention (1994) from the American Sociological Association, Crime, Law, and Deviance Section.

Outstanding Graduate Student Instructor Award (1993). University of California, Berkeley. Department of Legal Studies.

Prosser Prize (1992). "Guggenheim Crime Policy Seminar." University of California, Berkeley, Boalt Hall Law School.

ADDITIONAL HONORS AND DISTINCTIONS (SELECTIVE)

Member (Elected), American Law Institute (October, 2011-Present).

Listed in 2016 by the *Wall Street Journal* as one of 25 U.S. Law Professors whose research and publications have been cited most often by courts. See Nick Farris, Valerie Aggerbeck, Megan McNevin, & Greg Sisk, *Judicial Impact of Law School Faculties*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2826048

The subject of a full-length feature article by Mark Leviton (July, 2017). "The Whole Truth: Richard A. Leo On Why Innocent people Confess to Crimes." *The Sun Magazine*, Pp. 6-15. See <http://thesunmagazine.org/issues/499/the-whole-truth>

The subject of a *New Yorker* magazine article by Jeffrey Toobin (August 24, 2009). See: http://www.newyorker.com/talk/2009/08/24/090824ta_talk_toobin

Listed in Brian Leiter, *Most Cited Law Professors by Specialty, 2000-2007*, Criminal Law and Procedure, (http://www.leiterrankings.com/faculty/2007faculty_impact_areas.shtml)

Member, Scientific Advisory Board. National Center for Reason and Justice (3/02-Present).

Board member, Forensic Social Sciences Association (2/14-Present).

Affiliate, Center on Police Practices and Community (COPPAC). University of California, Santa Barbara Institute of Social, Behavioral & Economic Research (7/01-Present).

Fellow, Earl Warren Legal Institute Criminal Justice Program, University of California, Berkeley School of Law (10/98-8/05)

Visiting Scholar, Boalt Hall School of Law, University of California, Berkeley (8/03-8/05).

Visiting Professor of Sociology, Nankai University, Tianjin, China (10/96).

PUBLICATIONS

BOOKS

2018 Richard A. Leo and Tom Wells. *THE INNOCENCE REVOLUTION: A POPULAR HISTORY OF THE AMERICAN DISCOVERY OF THE WRONGLY CONVICTED*. (In Progress). Expected Publication Date: 2018

- Received Guggenheim Fellowship Award (2011) to write this book

2012 *CONFESSIONS OF GUILT: FROM TORTURE TO MIRANDA AND BEYOND* (with George C. Thomas III). New York: Oxford University Press. ISBN #: 978-0-19-533893-5. Available at:

<http://www.oup.com/us/catalog/general/subject/Sociology/CriminalJustice/?view=usa&ci=9780195338935>

- Translated into Chinese by SHANGHAI JIAOTONG UNIVERSITY PRESS of Shanghai (2014)

2008 POLICE INTERROGATION AND AMERICAN JUSTICE (2008). Cambridge: Harvard University Press. ISBN #: 0-674-02648-9. Available at: <http://www.hup.harvard.edu/catalog/LEOPOL.html> or <http://www.amazon.com/Police-Interrogation-American-Justice-Richard/dp/0674026489>

- Edwin H. Sutherland Outstanding Scholarship Award. The Society for the Study of Social Problems (2010). Inaugural award.
- Outstanding Book Award (2010). Academy of Criminal Justice Sciences.
- Herbert Jacob Book Prize (2009). Law and Society Association.
- Distinguished Scholarship Award (2009). Pacific Sociological Association. Honorable Mention.
- Excerpts reprinted in Yale Kamisar Et. Al, Eds. (2008). *Modern Criminal Procedure: Cases, Comments, Questions*. Twelfth Edition. (St. Paul, MN: West Publishing). Pp. 540, 624, 719-720
- Paperback version published in August, 2009
- Translated into Chinese by China University of Political Science and Law Press (2012)
- Translated into Korean by Humanitas Press (2014)

2008 THE WRONG GUYS: MURDER, FALSE CONFESSIONS AND THE NORFOLK FOUR (2008) (with Tom Wells). New York: The New Press. ISBN #: 978-1-59558-401-4. Available at: <http://amazon.com> or <http://thenewpress.com>. See also: <http://www.wrongguys.com>.

- Nominated for a National Book Award and a Pulitzer Prize
- The subject of a *New Yorker* magazine article by Jeffrey Toobin (August 24, 2009). See: http://www.newyorker.com/talk/2009/08/24/090824ta_talk_toobin
- Received Soros Senior Justice Fellowship (2004) to write this book

2008 THE PROBLEM OF FALSE CONFESSIONS IN THE POST-DNA WORLD (2008) (with Steven Drizin). Published as a book in Japan by Nippon Hyoronsha Co., LTD. ISBN #: 978-4-535-51664-9.

- 1998 THE MIRANDA DEBATE: LAW, JUSTICE AND POLICING (1998) (with George C. Thomas III, Eds). Boston: Northeastern University Press. ISBN #: 1-55553-338-8.
- 1998 THE AMERICAN CRIMINAL JUSTICE SYSTEM (1998), (Ed). (Simon & Schuster). ISBN #: 0-536-00826-4.

ARTICLES, BOOK CHAPTERS AND OTHER PUBLICATIONS

- 2018 "Police Interrogation and Suspect Confessions: Social Science, Law and Public Policy." Forthcoming in Erik Luna, Ed. (2018), *Academy for Justice: Reforming Criminal Justice, Vol. 2: Policing*. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Tristin Green, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 10, No. 1 (2017)
- 2018 "Police Interrogation and Coercion in Domestic American History: Lessons for the War on Terror" (with Alexa Koenig). Forthcoming in Scott Anderson and Martha Nussbaum, Eds. (2018). *Confronting Torture: Essays on the Ethics, Legality, History, and Psychology of Torture Today*. Pp. 172-207. (Chicago: University of Chicago Press). Available at: <http://ssrn.com/author=1020356>
- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Volume 3, No. 1 (2010).
- 2017 "What Innocence Means Today and Why It Matters," 68 *Florida Law Review*, 1569-1596. as a larger essay entitled, "Voices on Innocence" (with Lucian Dervan, Meghan Ryan, Valena Beety, Gregory Gilchrist and William Berry). Available at: <http://ssrn.com/author=1020356>
- Reprinted in Russell Covey and Valena Beety (2018). *Reading Innocence: A Wrongful Convictions Reader*. (Durham: Carolina Academic Press).
 - Reprinted in Michelle Travis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 9, No. 2 (2016)
- 2017 "The *Miranda* App: Metaphor and Machine (with Andrew Guthrie Ferguson). Forthcoming in the *Boston University Law Review*, Vol. 97. Pp. 935-992. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Tristin Green, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 10, No. 1 (2017)
- 2017 "The Criminology of Wrongful Conviction: A Decade Later." *Journal of Contemporary*

Criminal Justice. Vol. 33. Pp. 82-106.

- Reprinted in Tristin Green, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 9, No. 5 (2016)
- 2017 "Has the Innocence Movement Become an Exoneration Movement? The Risks and Rewards of Redefining Innocence," in Daniel Medwed, Ed. (2017). (Boston, MA: Cambridge University Press). *Wrongful Convictions and the DNA Revolution: Twenty-Five Years of Freeing the Innocent*. Pp. 57-83. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Russell Covey and Valena Beety (2018). *Reading Innocence: A Wrongful Convictions Reader*. (Durham: Carolina Academic Press).
 - Reprinted in Michelle Travis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 9, No. 3 (2016)
- 2017 "Police Interrogation, False Confessions and Alleged Child Abuse Cases." *The Michigan Journal of Law Reform*, Vol. 50. Pp. 693-721. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Tristin Green, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 10, No. 1 (2017)
- 2017 "A Damning Cascade of Investigative Errors: Flaws in Homicide Investigation in the U.S.A." (with Deborah Davis) in Fiona Bookman, Ed. (2017). *Handbook on Homicide* (Wiley-Blackwell). Pp. 578-598. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Michelle Travis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 9, No. 1 (2016)
- 2017 "Police Interrogation and False Confessions in Rape Cases" in Roy Hazelwood and Ann Burgess, Eds (2017). *Practical Aspects of Rape Investigation: A Multidisciplinary Approach*. 5th Edition. (Boca Raton, Florida: CRC Press). Pp. 177-186.
- Reprinted in Michelle Travis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 9, No. 2 (2016)
2016. "The Path to Exoneration" (with Jon Gould). *Albany Law Review*. Vol. 79, Pp. 325-372. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Michelle Travis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 9, No. 1 (2016)
- 2016 "When Exoneration Seems Hopeless: the Special Vulnerability of Sexual Abuse Suspects to False Confession" (with Deborah Davis) in Ros Burnett, Ed. (2016). *Wrongful Allegations of*

Sexual and Child Abuse (New York: Oxford University Press). Pp. 175-190. Available at: <http://ssrn.com/author=1020356>

- Reprinted in Michelle Travis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 7, No. 5 (2014)
- 2016 "Analyzing Videotaped Interrogations and Confessions." *The Champion*. Vol. XL, No. 12 (December, 2016). Pp. 40-47.
- Reprinted in Michelle Travis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 9, No. 1 (2016)
- 2016 "Her Story, His Story: Sexual Miscommunication, Motivated Remembering, and Intoxication as Pathways to Honest False Testimony Regarding Sexual Consent." (With Guillermo Villalobos and Deborah Davis) in Ros Burnett, Ed. (2016). *Wrongful Allegations of Sexual and Child Abuse* (New York: Oxford University Press). Pp. 129-142. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Michelle Travis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 7, No. 6 (2014)
- 2016 "False Confessions in the 21st Century" (with Brian Cutler). *The Champion*. Pp. 46-55. Vol. XL, No. 4 (May, 2016).
- Reprinted in Michelle Travis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 9, No. 1 (2016)
- 2015 "The Sound of Silence: *Miranda* Waivers, Selective Literalism and Social Context" in Lawrence Solan, Janet Ainsworth and Roger Shuy, Eds. (2015). *Speaking of Language and Law* (New York: Oxford University Press). Pp. 255-259. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Michelle Travis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 7, No. 4 (2014)
- 2014 "The Justice Gap and the Promise of Criminological Research." *Criminology, Criminal Justice, Law & Society*, Vol. 15, No. 3. Pp. 1-37. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Michelle Travis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Vol. 8, No. 1 (2015)
- 2014 "Predicting Erroneous Convictions" (with Jon Gould, Julia Carrano and Katie Hail-Jares). *Iowa Law Review*, Vol. 99, Pp. 471-522. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Russell Covey and Valena Beety (2018). *Reading Innocence: A Wrongful*

Convictions Reader. (Durham: Carolina Academic Press).

- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Volume 6, No. 3 (2013)
- 2014 “Disputed Interrogation Techniques in America: True and False Confessions and the Estimation and Valuation of Type I and II Errors” (with Deborah Davis) in Sarah Cooper, Ed. (2014). *Controversies in Innocence Cases in America* (Surrey, England: Ashgate Publishing Ltd). Pp. 57-72. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Volume 6, No. 4 (2013)
- 2014 “Innocent Defendants: Divergent Case Outcomes and What They Teach Us” (with Jon Gould, Julia Carrano, and Katie Hail-Jares) in Marvin Zalman and Julia Carrano, Eds. (2014), *Wrongful Conviction and Criminal Justice Reform: Making Justice* (London: Routledge). Pp. 73-92. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Volume 6, No. 4 (2013)
- 2014 “Interrogation and Confessions” (with Deborah Davis) in Jay Albanese, Ed. (2014). *The Encyclopedia of Criminology and Criminal Justice*, Vol. III (New York: John Wiley & Sons). Pp. 1199-1206. Available at: <http://ssrn.com/author=1020356>
- 2013 “Why Interrogation Contamination Occurs,” *The Ohio State Journal of Criminal Law*, Vol. 11. Pp. 193-215. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Volume 6, No. 4 (2013)
- 2013 “Promoting Accuracy in the Use of Confession Evidence: An Argument for Pre-Trial Reliability Assessments to Prevent Wrongful Convictions” (with Peter Neufeld, Steven Drizin, and Andrew Taslitz). *Temple Law Review*, Vol. 85, Pp. 759-838. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Volume 6, No. 2 (2013)
- 2013 “False Confessions and the Constitution: Problems, Possibilities and Solutions.” John T. Parry and L. Song Richardson, Eds. (2013). *The Constitution and the Future of Criminal Law in America* (New York: Cambridge University Press). Pp. 169-186. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research

Paper Series. University of San Francisco School of Law. Volume 6, No. 1 (2013).

- 2013 "The Problem of Interrogation-Induced False Confession: Sources of Failure in Prevention and Detection" (with Deborah Davis) in Stephen Morewitz and Mark Goldstein, Eds. (2013). *Handbook of Forensic Sociology and Psychology* (New York: Springer). Pp. 47-75. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Volume 5, No. 5 (2012).
- 2013 "Acute Suggestibility in Police Interrogation: Self-Regulation Failure as a Primary Mechanism of Vulnerability" in Anne Ridley, Ed. (2013). *Suggestibility in Legal Contexts: Psychological Research and Forensic Applications*. (Chichester: John Wiley & Sons, Ltd.). Pp. 171-195. Available at: <http://ssrn.com/author=1020356>
- 2013 "The Law of Interrogation" (with George C. Thomas III). G.J.N. Bruinsma and D.L. Weisburd, Ed. (2013). *Encyclopedia of Criminology & Criminal Justice* (New York: Springer). Pp. 2835-2840. Available at: <http://ssrn.com/author=1020356>
- 2012 "Interrogation Related Regulatory Decline: Ego-Depletion, Failures of Self-Regulation and the Decision to Confess" (with Deborah Davis). *Psychology, Public Policy and Law*, Vol 18. Pp. 673-704. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Volume 4, No. 4 (2011).
- 2012 "To Walk In Their Shoes: The Problem of Missing, Misrepresented, and Misunderstood Context in Judging Criminal Confessions" (with Deborah Davis). *New England Law Review*. Vol. 46, No. 4. Pp. 737-767. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Volume 5, No. 4 (2012).
- 2012 "Interrogation Through Pragmatic Implication: Sticking to the Letter of the Law While Violating Its Intent" (with Deborah Davis) in Lawrence Solan and Peter Tiersma, Eds. (2012). *Oxford Handbook on Language and the Law* (Oxford University Press). Pp. 354-366. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Volume 4, No. 2 (2011).
- 2011 "Three Prongs of the Confession Problem: Issues and Proposed Solutions" (with Deborah Davis). In Carol Henderson and Jules Epstein, Eds. (2011). *The Future of Evidence: How Science and Technology Will Change The Practice of Law* (Chicago: American Bar Association Books). Pp. 233-264. Available at: <http://ssrn.com/author=1020356>

- 2011 "Jurors Believe Interrogation Tactics Are Not Likely to Elicit False Confessions: Will Expert Witness Testimony Inform Them Otherwise?" (With Iris Blandon-Gitlin and Kathryn Sperry). *Psychology, Crime and Law*. Vol. 17, 239-260. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Volume 4, No. 1 (2011).
- 2010 "One-Hundred Years Later: Wrongful Convictions after a Century of Research" (with Jon Gould). *Journal of Criminal Law and Criminology*. Vol. 100, 825-868. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Volume 3, No. 4 (2010).
- 2010 "The Gatehouse and Mansions: Fifty Years Later" (with Alexa Koenig). *The Annual Review of Law and Social Science*, Vol. 6, 323-339. Available at: <http://ssrn.com/author=1020356>
- Reprinted in Joshua Davis, Legal Scholarship Network (SSRN): Legal Studies Research Paper Series. University of San Francisco School of Law. Volume 3, No. 3 (2010).
- 2010 "From False Confession to Wrongful Conviction: Seven Psychological Processes" (with Deborah Davis). *The Journal of Psychiatry and the Law*, Vol. 38, 9-56. Available at: <http://ssrn.com/author=1020356>
- Excerpted in Open Access Journal of Forensic Psychology (2009), Vol. 1. Available at: <http://www.forensicpsychologyunbound.ws/>
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Vancouver Columbian
Philadelphia Inquirer
Morristown Daily Record
- St. Louis Post-Dispatch*
Minnesota Star Tribune
Boston Globe
Port Huron Times Herald
- New York Times*
Los Angeles Times
Boston Globe
Dallas Morning News
Chicago Daily Law Bulletin
Syracuse Post-Standard
Fort-Worth Star Telegram
Reason
- Washington Post*
Los Angeles Times
Milwaukee Journal Sentinel
Daily Press.Com
Nation
Chicago Magazine
Playboy Magazine
Baltimore Sun
- Riverside Press-Enterprise*
New York Times
Los Angeles Times
St. Louis Post-Dispatch
U.S. News & World Report
Chicago Sun-Times
New Orleans Times-Picayune
- Orlando Sentinel*
San Diego Union-Tribune
Detroit Free Press
Charleston Post and Courier
Hartford Courant
Maury Povich Show
Geraldo Rivera Live
Newark Star-Ledger
Memphis Commercial Appeal
Indianapolis News
Gary Post-Tribune
Wilmington News Journal

Belleville News-Democrat
Greenville News
Cleveland Plain Dealer
Everett Herald
Columbus Dispatch
Worcester Telegram
Scranton Times
Dayton Daily News
Eugene Register-Guard
Salem Statesman Journal
Bridgewater Courier-News
Shreveport Times

Mobile Register
Charleston Gazette-Mail
Wheeling Sunday News-Register
Augusta Chronicle
Columbus Leger-Enquirer
Macon Telegraph
Contra Costa Times
Canton Repository
Tacoma News Tribune
Trenton Times
Hackensack Record

1996 *Los Angeles Times*
Legal Times
New Jersey Law Journal

Louisville Courier-Journal
Shreveport Times

1995 *Boulder Daily Camera*

PRESENTATIONS

2017 "Theorizing Failed Prosecutions" (with Jon Gould). Law and Society Association of Australia and New Zealand. Dunedin, New Zealand. December, 2017.

"Police Interrogation, False Confessions and Wrongful Convictions." International Society for the Reform of Criminal Law. San Francisco, CA. July, 2017

"Litigating False Confessions." National Innocence Network Conference. San Diego, CA. March, 2017.

"Lies, More Lies and the Reid Method: Coercion, Contamination, and Cover-Up in the Interrogation of Brendan Dassey." American Psychology-Law Society. Seattle, WA. March, 2017.

"How Interrogation Techniques and Suspect Vulnerabilities Interact to Produce False Confessions." Habeas Assistance and Training Counsel Project National Seminar on Forensic Evidence and Criminal Law. Seattle, WA. March, 2017.

"Interrogation and Confessions." Criminal Justice Reform Conference. Arizona State University Law School. Phoenix, AZ. February, 2017.

"False Confessions: The Psychological Science." United States Marine Core Defense Service Organization Worldwide Training Conference. San Diego, CA. February, 2017.

"Police Interrogation and Coerced/False Confessions." Reno Public Defender's Office. Reno,

Nevada. February, 2017.

"How to Avoid/Void Wrongful Convictions: False Confessions." University of San Diego School of Law and Community Defenders, Inc. San Diego, CA. January, 2017.

"Analyzing Proven False Confessions." Association of American Law Schools. San Francisco, CA. January, 2017.

2016 "The Path to Exoneration" (with John Gould and Eric Martin). American Society of Criminology. New Orleans, LA. November, 2016.

"The *Miranda* App" (with Andrew Ferguson). Boston University Law School. Boston, MA. September, 2016. Also presented at the Annual Meeting of the American Bar Association, Criminal Justice Section. Washington, D.C. November, 2016.

"The Serial Case – Social Media, and the Trial of Adnan Syed." Bar Association of San Francisco. San Francisco, CA. November, 2016.

"False Confessions and Wrongful Convictions." Harvard Law School. American Constitution Society. Cambridge, MA. November, 2016.

"When Prosecutions Go Wrong – Convicting the Innocent." Nebraska Criminal Defense Attorneys Association. Omaha, NE. October, 2016.

"Writing (Academic and Popular) Books." University of San Francisco School of Law, Faculty Colloquium. September, 2016.

"The Problem of Wrongful Conviction in America." Keynote Address. University of Auckland, Criminal Bar Association of New Zealand. Auckland, New Zealand. August, 2016

"Police Interrogation, Psychological Coercion and False Confessions." University of Auckland, Criminal Bar Association of New Zealand. Auckland, New Zealand. August, 2016.

"What Can Be Done About Wrongful Convictions?" Institute of Criminology, University of Sydney Law School. Sydney, Australia. April, 2016.

"The Problem of Confessions." Simon Fraser University, School of Criminology. Vancouver, Canada. April, 2016

"*Miranda*: 50 Years Later." University of San Diego School of Law. San Diego, CA. April, 2016.

"The Use of Social Framework Evidence on False Confessions in Criminal Cases." American Psychology-Law Society. Atlanta, GA. March, 2016.

- "Does *Miranda* Protect the Innocent?" Northern Kentucky University School of Law. Highland Heights, Kentucky. February, 2016.
- "Police Interrogation and False Confessions." The Center for American and International Law. Plano, Texas. February, 2016.
- "The Reid Method, Police Interrogation and Confessions." California Attorneys for Criminal Justice/California Public Defenders Association Capital Case Defense Seminar. San Diego, CA. February, 2016.
- "False Confessions, Convicting the Innocent and the Troubling Case of Joseph Giarratano, Jr." Washington and Lee School of Law. Lexington, VA. February, 2016.
- 2015 "Successes and Failures of the Innocence Revolution." Duke University Law School. Durham, North Carolina. November, 2015.
- "Reflections on a Classic Ten Years Later: Richard Leo's "Rethinking the Study of Miscarriages of Justice." American Society of Criminology. Washington, DC. November, 2015.
- "Wrongful Convictions and the Death Penalty." University of San Francisco School of Law. Criminal Law Society. November, 2015.
- "Police Interrogation, False Confessions, and Alleged Child Abuse Cases." University of Michigan, School of Law. Conference on Child Abuse Evidence: Perspectives from Law, Medicine, Psychology and Statistics. Ann Arbor, MI. November, 2015
- "The Path to Exoneration (with Jon Gould). National Science Foundation and National Institute of Justice Conference. "Elephants in the Courtroom: Examining Overlooked Issues in Wrongful Convictions." Arlington, Virginia. October, 2015.
- "Has the Innocence Movement Become an Exoneration Movement? The Risks and Rewards of Redefining Innocence "Wrongful Convictions and the DNA Revolution: 25 Years of Freeing The Innocent" Conference." Northeastern University School of Law. September, 2015.
- "A Damning Cascade of Investigative Errors." Southeastern Association of Law Schools. Boca Raton, FLA. August, 2015.
- "The Problem of Wrongful Conviction." Center for the Advanced Study in the Behavioral Sciences. Stanford University. Palo Alto, CA. May, 2015.
- "False Confessions: The Psychological Science." American Psychology-Law Society. San Diego, CA. March, 2015.
- "The Social Psychology of Police Interrogation, False Confessions and Wrongful Conviction."

Department of Psychology, Social Psychology Program. Stanford University. Palo Alto, CA. March, 2015.

- 2014 "Litigating False Confession Cases" and "Presenting Expert Testimony." National Forensic College. Cardozo Law School. New York, New York. June, 2014.

"False Confessions, Erroneous Convictions and Safeguarding the Innocent." The Rand Corporation. Santa Monica, CA. May, 2014

"The Problem of Wrongful Conviction." University of California, Irvine. The Newkirk Center for Science and Society, The Center for Law, Society and Culture, and the Center for Psychology and Law. Irvine, CA. April, 2014.

"Police Interrogation and Coerced and False Confessions." Los Angeles Public Defender's Office. Van Nuys and Downtown Offices. Los Angeles, CA. April, 2014.

"False Confession and Wrongful Conviction: Causes, Consequences, and Solutions." Susquehanna University. Arlin M. Adams Center For Law and Society Distinguished Lecture. Selinsgrove, PA. April, 2014.

"Legal Scholarship Employing Theory: A Critique." Northwestern University School of Law. Boston, MA. March, 2014.

"False Confessions." California Attorneys for Criminal Justice/California Public Defenders Association Capital Case Defense Seminar. Monterey, CA. February, 2014.

"The Justice Gap and the Promise of Criminological Research." Western Society of Criminology. Honolulu, HI. February, 2014.

- 2013 "Promoting Accuracy in the Use of Confession Evidence: An Argument for Pre-Trial Reliability Hearings to Prevent Wrongful Convictions." UCLA School of Law. Los Angeles, CA. August, 2013.

"Why Interrogation Contamination Occurs." Association of American Law Schools. Mid-year Criminal Justice Conference. San Diego, CA. June, 2013.

"Social Psychological Testimony Regarding Interrogations and Confessions." American-Psychology Law Society. Portland, OR. March, 2013.

"To Walk in Their Shoes: The Problem of Recognizing False Confessions" (with Deborah Davis). American-Psychology Law Society. Portland, OR. March, 2013.

"False Confessions." California Attorneys for Criminal Justice/California Public Defenders Association Capital Case Defense Seminar. Monterey, CA. February, 2013.

- 2012 "Contaminated Confessions: Accuracy and Error in Decision-Making in the Criminal Justice Process." Duke University School of Law. Durham, North Carolina. December, 2012.
- "Innocent Differences? An Empirical Study of Wrongful Convictions vs. "Near Misses" (with Jon Gould and Julia Carrano). American Society of Criminology. Chicago, IL. November, 2012.
- "False Confessions: Causes, Consequences, Solutions." Roosevelt University, Department of Psychology. Wrongful Convictions Distinguished Speakers Series. Chicago, IL. November, 2012.
- "Promoting Accuracy in the Use of Confession Evidence: An Argument for Pre-Trial Reliability Hearings to Prevent Wrongful Convictions." American University School of Law. Washington, D.C. September, 2012. U.C. Davis School of Law. Davis, CA. October, 2012. Temple University School of Law. Philadelphia, PA. November, 2012.
- "An Early Peek at the Results: An Empirical Study of Wrongful Convictions versus "Near Misses" (with Jon Gould and Julia Carrano). Law and Society Association. Honolulu, HI. June, 2012.
- "The Science of False Confessions." Washington State Courts Continuing Judicial Education Conference. Cle Elum, Washington. April, 2012.
- "The Problem of Interrogation-Induced False Confession: Sources of Failure in Prevention and Detection". Western Psychological Association. San Francisco, CA. April, 2012.
- "Interrogation Through Pragmatic Implication: Sticking to the Letter of the Law While Violating Its Intent." Loyola University Law School. Los Angeles, CA. April, 2012.
- "Two Real-Life Studies, a Meta-Analysis, and the Effects of Unanticipated Questions." American Psychology-Law Society. San Juan, Puerto Rico. March, 2012.
- "False Confessions: Understanding and Litigating the Issues." New Mexico Criminal Defense Lawyers Association. Albuquerque, NM. March, 2012.
- "False Confessions." California Attorneys for Criminal Justice/California Public Defenders Association Case Defense Seminar Program. Monterey, CA. February, 2012.
- 2011 "The Dynamics of False Confessions." The Texas Bar, Continuing Legal Education. Dallas, Texas. December, 2011.
- "Studying Wrongful Convictions: Learning From Social Science" (with Jon Gould). American Society of Criminology. Washington, D.C. November, 2011.
- "False Confessions: Why Innocent People Confess." Northern California Innocence Project.

Santa Clara University School of Law. Santa Clara, CA. October, 2011.

"The Problem of Interrogation-Induced False Confession: Sources of Failure in Prevention and Detection." Federal Public Defender, Capital Habeas Unit. Los Angeles, CA. August, 2011.

"The Science of False Confessions." Texas Criminal Defense Lawyers Association. Austin, TX. August, 2011.

"Police Interrogation Methods and False Confessions." New York State Justice Task Force on Wrongful Convictions. New York, NY. June, 2011.

"Police Interrogation: Tactics, Responses and Outcomes." University of Minnesota School of Law. Conference on Barry Feld's book, *Police Interrogation of Juveniles: Practice and Policy*. May, 2011.

"The Truth About False Confessions: Interrogation-Related Regulatory Decline: Ego-depletion, Failures of Self-Regulation and the Decision to Confess." Western Psychological Association Conference. Los Angeles, CA. April, 2011.

"False Confessions: Causes, Consequences, Solutions." National Innocence Network Conference. University of Cincinnati School of Law. April, 2011.

"Police Interrogation in the Shadow of Trial." New York University School of Law. Hoffinger Criminal Justice Colloquium. March, 2011.

"Confessions of the Innocent: Causes, Consequences and Solutions." Forensic Mental Health Association of California Annual Conference. Keynote Address. Seaside, CA. March, 2011.

"Three Prongs of the Confession Problem: Issues and Proposed Solutions." University of Washington School of Law. Faculty Colloquium. Seattle, WA. January, 2011.

2010 "Purpose-Driven Scholarship, Justice Work, and the Problem of Wrongful Conviction." University of San Francisco School of Law. Justice Forum. November, 2010.

"Innocent: Recent Advances in Uncovering Wrongful Convictions." Stanford University School of Law. Shaking the Foundations Conference. October, 2010.

"*Miranda* at 50: What Have We Learned?" Seattle University School of Law. Faculty Colloquium. September, 2010.

"The Gatehouses and the Mansions: 50 Years Later." University of San Francisco School of Law. Faculty Brown Bag Series. July, 2010.

"A Doctrinal Analysis of *Miranda v. Arizona* and its Progeny: Why the Conventional Explanation is Wrong and What's Really Going On." University of San Francisco School of

Law. Faculty Colloquium. April, 2010.

"Police Interrogation, Psychological Coercion and False Confessions: Understanding and Litigating the Issues." Los Angeles County Bar Association. April, 2010.

"When Lightning Strikes Twice: Analyzing Double Wrongful Convictions." University of California, Berkeley School of Law. Center for the Study of Law and Society Faculty Colloquium. March, 2010.

"The Psychology of Coerced and False Confessions" and "Litigating Coerced and False Confession Cases." Department of the Army, U.S. Trial Defense Service Conference. Ft. Lewis, WA. March, 2010.

"Stage Setting in Police Interrogation: Interactive Effects of a Pretext for Interrogation and Minimization" (with Osvaldo Hernandez, Deborah Davis, Crissa Draper and William Follette). American Psychology-Law Society Conference. Vancouver, Canada. March, 2010.

"When Lightning Strikes Twice: Analyzing Double Wrongful Convictions." Emory University School of Law Faculty Colloquium. February, 2010.

"Interrogation, Coercion and False Confessions: Understanding and Identifying the Issues." California Attorneys for Criminal Justice/California Public Defenders Association Case Defense Seminar Program. Monterey, CA. February, 2010.

"Interrogation Through Pragmatic Implication: Communicating Beneficence and Promises of Leniency" (with Deborah Davis and William Follette). Society for Personality and Social Psychology Conference. Las Vegas, NV. January, 2010.

"One Hundred Years of Getting It Wrong? Wrongful Convictions After a Century of Research" (with Jon Gould). Northwestern University School of Law. Conference on a Century of Criminal Law and Criminology. Chicago, IL. January, 2010

"Police Interrogation and False Confessions: A Review of the Research." Association of American Law Schools Annual Conference. New Orleans, LA. January, 2010.

2009 "The Wrong Guys: Author Meets Critics." American Society of Criminology Conference. Philadelphia, PA. November, 2009.

"False Confessions: Science and Research" Office of the State Appellate Defender and Illinois Institute for Continuing Legal Education Conference. Keynote Address. Springfield, IL. October, 2009.

"Police-Induced Confessions: Risk Factors and Recommendations." UC Hastings School of Law. Faculty Colloquium. San Francisco, CA. September, 2009.

"The Psychology of Forced Confessions" and "Litigating False Confession Cases." Indiana Public Defender Council Conference. Indianapolis, IN. August, 2009.

"Interrogation, Coercion and False Confessions: Understanding and Identifying the Issues." National Association of Criminal Defense Attorneys Conference. Santa Fe, NM. April, 2009.

"False Confessions: Challenging Police-Induced Testimonial Evidence." Illinois Institute for Continuing Legal Education Death Penalty Conference. Keynote Address. Chicago, IL. March, 2009.

"Interrogation, Coercion and False Confessions: Understanding and Identifying the Issues." Contra Costa County Public Defender's Office. Martinez, CA. March, 2009.

"False Confessions." California Attorneys for Criminal Justice/California Public Defenders Association Case Defense Seminar Program. Monterey, CA. February, 2009.

"False Confessions: Challenging Police-Induced Testimonial Evidence." San Francisco Public Defender's Office. February, 2009

"False Confessions: Causes, Consequences and Reforms." Texas Court of Criminal Appeals. Criminal Justice Integrity Unit. Austin, TX. January, 2009.

2008 **"The Wrong Guys: Murder, False Confessions and the Norfolk 4."** Northwestern University School of Law. Chicago, IL. November, 2008.

"Police Interrogation and American Justice: Author Meets Critics" and "When Lightning Strikes Twice: Studying Double Wrongful Convictions." American Society of Criminology Conference. St. Louis, Missouri. November, 2008.

"The Psychology of False Confessions: Causes, Consequences and Reforms." University of Illinois, Springfield. Institute for Legal and Policy Studies and Downstate Illinois Innocence Project. November, 2008.

"The Wrong Guys: Murder, False Confession and the Norfolk 4." University of San Francisco, School of Law. November, 2008.

"Police Interrogation, Psychological Coercion, and False Confessions." California Defense Investigators Association Conference. San Jose, CA. November, 2008.

"False Confessions: Causes, Consequences, and Implications." American Academy of Psychiatry and Law Conference. Keynote address. Seattle, WA. October, 2008.

"Police Interrogation and American Justice." New York University School of Law. Hoffinger Criminal Justice Colloquium. September, 2008.

"False Confessions and Wrongful Convictions." Innocence Project. New York, NY. September, 2008.

"Police Interrogation and False Confessions." Alaska Investigators Association and Alaska Innocence Project Conference. Anchorage, AL. September, 2008.

"False Confessions, Wrongful Convictions and Legal Reform." Association of American Law Schools. Mid-year Meeting, Evidence Section. Cleveland, Ohio. June, 2008.

"False Confessions" and "Police Interrogation, False Statements and Confessions". Habeas Corpus Resource Center Conference. San Francisco, CA. June, 2008

"False Confessions." National Association of Criminal Defense Attorneys Conference. Las Vegas, NV. April, 2008.

"Litigating False Confession Cases." National Innocence Network Conference. University of Santa Clara School of Law. March, 2008.

"Recommending False Confession for the Innocent" (with Deborah Davis and William Follette). American Psychology Law Society Conference. Ft. Lauderdale, FL. March, 2008.

"Police Interrogation and Coercion in Domestic American History." University of Chicago School of Law. Conference on Torture, Law and War. March, 2008

"Persuaded False Confessions." University of Chicago School of Law. Criminal Law Faculty Colloquia. February, 2008.

"Understanding False Confessions." California Attorneys for Criminal Justice/California Public Defenders Association Case Defense Seminar Program. Monterey, CA. February, 2008.

2007 "Understanding False Confessions." California Public Defenders' Association Conference. Yosemite, CA. November, 2007.

"Persuaded False Confessions" and "Effects of Interrogation Tactics on Recommendation of False Confessions for the Innocent" (with Deborah Davis and William Follette). University of Texas, El Paso. "Interrogation and Confessions: A Conference Exploring Current Research, Practice and Policy." September, 2007.

"Police Interrogation, Psychological Coercion, False Confessions." Florida Public Defender Association Conference. Orlando, FLA. September, 2007.

"Effects of Failed Polygraph Results on Perceived Wisdom of True and False Confessions" (with Deborah Davis). American Psychological Association Conference. San Francisco, CA. August, 2007.

"Police Interrogation, Psychological Coercion, False Confessions." District of Columbia Public Defender Service. Washington, DC. June 2007.

"Understanding the Reid Method and How It Coerces Confessions." Habeas Corpus Resource Center Conference. San Francisco, CA. June, 2007.

Wrongful Convictions and False Confessions. Tel Aviv University, School of Law. Conference on New Directions in Courtroom Research. Tel Aviv, Israel. May, 2007.

"False Confessions: Causes, Consequences, Solutions." Ohio Innocence Project. University of Cincinnati School of Law. Cincinnati, OH. March, 2007.

"Wrongful Conviction: Legal and Judicial Perspectives." Academy of Criminal Justice Sciences Conference. Seattle, WA. March, 2007.

"False Confessions and the Wrongful Conviction of the Innocent." National Innocence Network Conference. Harvard University Law School. March, 2007.

"Police Interrogation, Psychological Coercion, False Confessions." National Legal Aid and Defender Association. Annual Conference on Indigent Defense. Dallas, TX. March, 2007.

"Understanding the Reid Method and How It Coerces Confessions." California Attorneys for Criminal Justice/California Public Defenders Association Case Defense Seminar Program. Monterey, CA. February, 2007.

"The Social Psychology and Consequences of Police-Induced False Confessions." Northern California Innocence Project. Santa Clara, CA. February, 2007.

"Police Interrogation, Psychological Coercion, False Confessions." Santa Clara County Public Defender's Office. San Jose, CA. February, 2007.

"Why Do Suspects Falsely Confess?" Administrative Offices of the United States Courts. Conference on Forensic Evidence and the Criminal Law. New Orleans, LA. January, 2007.

2006 "Police Interrogation, False Confession and American Justice." University of Oklahoma, Department of Psychology. Faculty Colloquium. Norman, OK. December, 2006.

"Police interrogation, Psychological Coercion, False Confessions." Missouri State Public Defender System Conference. St. Louis, MO. December, 2006.

"Police Interrogation and American Justice." University of San Francisco School of Law. Faculty Colloquium. November, 2006.

"The Limits of *Miranda*." University of Colorado School of Law. Conference on the 40th

Anniversary of *Miranda v. Arizona*. Boulder, CO. October, 2006.

"Interrogating Guantanamo Detainees." University of San Francisco School of Law. October, 2006.

"Coerced and False Confessions." National Child Abuse Defense & Resource Center Conference. September, 2006. Las Vegas, NV.

"False Confessions: Causes, Consequences and Solutions." California Commission on the Fair Administration of Justice. Los Angeles, CA. June, 2006.

"Sympathetic Detectives with Time Limited Offers: Effects on Perceived Consequences of Confession" (with Deborah Davis, Deborah Knaack and David Bailey). Association for Psychological Science Conference. New York, NY. May, 2006.

"Police Interrogation and Confessions." San Mateo Private Defender Program. Burlingame, CA. May, 2006.

"*Miranda's* Past, Present and Future." Harvard University School of Law. Conference on Criminal Procedure Stories. Cambridge, MA. April, 2006.

"Incriminating Ourselves?" U.C.L.A. School of Law. Conference on the Faces of Wrongful Conviction: Examining California Justice Gone Wrong. April, 2006.

"Police Interviewing and Interrogation: Toward A National Self-Report Survey of Police Practices and Beliefs" (with Saul Kassin, Kimberly Richman, L.H., Colwell, Amy Leach, Dana La Fon, & Christian Meissner) and "Evaluating Law Enforcement Evidence Ploys when Confessions are False: Mock Juror Perceptions of Deception and Coercion" (with Jennifer A. Bienhoff, Krista D. Forrest & Brad J. Stastny) and "Evaluating Evidence Ploys: The Role of Ploy Type in Perceptions of Deception and Coercion" (with Brad Stastny, Krista Forrest & Jennifer Bienhoff). American Psychology-Law Society Conference. St. Petersburg, FL. March, 2006.

"Police Interrogation and False Confessions: Best Practice Guidelines." Wisconsin Criminal Justice Study Commission. Milwaukee, Wisconsin. February, 2006.

"Bringing Reliability Back In: False Confessions and Legal Safeguards in the Twenty-First Century." University of San Francisco School of Law. Faculty Colloquium. January, 2006.

- 2005 "Preventing Wrongful Convictions: Re-Examining Fundamental Principles of Criminal Law to Protect the Innocent" (with Steve Drizin). University of Wisconsin Law School. Conference on Wrongful Convictions. November, 2005.

"Reforming Criminal Interrogation: Legal Solutions." University of Chicago Law School. November, 2005.

"Bringing Reliability Back In: False Confessions and Legal Safeguards." Seattle University Law School. Faculty Colloquium. November, 2005.

"Police Interrogation and the American Adversary System." Washington University School of Law. Faculty Colloquium. St. Louis, Missouri. October, 2005.

"Police Interrogation and the American Process of Justice." Loyola University School of Law. Faculty Colloquium. Los Angeles, CA. September, 2005.

"The Social Psychology and Consequences of Police-Induced False Confessions." Northern California Innocence Project. Santa Clara, CA. July, 2005.

"Re-Thinking the Study of Wrongful Conviction." Law and Society Association Conference. Las Vegas, NV. June, 2005

"Beyond CSI: Psychology, Crime and Justice." University of California, Irvine. The UCI Think Forum Series. May, 2005.

"True, False, and Suspicious Confessions: Research and Testimony on Interrogations and Confessions (with Mark Costanzo). Symposium on Applied Social Psychology. Claremont McKenna College. Claremont, CA. April, 2005.

"Proven False Confessions: What They Tell Us About Police Interrogations." American Psychology Law Society Conference. San Diego, CA. March, 2005.

"Teaching Law and Society in Undergraduate Programs." West Coast Law and Society Retreat. University of California, Berkeley. March, 2005.

"The Psychology of Police Interrogation and False Confessions." California Attorneys for Criminal Justice/California Public Defenders Association Case Defense Seminar Program. Monterey, CA. February, 2005.

"The Evidentiary Aspects of Wrongful Convictions." The Association of American Law Schools Annual Conference. San Francisco, CA. January, 2005.

2004 "Police Interrogation and False Confessions." Northern California Innocence Project. University of Santa Clara. Santa Clara, CA. November, 2004.

"Police Interrogation, Psychological Coercion and False Confessions." Distinguished Faculty Scholar Lecture. University of Pittsburgh, School of Law. November, 2004

"Psychological Coercion and Unreliable Confessions" (with Richard Ofshe). American Society of Criminology Conference. Nashville, TN. November, 2004.

"The Psychology of Police Interrogation and False Confessions: What You Need to Know." Solano County Bar Association. Fairfield, CA. November, 2004.

"Police Interrogation and False Confessions." Los Angeles County Bar Association. Los Angeles, CA. November, 2004.

"Police Interrogation and Unreliable Statements: Thinking about the James Tucker Case." Northern California Innocence Project. Golden Gate University School of Law. San Francisco, CA. September, 2004.

"Police Interrogation, Psychological Coercion and False Confessions." National Defender Investigation Association Western Regional Conference. Redondo Beach, CA. September, 2004.

"The Search for Truth." 2004 Northern District of California Judicial Conference, Ninth Circuit. Santa Cruz, CA. May, 2004.

"Interrogation, Confession and Innocence." Innocence Project, Benjamin N. Cardozo Law School. New York, N.Y. May, 2004.

"Protecting Human Subjects vs. Preserving Social Research." University of California, Berkeley, School of Law. Berkeley, CA. April, 2004.

"Police Interrogation and Confessions." Santa Clara County Public Defender's Office. San Jose, CA. March, 2004.

"Police Interrogation: A Study in Deception." San Mateo County Private Defenders Program. Burlingame, CA. January, 2004.

2003 "Confessions, Admission, and False Statements." California Attorneys for Criminal Justice Conference. San Francisco, CA. December, 2003.

"Procedures for Interrogation and Confession." The University of California, Irvine. Conference on Science and the Law of Evidence. November, 2003.

"Confessions and Coercion." Habeas Corpus Resource Center Conference. San Francisco, CA. November, 2003.

"Understanding Police Interrogation, Coercion and Confessions." San Francisco Public Defenders' Office. San Francisco, CA. October, 2003.

"Videotaping Interrogations: Does it Enhance the Jury's Ability to Distinguish True and False Confessions?" (with Saul Kassin, C. Crocker and Lindsay Holland). Psychology & Law International Interdisciplinary Conference. Edinburgh, Scotland. July, 2003.

- "Exploding the Myths of False Confession: Lessons from the Central Park Jogger Case" (with Steve Drizin). The Law and Society Association Conference. Pittsburgh, PA. June, 2003.
- "Analyzing Confessions and Their Consequences." The Advanced Judicial Academy for Illinois Judges." University of Illinois. Champaign, Illinois. June, 2003
- "The Social Psychology of Police Interrogation and False Confession." San Diego Psychology-Law Society. San Diego, CA. May, 2003.
- "The Psychology of Police Interrogation and False Confession." The National Judicial Institute. Victoria, British Columbia. May, 2003.
- "The Psychology of Police Interrogation, Coercion and False Confession." Full day training course." Miami Beach Police Department. Miami Beach, FLA. February, 2003
- "False Statements." California Attorneys for Criminal Justice/California Public Defenders Association Case Defense Seminar Program. Monterey, CA. February, 2003.
- 2002 "The Psychology of Police Interrogation and False Confession." National Judicial Institute. Judicial Safeguards for the Prevention of Wrongful Convictions Seminar. Ottawa, Ontario. Canada. December, 2002.
- "The Consequences of False Confessions Revisited in the DNA Age" (with Steve Drizin). The American Society of Criminology Conference. Chicago, IL. November, 2002.
- "Influence, Persuasion and Compliance: The Psychology of Police Interrogation and Confession Evidence." University of California, San Diego. Department of Psychology. Faculty Colloquium. November, 2002.
- "Studying Police Interrogation and Confessions." Long Beach Police Department. Long Beach, CA. November, 2002.
- "The Psychology of Interrogation, Coercion and Police-Induced False Confession." California Public Defenders Association Conference. Rohnert Park, CA. August, 2002
- "The Psychology of Police Interrogation and False Confession." Three day training course for investigators at the Broward County Sheriff's Office. Ft. Lauderdale, Florida. July, 2002.
- "False Confessions." Spokane Criminal Defense Attorneys. Spokane, WA. June, 2002.
- "Thinking About Miscarriages of Justice." The Law and Society Association Conference. Vancouver, Canada. May, 2002.
- "Police Interrogation, False Confessions and Miscarriages of Justice." California State University, Northridge. Department of Sociology. Faculty Colloquium. May, 2002.

"Public Perceptions of Interrogation Tactics in Criminal Setting" (with Jodi Quas and Brianne Beck). The Western Psychological Association Conference. Irvine, CA. April, 2002.

The Psychology of Police Interrogation and False Confessions." Invited Lecture to Military Prosecutors as part of the "Prosecuting Complex Litigation" Course Seminar. Naval Justice School. San Diego, CA. April, 2002.

"Video-taping, Police-Induced False Confessions and Interrogation Reform: Defining the Problems, Finding the Solutions." National Innocence Network Conference, California Western School of Law. San Diego, CA. January, 2002.

2001 "Police Interrogation and False Confessions." Annual Trial Defense Service Conference. United States Army. Las Vegas, Nevada. November, 2001.

"Analyzing False Confession Cases: How to Know Them When You See Them; What to Do When You Get Them." The Federal Defenders Program and the Illinois Association of Criminal Defense Lawyers Conference. Chicago, IL. October, 2001.

"How Police Induce False Confessions." Wisconsin Public Defender Conference. Milwaukee, WI. October, 2001.

"Influence, Coercion and Confession: Connecting Scholarly Research and Courtroom Testimony." The American Psychological Association Conference. San Francisco, CA. August, 2001.

"Investigating and Correcting Official Misconduct: Preliminary Lessons from the Rampart Scandal" (with Bill Thompson and Paul Kaplan). The Society for the Study of Social Problems Conference. Anaheim, CA. August, 2001.

"Police Interrogation, Coercion and False Confessions: Exposing Police Misconduct Inside the Interrogation Room and Exonerating the Innocent." The National Association of Criminal Defense Attorneys Conference. Minneapolis, MN. August, 2001.

"Police Interrogation Techniques and False Confessions." New Mexico Criminal Defense Lawyers Association Seminar. Albuquerque, NM. July, 2001.

"Police Interrogation, Coercion and False Confessions." Los Angeles Public Defender's Office. Los Angeles, CA. June, 2001.

"Thinking Critically About False Memories, False Confessions and False Accusations: Past, Present and Future." University of California, Irvine. Students for Science and Skepticism. May, 2001.

"Police Interrogation, Coercive Influence Techniques, and False Confessions." Western Circuit

Workshop, United States Air Force. Travis Air Force Base. Sacramento, CA. March, 2001.

"Proving Your Client's Confession is False or Coerced." Capital Case Defense Seminar. California Attorneys for Criminal Justice and the California Public Defenders Association. Monterey, California. February, 2001.

"False Confessions." Benjamin N. Cardozo School of Law, Innocence Project Lecture Series. New York City, N.Y. January, 2001.

2000 "Questioning the Relevance of *Miranda* in the Twenty-First Century." University of Michigan, School of Law. Conference on *Miranda* After *Dickerson*: The Future of Confession Law. Ann Arbor, MI. November, 2000.

"Studying Miscarriages of Justice in the Age of DNA, Video Technology and Death Row Exonerations: Understanding and Solving the Problem." Distinguished Faculty Lecture. University of California, Irvine. November, 2000.

"Police Misconduct Inside the Interrogation Room" and "Police-Induced False Confessions, Wrongful Deprivations of Liberty, and Miscarriages of Justice. The American Society of Criminology Conference. San Francisco, CA. November, 2000.

"Confessions: Creating New Approaches to Excluding False, Coerced and Unlawfully Obtained Statements." San Diego County Public Defenders' Office. November, 2000.

"The False Confession." Orange County Public Defender's Training Seminar. Santa Ana, California. November, 2000.

"Miscarriages of Justice in the 21st Century: Coercion, False Confessions and the Wrongful Conviction of the Innocent." Marian Miner Cook Athenaeum Distinguished Lecture. Claremont McKenna College. Claremont, CA. September, 2000.

"Interviewing/Interrogation." Full day Training Session. Cyprus Police Training Program. Ministry of Justice and Public Order of the Republic of Cyprus. Nicosia, Cyprus. September, 2000.

"Psychological Research and Wrongful Convictions: Influence, Suggestion and Coercion." The American Psychological Association Conference. Washington, D.C. August, 2000.

"Obtaining Truthful Confessions, Avoiding Coerced and/or False Confessions." Training Seminar. Law Enforcement Coordinating Committee for the Fifth Circuit. San Antonio, TX. July, 2000.

"Going to a Different Ivory Tower." Association of American Law Schools Mid-Year Conference on Criminal Justice. Washington, D.C. June, 2000.

"Police Interrogation Methods, Coercion, and False Confessions." West Virginia Public Defender Conference. Davis, West Virginia. June, 2000

"Police-Induced False Confessions." The Mississippi Judicial College, University of Mississippi. Tunica, Mississippi. May, 2000.

"Coercive Interrogation and False Confessions: Reflections on the Wenatchee Cases." The University of Washington, Washington Law School Foundation. Seattle, WA. April, 2000.

"The Legal Consequences of False Confessions." The American Psychology-Law Society Conference. New Orleans, LA. March, 2000.

"Suggestive Interrogation and False Confessions." University of California, Irvine. Miscarriages of Justice Conference. School of Social Ecology. March, 2000.

"Interrogations and Confessions: Implications for Attorneys and Psychologists." Half-day course for prosecutors, defense attorneys and psychologists. Sponsored by Goebel & Vigen: Clinical, Forensic & Organizational Psychology. Shreveport, Louisiana. March, 2000.

"False Confession Theory and Application." Central Circuit Defense Team Conference, United States Air Force. Randolph Air Force Base. San Antonio, Texas. January, 2000.

"Police Interrogation, Coercive Influence Techniques, and False Confessions." Federal Defenders of San Diego Conference. San Diego, CA. January, 2000.

1999 "Coerced and False Confessions." Indiana Public Defender Council Conference. Indianapolis, Indiana. December, 1999.

"False Confessions: Causes, Consequences, and Solutions." The American Society of Criminology Conference. Toronto, Canada. November, 1999.

"Coerced Confessions." The Colorado State Public Defenders' Association Conference. Crested Butte, CO. October, 1999.

"Video-taping Interrogations and Confessions." Testimony before the Illinois House of Representatives. Task Force on Videotaping Interrogation and Confessions. Chicago, IL. September, 1999.

"Litigating a False Confession Case." National Seminar on Mental Illness and the Criminal Law. The Federal Defender Training Group. Washington, D.C. June, 1999.

"Adapting to *Miranda*: Modern Interrogators' Strategies for Dealing with the Obstacles Posed By *Miranda*." University of Southern California School of Law. Faculty Colloquium. March, 1999.

- "Analyzing Coerced and/or False Confessions." National Association of Criminal Defense Attorneys Conference. St. Louis, Missouri. March, 1999.
- "False Confessions: Inside the Interrogation Room from Coercion to Deception." Criminal Defense Attorneys of Michigan Conference. Detroit, Michigan. March, 1999.
- "The Social Psychology of Police Interrogation and False Confession." University of California, Santa Barbara. Department of Psychology. Social Psychology Symposium. January, 1999.
- "The Social Psychology of Police Interrogation and False Confession." University of California, Irvine. Department of Psychology and Social Behavior. Faculty Colloquium. January, 1999.
- 1998 "The Regulation and Memorialization of Confessions." Northwestern University School of Law. Conference on Wrongful Convictions and the Death Penalty. November, 1998.
- "Science in the Courtroom." The American Society of Criminology Conference. Washington, D.C. November, 1998.
- "Analyzing Coerced Confession Cases." Arizona Attorneys for Criminal Justice Conference. Tucson, AZ. September, 1998.
- "The Social Psychology of False Confessions." American Sociological Association Conference. San Francisco, CA. August, 1998.
- "The Psychology of Confession Evidence: From the Ivory Tower to the Realities of Practice." The Law and Society Association Conference. Aspen, CO. June, 1998.
- "*Miranda* and the Adversary System: Lessons for Japan." University of California, Berkeley School of Law. Center for the Study of Law and Society. Conference on Japanese Criminal Justice. April, 1998.
- "The Truth about False Confessions: Understanding Their Causes and Consequences." Wayne State University. Center for Legal Studies. Faculty Colloquium. Detroit, MI. April, 1998.
- "The Truth About False Confessions: What Criminologists Should Know." The Academy of Criminal Justice Sciences Conference. Albuquerque, NM. March, 1998.
- "Coerced Statements, False Confessions and Creating Memory, Parts I and II." The Federal Judicial Center Conference. San Diego, CA and Atlanta, GA. March, 1998.
- "The Causes and Consequences of False Confessions." University of Washington, Seattle. Department of Sociology. Faculty Colloquium. January, 1998.

- 1997 "Police Interrogation, False Confessions and Miscarriages of Justice." The University of California, Irvine School of Social Ecology. Newport Beach, CA. November, 1997.
- "Police Interrogation, False Confessions and Expert Witnesses." American Society of Criminology Conference. San Diego, CA. November, 1997.
- "The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation" (with Richard Ofshe). Law and Society Association Conference. St. Louis, Missouri. May, 1997.
- "The Decision to Confess." The University of Denver College of Law. Symposium on Coercion, Exploitation and the Law. Denver, CO. March, 1997.
- "Police Interrogation, False Confessions, and Expert Witnessing." University of Colorado, Boulder. Department of Sociology, Graduate Student Forum. March, 1997.
- "Explaining False Confessions." The University of Colorado, Boulder School of Law. Faculty Colloquium. Boulder, CO. February, 1997.
- "False Confessions and Miscarriages of Justice *Today*." Conference sponsored by The Justice Committee. Salem, MA. January, 1997.
- 1996 "Coerced False Confessions." American Society of Criminology Conference. Chicago, Illinois. November, 1996.
- "False Confessions: Documenting, Explaining and Preventing Miscarriages of Justice." University of California, Irvine. Department of Criminology, Law and Society. Faculty Colloquium. November, 1996.
- "Is *Miranda* Enough or Should We Video-tape All Confessions?" Seton Hall University Law School. Newark, NJ. October, 1996.
- "The Principles and Practices of Criminal Law in the United States." Tsingua University School of Law. Beijing, China. October, 1996.
- "Police Interrogation in America." Chinese People's Public Security University. Department of Criminology. Beijing, China. October, 1996.
- "Police Interrogation and False Confessions in America." Supreme People's Procuratorate of the People's Republic of China." Beijing, China. October, 1996
- "Deception by Sociologists." American Sociological Association Conference. New York, NY. August, 1996.
- "Secrecy and the Interrogation of Suspects." University of Colorado, Boulder. Conference on

- George Simmel's Actual and Potential Impact on Contemporary Society. April, 1996.
- "Between Reality and Metaphor: A Friendly Critique of *The Myth of Repressed Memory*." Pacific Sociological Association Conference. Seattle, WA. March, 1996.
- 1995 "The Context and Outcome of Police Interrogation: A Quantitative Analysis." American Society of Criminology Conference. Boston, MA. November, 1995.
- "The Social and Legal Construction of Recovered Memories." University of Delaware at Newark, Department of Legal Studies. November, 1995.
- "False Confessions and Miscarriages of Justice: A Preliminary Study" and "The Mythology and Sociology of Recovered Memories." Northern Arizona University, Departments of Sociology and Criminal Justice. Flagstaff, AZ. October, 1995.
- "The Social Meaning of the O.J. Simpson Case." University of Colorado, Boulder. Department of Sociology, Diversity Forum. October, 1995.
- "Interrogation and Surveillance: Changing Trends in Police Detection and Social Control." American Sociological Association Conference. Washington, D.C. August, 1995.
- "False Memory, False Confession: When Police Interrogations Go Wrong." Law & Society Association Conference. Toronto, Canada. June, 1995.
- "Trial and Tribulations: Courts, Ethnography, and the Need for an Evidentiary Privilege for Academic Researchers." The Pacific Sociological Association Conference. San Francisco, CA. April, 1995.
- "Police Interrogation: Empirical Observations, Legal Questions, Ethical Dilemmas." University of Colorado, Boulder School of Law. Faculty Colloquium. February, 1995.
- "Violence, Civility and Social Change: The Case of American Police Interrogation in the Twentieth Century." University of Minnesota, Minneapolis. Department of Sociology. Faculty Colloquium. January, 1995.
- 1994 "Westville Revisited: A Contemporary Analysis of Order, Legality, and Crime Detection." American Society of Criminology Conference. Miami, FLA, November, 1994.
- "The Sociologist as Detective: Reflections on the Methodology and Ethics of Fieldwork Inside the Police Interrogation Room." University of California, Los Angeles. Department of Sociology. October, 1994.
- "The Historical Sociology of the Third Degree in America: Analyzing the Rise and Fall of a Violent Social Practice." American Sociological Association Conference. Los Angeles, CA. August, 1994.

- "The Impact of *Miranda* Revisited: Analyzing an Old Question with New Data." Law & Society Association Conference. Phoenix, AZ, June, 1994.
- "Police Interrogation as a Confidence Game." Western Society of Criminology Conference. Berkeley, CA, February, 1994.
- 1993 "Inside the Interrogation Room: A Participant Observation Study of Custodial Police Questioning." American Society of Criminology Conference. Phoenix, AZ, October, 1993.
- "How to More Effectively Elicit Confessions." Presentation to the Hayward Police, CA Department, Criminal Investigation Division. August, 1993.
- "Violence, Civility and Institutional Change: The Case of American Police Interrogation." University of Colorado, Boulder. Department of Sociology. Faculty Colloquium. January, 1993.
- 1992 "Criminal Interrogation and Confessions Revisited: An Analysis and Critique of Inbau and Reid's Police Training Manuals and Courses." American Society of Criminology Conference. New Orleans, LA, November, 1992.
- "Police Interrogation and Social Control." Law and Society Association Conference. Philadelphia, PA, May, 1992.
- 1991 "From Coercion to Deception: An Empirical Analysis of the Changing Nature of Police Interrogation in America." American Society of Criminology Conference. San Francisco, CA. November, 1991.
- "The Ethics of Deceptive Interrogation" (with Jerome H. Skolnick). University of California, Berkeley, School of Law. Faculty Colloquium. September, 1991.
- "The Social Psychology of Coerced-Internalized False Confessions" (with Richard J. Ofshe). American Sociological Association Conference. Cincinnati, OH, August, 1991.
- "Research on Police Interrogation: Some Thoughts and Questions About the Permissible Limits of Deception." University of California, Berkeley. Jurisprudence and Social Policy Program, Friday Forum. May, 1991.

LEGISLATIVE, JUDICIAL AND EXECUTIVE TESTIMONY

New York State Justice Task Force on Wrongful Convictions (2011)
 Texas Court of Criminal Appeals. Criminal Justice Integrity Unit (2009)
 California Commission on the Fair Administration of Justice (2006)
 Wisconsin Criminal Justice Study Commission (2006)
 The Illinois House of Representatives (1999)

GRANTS AND FELLOWSHIPS

Stanford University, Center for the Advanced Study in the Behavioral Sciences (2014-2015)
Guggenheim Foundation (2011-2012) Open Society Institute (2004-2005, 2008)
National Science Foundation (2005-2006) Univ. of California, Irvine (1998-2002)
MacArthur Foundation (1992-1993) Univ. of Colorado, Boulder (1994-1996)

COURSES TAUGHT

LAW

Criminal Procedure
Criminal Law
Wrongful Convictions
White Collar Crime

GRADUATE

Miscarriages of Justice
Police Organization and Behavior
Police Scandal and Misconduct
Topics in Criminology

UNDERGRADUATE

Introduction to Criminology, Law and Society
Interrogation, Confession and the Law
Miscarriages of Justice
Influence, Memory and the Law
Topics in Criminology
Criminal Justice in the United States: An Introduction
American Criminal Justice System: Advanced Overview
Critical Thinking
Sociology of Law
Police, Law and Society
Police Interrogation and False Confessions
Sociology of White-Collar Crime

POLICE INTERROGATION TRAINING (GIVEN)

- 2/03 Taught 8 hour training course on interrogation methods, psychological coercion and false confessions for felony investigators in the Miami Beach Police Department. Miami Beach, FL.
- 7/02 Taught three 8 hour training courses on interrogation methods, psychological coercion and false confessions for felony investigators in the Broward County Sheriff's Office. Ft. Lauderdale, FL.
- 9/00 Taught a full-day training session on interview and interrogation to the Cyprus Police as part of their training program in the Ministry of Justice and Public Order. Republic of Cyprus. Nicosia, Cyprus.
- 7/00 Taught training seminar on obtaining truthful confessions and avoiding coerced and/or false confessions to the Law Enforcement Coordinating Committee for the Fifth Circuit. San Antonio, TX.

POLICE INTERROGATION TRAINING (RECEIVED)

- 3/93 Attended and participated in one week advanced interrogation training course taught by

the Federal Law Enforcement Training Center (FLETC). Glynco, Georgia.
Received certificate.

- 1/92 Attended and participated in one week interrogation training course taught by the San Mateo Community College, Administration of Criminal Justice Department. San Mateo, California. Received certificate.
- 11/91 Attended and participated in two day advanced interrogation training course taught by Reid & Associates. San Francisco, California. Received certificate.
- 3/91 Attended and participated in three day introductory interrogation training course taught by Reid & Associates. Los Angeles, California. Received certificate.
- 12/90 Attended one-day in-house interrogation training course for Sergeants. Criminal Investigation Division, Oakland Police Department. Alameda, California.

OTHER LAW ENFORCEMENT RELATED SERVICE WORK

- 10/01-6/03 Member, Academic Education and Action Research Advisory Committee to the Chief of Police, Long Beach Police Department. Long Beach, CA.
- 5/84-8/84 Voluntary Internship. San Francisco District Attorney's Office, Consumer Fraud Division. San Francisco, CA.

PROFESSIONAL ACTIVITIES (SELECTIVE)

Editorial Board, *Behavioral Sciences and the Law* (2017-Present)
Editorial Board, *Law and Society Review* (1998-2002)

Peer Reviewer, Journals:

The Journal of Applied Research in Memory and Cognition (2017)
Behavioral Sciences & the Law (2014, 2017)
The American Psychologist (2016)
Law & Society Review (1996-2000; 2002-2003; 2012, 2014, 2016)
Stanford Law Review (2015)
Philosophy, Science and Law (2014)
Journal of the American Academy of Psychiatry and the Law (2014)
Current Directions in Psychological Science (2014)
Psychology, Public Policy and Law (2013-2014)
Law & Human Behavior (2005-2006, 2008-2009; 2012-2013)
Justice Quarterly (1998, 2000, 2005, 2009, 2013)
Sociological Quarterly (1998, 2013)
Law & Social Inquiry (1997-1998; 2001; 2005; 2013)
American Journal of Criminal Justice (2013)

Journal of Law and Courts (2012)
British Journal of Sociology (2012)
Basic and Applied Social Psychology (2011)
Psychology, Crime and Law (2009)
Regulation and Governance (2009)
Journal of Criminal Justice (2000, 2006, 2008)
Criminology and Public Policy (2007)
Legal and Criminological Psychology (2006)
Journal of Law, Economics & Organization (2005)
Psychological Science (2004)
Psychological Science in the Public Interest (2004)
Law, Culture and the Humanities (2004)
Queen's Law Journal (2004)
Criminal Justice Ethics (2003)
Criminology (2001-2002)
Research in Crime & Delinquency (1995, 1999)
Sociological Forum (1998-1999)
Journal of Criminal Law and Criminology (1996)
Studies in Law, Politics and Society (1996)
Social Problems (1996)
American Journal of Sociology (1995)

Peer Reviewer, Book Manuscripts:

<i>New York University Press</i> (2006-2007, 2011-2012, 2015, 2017)	<i>Sunbury Press</i> (2017)
<i>University of California Press</i> (2014, 2017)	<i>Ankerwycke Books</i> (2016)
<i>Hope and Life Press Books</i> (2017)	<i>Lexington Books</i> (2011)
<i>Oxford University Press</i> (2013-2014)	<i>University of Arizona Press</i> (2008) \ <i>Cornell</i>
<i>Princeton University Press</i> (2008)	<i>University of Michigan Press</i> (2005)
<i>University Press</i> (2006)	<i>University of Chicago Press</i> (2004)
<i>AltaMira Press</i> (2004)	<i>Aspen Publishers, Inc.</i> (2000)
<i>Academic Press</i> (2003)	
<i>Northeastern University Press</i> (1999)	

Tenure and Promotion Reviews:

University of California, Riverside, Department of Psychology (2016)
 University of Pittsburgh, School of Law (2015)
 University of North Carolina, Greensboro, Department of Sociology (2015)
 Roger Williams University, Department of Psychology (2015)
 Emory University, Department of Psychology (2014)
 Arizona State University, School of Criminology and Criminal Justice (2014)
 University of Washington, School of Law (2013)
 John Jay College of Criminal Justice (New York), Department of Psychology (2010)
 UC Hastings College of Law, San Francisco, CA (2010)

University of Nevada, Reno, Department of Psychology (2004)
University of California, Berkeley, School of Law (2004)
Lafayette College (Pennsylvania), Department of Sociology (2003)
Northwestern University School of Law (2002)
Franklin and Marshall College (Pennsylvania), Department of Sociology (2001)

PROFESSIONAL MEMBERSHIPS

American Law Institute	American Society of Criminology
American Psychological Association	American Psychology-Law Society
Association for Psychological Science	Law and Society Association
Academy of Criminal Justice Sciences	Association of American Law Schools
Society for the Study of Social Problems	The American Sociological Association
Pacific Sociological Association	Western Psychological Association
Western Society of Criminology	International Investigative Interviewing Research Group

CONSULTATIONS (SELECTIVE)

Law Enforcement

State of California, Department of Justice, San Diego, CA (2002-2004; 2013)
Maricopa County Sheriff's Office, Phoenix, AZ (2011)
Riverside County Sheriff's Association, Riverside, CA (2006)
Solicitor's Office, State of South Carolina, Seventh Judicial Circuit (2005)
Wyoming Association of Correctional Employees (2005)
Miami Beach Police Department, Miami Beach, FLA (2003)
Broward County Sheriff's Office, Ft. Lauderdale, FLA (2002)

Legislative, Judicial and Executive Organizations

New York State Justice Task Force on Wrongful Convictions (2011)
Texas Criminal Justice Integrity Unit (2009)
California Commission on the Fair Administration of Justice (2006)
Wisconsin Criminal Justice Study Commission (2006)
Illinois State Legislature, Task Force on Recording of Interrogations (1999-2000)

Innocence Projects and Universities (Selective)

Innocence Project, Benjamin N. Cardozo Law School, New York, NY (1999-2000, 2009; 2012; 2017)
The Exoneration Initiative (2015-Present)
MacArthur Justice Center, Northwestern University Law School (2009-2011; 2013; 2015-Present)
Northern California Innocence Project, San Francisco, CA (2004-2005; 2014-Present)
Minnesota Innocence Project (2011-2016)

University of Oklahoma Innocence Project (2012-2015)
 Midwest Innocence Project (2014)
 Pennsylvania Innocence Project (2014)
 University of Wisconsin Innocence Project (2006; 2011-2014)
 PACE University Law School Post-Conviction Criminal Defense Clinic (2010-2013)
 University of California Davis School of Law, Immigration Clinic (2011-2012)
 American University, Preventing Wrongful Convictions Project, Washington D.C. (2011-2013)
 Centurion Ministries, Princeton, NJ (1998-2011)
 Center for Wrongful Conviction, Northwestern University School of Law (2011)
 George Washington University, Preventing Wrongful Convictions Project (2010-2011)
 Maryland Innocence Project (2008-2010)
 Downstate Illinois Innocence Project, University of Illinois (2008-2010)
 Ohio Innocence Project (2007-2010)
 Bluhm Legal Clinic, Northwestern University (2008-2010)
 Innocence Project Northwest, University of Washington (1998-1999; 2005-2006; 2008-2010)
 MacArthur Justice Center, University of Chicago Law School (1999; 2005-2006)
 Innocence Project, Osgoode Hall Law School, York University. Toronto, Ontario (2000)

Law Firms (Selective)

Arnold & Porter Kaye Scholer LLP, New York, New York (2017)
 Innocence Legal Team, Walnut Creek, CA (2011-2012; 2015-Present)
 Neufeld, Scheck and Brustin, LLP, New York, NY (2013-2014; 2016-Present)
 Cuomo, LLC, New York, New York (2016-Present)
 Loevy & Loevy, LLP, Chicago, IL (2012-2013; 2015-Present)
 Skadden, Arps, Slate, Meagher & Flom LLP, Washington, D.C. (2014-Present)
 Squire, Patton and Boggs LLP, New York, NY (2009-Present)
 Drinker, Biddle & Reath LLP, Princeton, NJ (2011-Present)
 Riordan & Horgan, San Francisco, CA (2014-Present)
 The Valorem Group, Chicago, IL (2015-Present)
 Sideman Bancroft LLP, San Francisco (2015-2016)
 Venable LLP, Washington D.C. (2007-2016)
 Carpenter, Lipps & Leland LLP, Columbus, OH (2016)
 Arent Fox, LLP, Los Angeles, CA (2015-2016)
 Rudolf, Widenhouse and Fialko, Charlotte, NC (2015)
 Kirkland & Ellis, LLP, Washington, DC (2013-2014)
 Bingham McCutchen LLP, Boston, MA (2005-2014)
 Beldock, Levine & Hoffman, LLP, New York, NY (2004-2014)
 Sidley Austin LLP, Chicago, IL (2009-2014)
 Goodwin Procter LLP, Boston, MA (2012-2013)
 Morgan, Lewis and Bockius LLP, Chicago, IL (2012-2013)
 Williams & O'Connellly LLP, Washington, D.C. (2011-2012)
 Reed Smith, New York, NY (2011-2012)
 Fredrikson & Byron, P.A., Minneapolis, MN (2009-2012)
 McGwire Woods LLP, Richmond, VA (2011)

Lane Powell, Seattle, WA (2008-2010)
Paul, Weiss, Rifkind, Wharton & Garrison LLP (2009-2010)
Sidley & Austin LLP, San Francisco, CA (2009)
Weil, Gotshal & Manges LLP, New York, N.Y. (2009)
Kirkland & Ellis LLP, New York, N.Y. (2008-2009)
Cochran, Neufeld, and Scheck LLP, New York, N.Y. (2003-2009)
Holland & Knight LLP, New York, NY (2004-2005, 2007-2009)
Goodwin Proctor LLP, New York, N.Y. (2008-2009)
Covington & Burling LLP, Washington, D.C. (2006)
O'Melveny & Myers LLP Los Angeles, CA (2003, 2005-2006)
Kelley, Drye & Warren LLP, New York (2006)
Joseph, Greenwald & Laake, PA, Greenbelt, Maryland (2005-2006)
Tamburello & Hanlon, San Francisco, CA (2005)
Hallinan, Wine & Sabelli, San Francisco, CA (2003)
Jenner & Block, Chicago, IL (2000-2001)
Jackson Walker LLP, Houston, TX (2000)
Day, Berry and Howard LLP, Hartford, CT (1999-2000)

Other (Selective)

Original Productions, LLC (2016)
Government of Mexico (2014)
NAACP Legal Defense Fund (2007-2009)
Good Morning America. ABC, New York, New York (2009)
Equal Justice Institute, Montgomery. ALA (2001-2004)
Beverly Monroe Coalition for Justice, Richmond, VA (1997-2003)
Sixty Minutes, CBS, New York, NY (2003)

References Available on Request

Dr. Richard A. Leo, Ph.D., J.D.
JUSTICE RESEARCH & CONSULTING, INC.
15 Ashbury Terrace
San Francisco, CA 94117

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(415) 422-6433 (FAX)
Email: rleo@usfca.edu

August 1, 2017

Tricia Blanchette
Attorney at Law
P.O. Box 12725
Columbia, S.C. 29211



Re: *State of South Carolina v. James Irby*

Dear Ms. Blanchette:

This report is per your request in the above-referenced case of *State of South Carolina v. James Irby*. I was retained in 2008 by Mr. Irby's then-attorney, Christopher Brough, to serve as a consultant on Mr. Irby's criminal case and to possibly testify at his trial as an expert witness on the subjects of police interviewing and interrogation, psychological coercion and false confessions. After reviewing the materials in Mr. Irby's case, I provided my opinions to Mr. Brough and indicated that I believed that my expertise could be helpful to Mr. Irby and that I would be willing to testify at his trial. Mr. Brough did not call me to testify at Mr. Irby's trial, and my recollection is that he told me after the trial that the reason was that Mr. Irby's family could not afford my fees. Had I known that Mr. Irby's family could not have afforded my fees, I would have worked with them to negotiate a discounted rate. This report expresses the opinions would have testified to at Mr. Irby's trial had Mr. Brough called me as an expert witness at the time.

I. Qualifications

I am the Hamill Family Professor of Law and Psychology at the University of San Francisco, and formerly an Associate Professor of Psychology and an Associate Professor of Criminology at the University of California, Irvine. My areas of research, training, and specialization include social psychology, criminology, sociology, and law. For more than two decades, I have conducted extensive empirical research on police interrogation practices, the psychology of interrogation and confessions, psychological coercion, police-induced false confessions, and erroneous convictions. In 1992 and 1993, I spent nine months doing field research inside the Oakland Police Department, which included sitting in on and contemporaneously observing one-hundred twenty-two (122) felony interrogations; in 1993, I

also observed sixty (60) fully videotaped interrogations in the Vallejo and Hayward Police Departments in northern California. Since then, I have analyzed thousands of cases involving interrogations and confessions; I have researched, written, and published numerous peer-reviewed articles on these subjects in scientific and legal journals; and I have written several books on these subjects, including *Police Interrogation and American Justice* (Harvard University Press, 2008) and *Confessions of Guilt: From Torture to Miranda and Beyond* (Oxford University Press, 2012).

I am regarded as a national and leading expert on these topics, and I have won numerous individual and career achievement awards for my scholarship and publications. My scholarship has often been featured in the news media and cited by appellate courts, including the United States Supreme Court, on multiple occasions. To date, I have consulted with criminal and civil attorneys on more than nineteen-hundred (1,900) cases involving disputed interrogations and/or confessions, and I have been qualified and testified as an expert witness three-hundred and twenty-three (330) times in state, federal and military courts in thirty-four (34) states and the District of Columbia, including in the State of South Carolina. I have given many lectures to judges, defense attorneys, prosecutors, and other criminal justice professionals, and I have taught interrogation training courses and/or given lectures to police departments in the United States, China, and the Republic of Cyprus. My qualifications are summarized in greater detail in my curriculum vitae, which is attached to this report.

II. Materials Reviewed

In conjunction with my preparation of this report, I have reviewed the following materials

- Video and Audio of Polygraph Interview/Interrogation of James Irby
- Transcript of Polygraph Interview/Interrogation of James Irby
- Video and Audio of Post-polygraph Interrogation of James Irby
- Transcript of Post-polygraph Interrogation of James Irby
- Police Reports
- Spartanburg County vs. Lillian Collins, Transcript of Record (July 30, 2008)
- State v. James Irby, Transcript Record (January 29, 2011)
- Trial transcript of *State v. James Irby* (November 18-19, 2012)

III. Case Specific Opinions

After reviewing the above case materials, it is my professional opinion that:

1) Detective Alridge's and Detective Morgan's pre-polygraph and post-polygraph interrogation of James Irby was guilt presumptive, accusatory, and theory-driven rather than evidence-driven. The interrogations were not structured to find the truth but, instead, to intentionally incriminate Mr. Irby by pressuring and persuading him to repeat back the alleged

victim's allegations, which Detective Alridge and Morgan assumed must be true but never sought to independently verify with actual evidence.

2) Detective Morgan used interrogation techniques and practices that are known to increase the risk of eliciting false and unreliable statements, admissions and/or confessions when misapplied to the innocent (i.e., *situational* risk factors). These included: lengthy interrogation, false evidence ploys, minimization, and implied promises of leniency (in exchange for a confession) and implied threats of harsher punishment (in the absence of a confession).

3) Detective Morgan's interrogations of James Irby was psychologically coercive: Detective Morgan used interrogation techniques that social science research has shown to be highly likely to cause a suspect to perceive that he or she has no choice but to comply with the interrogator's demands and/or requests, and that are known to increase the risk of eliciting involuntary statements, admissions and/or confessions.

4) Detective Morgan's psychologically coercive interrogation techniques moved Mr. Irby from denial to admission, and in the process increased the risk of eliciting a *coerced-compliant* false confession from him.

5) If I had been called at Mr. Irby's trial, I would have testified both generally and specifically. Generally, I would have testified about the counter-intuitive phenomena of police interrogation and false and unreliable confessions to police. I would describe the social science research on the social psychology of police interrogation; the techniques police are trained to use; the techniques that social science research shows they do use in practice; how and why these interrogation techniques are designed to work to move presumed guilty suspects from denial to admission; how and why they can lead to involuntary statements; how and why they can, and sometimes do, lead to false and unreliable confessions from the innocent; which techniques increase the risk of eliciting false and unreliable confessions and why; the different types of police-induced false confession; the problem of interrogation contamination and how it relates to police elicitation of false confessions; and the indicia, patterns and characteristics of false and unreliable confessions. I would have also testified specifically interrogation techniques and practices present in Mr. Irby's interrogation, why they are significant in light of the social science research, and how and why they may increase the risk of eliciting false and/or unreliable statements during police interrogation.

In the remainder of this report, I will first provide an overview of the relevant social science research on the psychology of police interrogation practices and techniques, police-induced false confessions, risk factors for false confession, and psychological coercion. I will then discuss these issues as they relate to my specific professional opinions about the trustworthiness of the investigation, interrogations and Mr. Irby's resulting confession statement.

IV. The Scientific Study of Police Interrogation and False Confessions

There is a well-established empirical field of research in the academic disciplines of psychology, criminology, and sociology on the subjects of police interrogation practices, psychological coercion, and false confessions. This research dates back to 1908; has been the subject of extensive publication (hundreds of academic journal articles, stand-alone books, and book chapters in edited volumes); has been subjected to peer review and testing; is based on recognized scientific principles, methods, and findings; and is generally accepted in the social scientific community. Significantly, numerous courts have held repeatedly that these principles, methods, and findings are generally accepted in the social science community and therefore accepted expert testimony in criminal and civil rights litigation.¹

This research has analyzed numerous police-induced false confessions and identified the personal and situational factors associated with, and believed to cause, false confessions.² The fact that police-induced false confessions can and do occur has been well-documented and is not disputed by anyone in the law enforcement or academic community. Indeed, leading police interrogation training manuals have, at least since 2001, contained entire chapters and sections on the problem of police-induced false confessions and what investigators need to know to better understand and avoid eliciting false confessions from innocent suspects.³ Social scientists have documented approximately four-hundred and fifty to five-hundred proven false confessions in

¹ Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & Hum. Behav. 3, 16 (2010) (noting that "false confessions tend to occur after long periods of time" and "sleep deprivation is historically one of the most potent methods used to ... extract confessions"); Gisli H. Gudjonsson et al., *Custodial Interrogation, False Confession and Individual Differences: A National Study Among Icelandic Youth*, 41 Personality & Individual Differences 49, 56 (2006) (finding that depressed mood is linked to a susceptibility to provide false confession to police); Brandon L. Garrett, *The Substance of False Confessions*, 62 Stan. L.Rev. 1051, 1087 (2010) ("The vast majority of these exonerees made statements in their interrogations that were contradicted by crime scene evidence, victim accounts, or other evidence known to police during their investigation."); Richard A. Leo, *False Confessions: Causes, Consequences, and Implications*, 37 J. Am. Acad. Psychiatry & L. 332, 337 (2009) ("Interrogators help create the false confession by pressuring the suspect to accept a particular account and by suggesting facts of the crime to him, thereby contaminating the suspect's post-admission narrative.... If the entire interrogation is captured on audio or video recording, then it may be possible to trace, step by step, how and when the interrogator implied or suggested the correct answers for the suspect to incorporate into his post-admission narrative."); Steven A. Drizin & Beth A. Colgan, *Let the Cameras Roll: Mandatory Videotaping of Interrogations Is the Solution to Illinois' Problem of False Confessions*, 32 Loy. U. Chi. L.J. 337, 339-41 (2001) (*accord*).

² See Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson, Richard A. Leo and Allison Redlich (2010). "Police-Induced Confessions: Risk Factors and Recommendations" in *Law and Human Behavior*, 34, 3-38; Richard A. Leo (2008), *POLICE INTERROGATION AND AMERICAN JUSTICE* (Harvard University Press); and Gisli Gudjonsson (2003), *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* (John Wiley & Sons Inc).

³ See, for example, See Fred Inbau, John Reid, Joseph Buckley and Brian Jayne (2001). *CRIMINAL INTERROGATION AND CONFESSIONS*, 4th Edition (Aspen Publishers, Inc.) at 411-448; and David Zulawski and Douglas Wicklander (2002). *PRACTICAL ASPECTS OF INTERVIEWING AND INTERROGATION*, 2nd Edition (CRC Press) at 73-104.

America since the early 1970s,⁴ but this is surely an underestimate and thus the tip of a much larger iceberg for several reasons. First, false confessions are difficult for researchers to discover because neither the state nor any organization keeps records of the interrogations producing them. Second, even when they are discovered, false confessions are notoriously hard to establish because of the factual and logical difficulties of proving the confessor's *absolute* innocence. As a result, Richard Ofshe and I coined the term "proven false confession" in 1998,⁵ showing that there are only four ways in which a disputed confession can be classified as proven beyond any doubt to be false:

- 1) When it can be objectively established that the suspect confessed to a crime that did not happen;
- 2) When it can be objectively established that it would have been physically impossible for the confessor to have committed the crime;
- 3) When the true perpetrator is identified and his guilt is objectively established; and/or
- 4) When scientific evidence dispositively establishes the confessor's innocence.

However, only a small number of cases involving a disputed confession will ever come with independent case evidence that allows the suspect to prove his innocence beyond dispute based on one of more of these four factors because doing so is akin to proving the negative. The documented number of proven false confessions in the scientific research literature is, therefore, a dramatic undercount of the actual false confessions that police have elicited in the United States in recent decades. There have almost certainly been thousands (if not tens or hundreds of thousands) more police-induced false confessions than researchers have been able to discover and classify as proven false. Indeed, in a survey of police that my colleagues and I published in 2007, police investigators themselves estimated that they elicited false confessions in 4.78% of their interrogations.⁶

⁴ The largest published study of proven false confessions to date is Steven Drizin and Richard A. Leo (2004). "The Problem of False Confessions in the Post-DNA World." *North Carolina Law Review*, 82, 891-1007. For a review of the literature documenting proven false confessions, see Richard A. Leo (2008), *POLICE INTERROGATION AND AMERICAN JUSTICE*. At that time, there were approximately two-hundred and fifty to three-hundred proven false confessions in the documented literature. Since 2004, Steve Drizin, Gillian Emmerich and I have collected an additional two-hundred proven false confessions that are the subject of an academic article we are currently drafting but have not yet submitted for publication.

⁵ Richard A. Leo and Richard Ofshe (1998). "The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation." *The Journal of Criminal Law and Criminology*. Vol. 88, No. 2. Pp. 429-496.

⁶ Saul Kassin, Richard Leo, Christian Meissner, Kimberly Richman, Lori Colwell, Amy-May Leach, and Dana La Fon (2007). "Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs," *Law and Human Behavior*, 31, 381-400.

The subject of police interrogation and false confessions is beyond common knowledge and highly counter-intuitive.⁷ Police detectives receive specialized training in psychological interrogation techniques; most people do not know what these techniques are or how the techniques are designed to work (*i.e.*, move a suspect from denial to admission). In addition, most people also do not know what psychological coercion is, why some techniques are regarded as psychologically coercive, and what their likely effects are. Moreover, most people do not know which interrogation techniques create a risk of eliciting false confessions or how and why the psychological process of police interrogation can, and sometimes does, lead suspects to falsely confess. This unfamiliarity causes most people to assume that virtually all confessions are true.

V. The Social Psychology of Police Interrogation⁸

Police interrogation is a cumulative, structured, and time-sequenced process in which detectives draw on an arsenal of psychological techniques in order to overcome a suspect's denials and elicit incriminating statements, admissions, and/or confessions. This is the sole purpose of custodial interrogation. To achieve this purpose, interrogators use techniques that seek to influence, persuade, manipulate, and deceive suspects into believing that their situation is hopeless and that their best interest lies in confessing.⁹ Sometimes, however, interrogators cross the line and employ techniques and methods of interrogation that are coercive and increase the likelihood of eliciting unreliable confessions or statements.

Contemporary American interrogation methods are structured to persuade a rational guilty person who knows he is guilty to rethink his initial decision to deny culpability and choose instead to confess. Police interrogators know that it is not in any suspect's rational self-interest to confess. They expect to encounter resistance and denials to their allegations, and they know that they must apply a certain amount of interpersonal pressure and persuasion to convince a reluctant suspect to confess. As a result, interrogators have, over the years, developed a set of

⁷ See Danielle Chojnacki, Michael Cicchini and Lawrence White (2008), "An Empirical Basis for the Admission of Expert Testimony on False Confessions," *Arizona State Law Journal*, 40, 1-45; Richard A. Leo and Brittany Liu (2009), "What Do Potential Jurors Know About Police Interrogation and False Confessions?" *Behavioral Sciences and the Law*, 27, 381-399; Linda Henkel, Kimberly Coffman, and Elizabeth Dailey (2008), "A Survey of People's Attitudes and Beliefs About False Confessions," *Behavioral Sciences and the Law*, 26, 555-584; Iris Blandon-Gitlin, Kathryn Sperry, and Richard A. Leo (2011) "Jurors Believe Interrogation Tactics Are Not Likely to Elicit False Confessions: Will Expert Witness Testimony Inform Them Otherwise?" in *Psychology, Crime and Law*, 17, 239-260; and Mark Costanzo, Netta Shaked-Schroer and Katherine Vinson (2010), "Juror Beliefs About Police Interrogation, False Confession and Expert Testimony" in *The Journal of Legal Empirical Studies*, 7, 231-247.

⁸ See Richard A. Leo (2009), "False Confessions: Causes, Consequences and Implications," *Journal of the American Academy of Psychiatry and Law*, 37, 332-343.

⁹ Deborah Davis and William O'Donohue (2004), "The road to perdition: Extreme influence tactics in the interrogation room," In William O'Donohue, ED (2004), *Handbook of Forensic Psychology* (San Diego: Academic Press). Pp. 897-996.

subtle and sophisticated interrogation techniques whose purpose is to alter a guilty suspect's perceptions so that he will see the act of confessing as being in his self-interest.

These interrogation techniques were developed for the purpose of inducing guilty individuals to confess to their crimes, and police are admonished in their training to use them only on suspects believed to be guilty.¹⁰ When these same techniques are used on innocent suspects, they carry a heightened risk that they will elicit false statements, admissions and/or confessions.

The goal of an interrogator is to persuade a suspect to view his immediate situation differently by focusing the suspect's attention on a limited set of choices and alternatives, and by convincing him of the likely consequences that attach to each of these choices. The process often unfolds in two steps: first, the interrogator causes the suspect to view his situation as hopeless; and, second, the interrogator persuades the suspect that only by confessing will the suspect be able to improve his otherwise hopeless situation. The interrogator makes it clear what information he is seeking and attempts to convince the suspect that his only rational option is to confirm the information the interrogator purports to already know.

To understand how and why police-induced false confessions occur, one must first understand how interrogation is intended to influence and manipulate a suspect's perceptions, reasoning, and decision-making. Police interrogation is designed for the guilty, not the innocent. The purpose of interrogating a suspect (unlike the interviewing of witnesses or victims) is to elicit an incriminating statement, admission, and/or confession that will assist the state in its prosecution of the crime; accordingly, police are admonished in their training to interrogate only those whom they believe to be guilty.¹¹ Because police expect the suspect to deny his guilt, the goal of interrogation is to break down the suspect's resistance and move him to admission. Police investigators typically achieve this result by accusing the suspect of committing the crime, attacking the suspect's alibi or version of events, cutting off the suspect's denials and confronting the suspect with seemingly irrefutable (whether real or non-existent) evidence of his guilt. The purpose of these techniques is to break down the suspect's confidence in his denials by convincing him that he is caught, that no one will believe his assertions of innocence, and that

¹⁰ See Fred Inbau, John Reid, Joseph Buckley and Brian Jayne (2013). *CRIMINAL INTERROGATION AND CONFESSIONS*, 5th Edition (Burlington, MA: Jones & Bartlett Learning) at 187 ("These nine steps are presented in the context of the interrogation of suspects whose guilt seems definite or reasonably certain"). For empirical support for this observation, see Richard A. Leo (2008). *POLICE INTERROGATION AND AMERICAN JUSTICE* (Harvard University Press).

¹¹ See also Fred Inbau, John Reid, Joseph Buckley and Brian Jayne (2013). *CRIMINAL INTERROGATION AND CONFESSIONS*, 5th Edition (Burlington, MA: Jones & Bartlett Learning) at 187 ("These nine steps are presented in the context of the interrogation of suspects whose guilt seems definite or reasonably certain"). For empirical support for this observation, see Richard A. Leo (2008). *POLICE INTERROGATION AND AMERICAN JUSTICE* (Harvard University Press).

objective evidence of his guilt is so overwhelming that it will inevitably lead to his arrest and conviction, regardless of what he says or does during interrogation.

To elicit an admission or confession, however, it is often not sufficient simply to break down a suspect's resistance. Interrogators also try to persuade the suspect that given the circumstances in which he now finds himself—he is caught, all the evidence is against him, and there is no way out of his predicament—there are positive reasons for confessing that will improve his otherwise hopeless situation. In other words, interrogators seek not only to overcome a suspect's denials, but also to convince him of the positive benefits of compliance and confession.¹² Interrogators sometimes do this by focusing the suspect's attention on the processing of his case in the criminal justice system and implying or stating the benefits of cooperation and confession versus the disadvantages of continued denial and resistance. Interrogators sometimes do this by trying to focus the suspect's attention on how certain actors in the criminal justice system (police, prosecutors, judges, juries) can either help or hurt the suspect, depending on what he says in the interrogation room, or how they will react to the suspect's unsympathetic and implausible denials versus a confession that demonstrates remorse and accepts responsibility for the offense. Sometimes interrogators do this by trying to persuade the suspect that the alleged crime could be framed in a way that minimizes the suspect's culpability if he were to admit the underlying act (*e.g.*, a homicide could be portrayed as an accident or an act of self-defense), but that it will be framed in the way that maximizes his culpability if he does not admit during the interrogation to the underlying act (*e.g.*, a homicide will be portrayed as an intentional and premeditated murder). And sometimes interrogators do this by using explicit promises of prosecutorial leniency in exchange for a confession or statement that fits an interrogator's theory of the case and explicit threats of harsher treatment or punishment in the absence of a confession or statement that fits an interrogator's theory of the case.

Involuntary false confessions to police typically occur when detectives use inappropriate, improper, and/or coercive interrogation techniques that cause a suspect to feel hopeless and perceive that he has no choice but to comply with the detectives' demands if he wishes to put an end to the interrogation.¹³ False confessions and false statements, of course, will occur in response to traditionally-coercive methods of interrogation such as the use of physical violence, threats of immediate physical harm, excessively long or incommunicado interrogation, or deprivation of essential necessities such as food, water, and/or sleep. However, these types of traditionally coercive techniques no longer appear to be common in the United States. The psychological techniques of interrogation that cross the line and sometimes cause false confessions typically involve one of two patterns: (1) the interrogator communicates to the suspect, implicitly or explicitly, that he will receive a higher charge and harsher sentence or punishment if he does not provide a satisfactory statement, but that he will receive a lesser

¹² See Richard Ofshe and Richard A. Leo (1997) "The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions." *Studies in Law, Politics & Society*, Vol. 16. Pp. 189-251.

¹³ See Richard A. Leo (2008). *POLICE INTERROGATION AND AMERICAN JUSTICE* (Harvard University Press).

charge or sentence, or perhaps no punishment at all, if he does; or (2) the interrogator wears down and distresses the suspect to the point that the suspect subjectively feels that he has no choice but to comply with the interrogator's demands if he is to put an end to the intolerable stress of continued interrogation and/or escape the oppressive interrogation environment.

VII. The Different Types of False Confession

Whether a police-induced false confession is caused primarily by coercive interrogation techniques or by a suspect's pre-existing vulnerabilities to interrogation or some combination of both, there are three fundamental types of false confession: a *voluntary* false (i.e., a false confession knowingly given in response to little or no police pressure); a *compliant* false confession (a false confession knowingly given to put an end to the interrogation or to receive an anticipated benefit or reward in exchange for confession); and a *persuaded* false confession (a confession given by a suspect who comes to doubt the reliability of his memory and thus comes to believe that he may have committed the crime despite no actual memory of having done so). These different types of false confession typically involve different levels of police pressure, psychological logics of influence and decision-making, and different beliefs about the likelihood of one's guilt. Regardless, false confessors typically recant their confessions shortly after they are removed from the pressures and reinforcements of the interrogation environment.

VIII. The Three Sequential Police Errors That Can Lead to False (But Sometimes Detailed) Confessions

There are three important decision points in the interrogation process that are known to be linked to false confessions or statements. The first decision point is the police decision to classify someone as a suspect. This is important because police only *interrogate* individuals whom they first classify as suspects; police *interview* witnesses and victims. There is a big difference between interrogation and interviewing: unlike interviewing, an interrogation is accusatory, involves the application of specialized psychological interrogation techniques, and the ultimate purpose of an interrogation is to get an incriminating statement from someone whom police believe to be guilty of the crime. False confessions or statements occur when police misclassify an innocent suspect as guilty and then subject him to a custodial interrogation, and are satisfied with elicitation of a version of events that, in fact, is not true. This is one reason why interrogation training manuals implore detectives to investigate their cases before subjecting any potential suspect to an accusatorial interrogation.¹⁴

¹⁴ Fred Inbau, John Reid and Joseph Buckley (1986). *CRIMINAL INTERROGATION AND CONFESSIONS*, Third Edition (Baltimore, MD: Williams & Wilkins) at 3 ("Prior to the interrogation, and preferably before any contact with the suspect, become thoroughly familiar with all the known facts and circumstances of the case."). See also Fred Inbau, John Reid, Joseph Buckley and Brian Jayne (2013). *CRIMINAL INTERROGATION AND CONFESSIONS*, 5th Edition (Burlington, MA: Jones & Bartlett Learning) at 18 ("One basic principle to which there must be full adherence is that the interrogation of suspects should follow, and not precede, an

The second important decision point in the process occurs when the police interrogate the suspect. Again, the goal of police interrogation is to elicit an incriminating statement from the suspect by moving him from denial to admission. To accomplish this, police use psychologically-persuasive, manipulative, and deceptive interrogation techniques. As described in detail in the previous sections, police interrogators use these techniques to accuse the suspect of committing the crime, to persuade him that he is caught and that the case evidence overwhelmingly establishes his guilt, and then to induce him to confess by suggesting it is the best course of action for him. However, properly trained police interrogators do not use physically- or psychologically-coercive techniques because they may result in involuntary and/or unreliable incriminating statements, admissions, and/or confessions.

The third important decision point in the interrogation process occurs after the police have elicited an admission—an “I did it” statement—from the suspect. This is referred to as the post-admission phase of the interrogation. The post-admission phase of the interrogation is important because it is here that the police can acquire information and evidence that will either support or not support the accuracy of the suspect’s admission. Properly-trained police interrogators should know that innocent people sometimes falsely confess to crimes they did not commit.¹⁵ Properly-trained police interrogators also know that guilty suspects sometimes implicate others for crimes they themselves committed in order to diminish their role in the crime. Interrogators therefore will seek to elicit information (that is not generally known and cannot likely be guessed by chance) from the suspect that either demonstrates, or fails to demonstrate, independent knowledge of the crime scene details and case facts. Properly-trained police interrogators, therefore, will not ask leading or suggestive questions and will not educate the suspect about details of the victim’s allegations or of the alleged crime. Instead, they will let the suspect supply the details of the case independently. Properly-trained police interrogators will also seek to test the suspect’s post-admission account against the physical and other credible evidence. Truthful confessions and statements are typically corroborated by solid physical evidence and independent knowledge of underlying case facts that have not been suggested to the suspect; false confessions and false statements are not.¹⁶

investigation conducted to the full extent permissible by the allowable time and circumstances of the particular case. The authors suggest, therefore, that a good guideline to follow is “investigate before you interrogate”).

¹⁵ Although the “Reid” Manual (CRIMINAL INTERROGATION AND CONFESSIONS by Fred Inbau et al.) did not include a full chapter on false confessions until the Fourth Edition in 2001, the need for police interrogators to be diligent to avoid false confessions has been present for decades. From the very first manual in 1942 and in all subsequent editions (1948, 1953, 1962, 1967, 1986, 2001 and 2013), it has repeatedly implored interrogators not to use any methods that are “apt to make an innocent person confess to a crime he did not commit,” implicitly, if not explicitly, suggesting that police interrogators do know that suspects can be made to falsely confess to crimes they did not commit.

¹⁶ Richard A. Leo and Richard Ofshe (1998). “The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation” *The Journal of Criminal Law and Criminology*. Vol. 88, No. 2. Pp. 429-496. This observation has been made in the police interrogation training literature as well. See also Fred Inbau, John Reid, Joseph Buckley and Brian Jayne (2013). CRIMINAL

IX. The Interrogation and Confession Statement of James Irby

In the interrogations of James Irby by Detectives Morgan and Alridge utilized interrogation techniques and practices that the empirical social science research has shown to cause and/or significantly increase the risk of eliciting unreliable and false statements, admissions and/or confessions when applied to innocent suspects. These include:

1) *Presumption of Guilt, Presumption of Guilty Knowledge, and Investigative Bias.*¹⁷ Substantial social science research has demonstrated that a behavioral presumption of guilt leads to tunnel vision, confirmation bias, and investigative bias among police investigators, who, as a result, often end up eliciting unreliable case information.¹⁸ When investigators begin with or arrive at a premature presumption of guilt, they seek to build a case against an individual whose guilt they assume *a fortiori* -- rather than seeking to even-handedly collect factual information and objectively investigate a case. Under these circumstances, investigators act as if they are seeking to prove their pre-existing theories or conclusions rather than investigate a hypothesis or objectively gather case evidence. This mental framework causes investigators to disregard contradictory information and evidence, selectively [mis]characterize existing information and evidence, misinterpret a suspect's statements and behavior to conform to the investigators' pre-existing assumptions, and to more aggressively interrogate suspects whose guilt they presume.¹⁹ Most significantly, social science research has demonstrated that investigators' pre-existing presumption of guilt puts innocent suspects at an elevated risk of making or agreeing to a false statement, admission, or confession in order to satisfy overzealous investigators and put an end to the accusatory pressures of sustained police interrogation.²⁰

Detective Alridge's and Detective Morgan's pre-polygraph and post-polygraph interrogation of James Irby were guilt-presumptive, accusatory, and theory-driven rather than evidence-driven. The interrogations were not structured to find the truth but, instead, to intentionally incriminate Mr. Irby by pressuring and persuading him to repeat back the alleged victim's allegations, which Detective Alridge and Morgan assumed must be true but never sought to independently verify with actual evidence. It is clear from Detective Alridge's atypical

INTERROGATION AND CONFESSIONS, 5th Edition (Burlington, MA: Jones & Bartlett Learning) at 354-360.

¹⁷ See Saul Kassin, Christine Goldstein, and Kenneth Savitsky (2003). "Behavioral Confirmation in the Interrogation Room: On the Dangers of Presuming Guilt." *Law and Human Behavior*, 27, 187-203; C. Hill, A. Memon, and P. McGeorge (2008). "The Role of Confirmation Bias in Suspect Interviews: A systematic Evaluation." *Legal & Criminological Psychology*, 13, 357-371; and Fadia Narchet, Christian Meissner, and Melissa Russano (2011), "Modeling the Influence of Investigator Bias on the Elicitation of True and False Confessions." *Law and Human Behavior*, 35, 452-465.

¹⁸ See Carol Tavis and Elliott Aronson (2007). *Mistakes Were Made (But Not By Me)*. (Harcourt Books).

¹⁹ See Saul Kassin, Christine Goldstein, and Kenneth Savitsky (2003). "Behavioral Confirmation in the Interrogation Room: On the Dangers of Presuming Guilt." *Law and Human Behavior*, 27, 187-203.

²⁰ Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson, Richard A. Leo and Allison Redlich (2010). "Police-Induced Confessions: Risk Factors and Recommendations" in *Law and Human Behavior*, 34, 3-38.

"pre-polygraph" interview questions that she believed Mr. Irby guilty from the start, and that the polygraph examination, which was used here as an instrumental interrogation technique, was from the start a means to that end of eliciting a confession. Detective Morgan then seemingly relied on the inherently unreliable polygraph "results" as the basis for his own guilt-presumptive accusatory interrogation of Mr. Irby rather than conducting any meaningful independent investigation to evaluate whether the alleged victims' allegations were truthful. In effect, the polygraph was used as an interrogation tool to verify Detective Morgan's preconceived theory of the case, without the need to do any serious investigation, and then to elicit a confession that confirmed in his mind his pre-existing theory.

As well-established social science research has repeatedly demonstrated, an interrogator's guilt-presumptive investigative bias substantially increases the risk of eliciting false and unreliable statements, admissions and/or confessions from innocent suspects. In my professional opinion, the detectives unwavering presumption of Mr. Irby's guilt and confession-driven interrogation led to investigative bias, behavioral confirmation bias and tunnel vision, phenomena that have been documented in so many psychological studies and in cases of police-induced false confession and erroneous conviction of the innocent.²¹

2) *Lengthy Interrogation, Fatigue and Exhaustion.* On December 5, 2007, Mr. Irby was questioned/accused/interrogated for approximately 6 hours, an extraordinarily lengthy interrogation. However, it is closer to 7 and 1/2 hours when we add in the gaps of time between the interrogation sessions and his written statement, in which Mr. Irby describes that he arrived at 10:30 am and completes his statement at 5:55 p.m. Researchers consider the length of an interrogation to include both the time that a suspect is being questioned and/or accused as well as any breaks between questioning/accusation sessions because breaks between accusation and questioning add to the stress and fatigue of the interrogation and sometimes is used as an interrogation technique itself.

Lengthy interrogation/custody and sleep deprivation are two related *situational* risk factors for making or agreeing to a false confession during police interrogation.²² Empirical studies indicate that the overwhelming majority of routine custodial interrogations last less than one hour,²³ whereas the combined time period of custody and interrogation in most interrogations leading to a false confession is more than six hours.²⁴ The Reid and Associates police interrogation training manual specifically recommends that police interrogate for no

²¹ Keith Findley and Michael Scott (2006). "The Multiple Dimensions of Tunnel Vision in Criminal Cases," University of Wisconsin Law Review, 291-397.

²² See Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson, Richard A. Leo and Allison Redlich (2010). "Police-Induced Confessions: Risk Factors and Recommendations" in *Law and Human Behavior*, 34, 3-38.

²³ Richard A. Leo (1996). "Inside the Interrogation Room," *Journal of Criminal Law and Criminology*, 86, 266-303. See also Barry Feld (2013). *Kids, Cops and Confessions: Inside the Interrogation Room* (New York, NY: New York University Press).

²⁴ Steven Drizin and Richard A. Leo (2004). "The Problem of False Confessions in the Post-DNA World. *North Carolina Law Review*, 82, 891-1007.

longer than four (4) hours absent "exceptional situations" and that "most cases require considerably fewer than four hours."²⁵ Lengthy detention and interrogation is a significant risk factor for false confessions because the longer an interrogation lasts, the more likely the suspect is to become fatigued and depleted of the physical and psychological resources necessary to resist the pressures and stresses of accusatory interrogation,²⁶ especially where investigators use psychologically aggressive, manipulative and/or coercive methods.²⁷ It can also lead to sleep deprivation, which heightens interrogative suggestibility by impairing decision-making abilities, such as the ability to anticipate risks and consequences, inhibit behavioral impulses and resist suggestive questioning.²⁸ The longer custody and interrogation last, the more pressure investigators can bring to bear on the suspect and the more techniques and strategies they may use to move the suspect from denial to admission. Lengthy interrogation, fatigue and exhaustion increase the risk that an innocent suspect will make or agree to a false statement, admission and/or confession.

3) *False evidence ploys.* Police interrogators routinely tell criminal suspects that the evidence establishes their guilt: if police possess real evidence, this is called a true evidence ploy. If police are making up, lying about, or exaggerating non-existent evidence, this is called a false evidence ploy. The social science research literature has demonstrated that false evidence ploys are virtually always present in, and substantially likely to increase, the risk of eliciting false statements, admissions and/or confessions. False evidence ploys are among the most well-documented situational risk factors for eliciting false and unreliable statements, admissions and/or confessions in the social science research literature.²⁹ Many people do not know that police detectives can legally lie by pretending to have incriminating evidence that does not exist, is fabricated or is exaggerated; even those who suspect that the police may be bluffing about the evidence are likely to fear that police will manipulate evidence to prosecute them. The use of false evidence ploys can create or contribute to the suspect's perception that he or she is trapped, there is no way out, and that his conviction will be inevitable, thus leading to the perception that he or she is in a hopeless situation and has little choice but to agree to or negotiate the best available outcome or mitigation of punishment given the subjective reality of his situation.

²⁵ Fred Inbau, John Reid, Joseph Buckley and Brian Jayne (2001). *CRIMINAL INTERROGATION AND CONFESSIONS*, 4th Edition (Gaithersburg, Maryland: Aspen Publishers, Inc) at 597.

²⁶ Deborah Davis and Richard A. Leo (2012). "Interrogation Related Regulatory Decline: Ego-Depletion, Failures of Self-Regulation and the Decision to Confess" *Psychology, Public Policy and Law*, Vol 18. Pp. 673-704.

²⁷ Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson, Richard A. Leo and Allison Redlich (2010). "Police-Induced Confessions: Risk Factors and Recommendations" in *Law and Human Behavior*, 34, 3-38.

²⁸ Mark Blagrove (1996). "Effects of length of sleep deprivation on interrogative suggestibility. *Journal of Experimental Psychology: Applied*, 2, 48-59. See also Stephen Frenda, Shari R. Berkowitz, Elizabeth F. Loftus, and Kimberly M. Fenn (2016). "Sleep Deprivation and False Confessions," *Proceedings of the National Academy of Sciences*, Vol. 113, Pp. 2047-2050 (February 23, 2016).

²⁹ Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson, Richard A. Leo and Allison Redlich). "Police-Induced Confessions: Risk Factors and Recommendations" in *Law and Human Behavior*, 34, 3-38.

Detectives Alridge and Morgan told Mr. Irby that he had failed the polygraph exam that supposedly proved his guilt to a scientific certainty. This was a false evidence ploy because the polygraph, even if its results were reported accurately, is a pseudo-scientific police-created instrument that can never tell whether a person is lying or telling the truth (because there is no unique physiological response when one tells the truth or when one lies), and the polygraph highly prone to error (some estimate a false positive error rate of 50%, no better than the flip of a coin) because there is no underlying science to support the concept, either theoretically or empirically.³⁰ In other words, the polygraph is an inherent, if psychologically powerful, false evidence ploy because it can never be a valid or reliable instrument of human lie detection or truth verification, but is highly effective at eliciting confessions through as an adjunct psychologically manipulative, if not coercive, interrogation.

As a century of basic psychological research on misinformation effects³¹ (as well as decades of psychological research on police lying to suspects during interrogation) has shown,³² false evidence ploys are effective at eliciting compliance,³³ confusing some suspects into believing that they have been framed or that such evidence really does exist,³⁴ causing some suspects to doubt themselves (deferring to interrogators' authoritative assertions of irrefutable evidence despite knowing they did not commit a crime),³⁵ and even causing some suspects to develop false beliefs and/or memories of committing crimes.³⁶ Based on well-established basic and applied social scientific research going back decades, the use of the polygraph false evidence ploy significantly increased the risk of eliciting a false and unreliable confession from Mr. Irby, especially the longer his interrogation lasted and the more fatigued and intimidated he became.

4) *Minimization*. A common interrogation strategy is for investigators to portray the offense in a way that minimizes its moral, psychological and/or legal seriousness, thus lowering the perceived cost of confessing by communicating that the consequences of confessing will not be that serious. Interrogation techniques and strategies that minimize the legal seriousness of the crime, in particular, are associated with and known to increase the risk of eliciting false confessions. Such minimization strategies can imply leniency, reduced punishment, or even no

³⁰ David Lykken (1998). *A Tremor in the Blood: Uses and Abuses of the Lie Detector* (Plenum Press).

³¹ Loftus, Elizabeth (2005). "Planting Misinformation in the Human Mind: A 30 Year Investigation of the Malleability of Memory," *Learning & Memory*, 12, 361-366.

³² Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson, Richard A. Leo and Allison Redlich. "Police Induced Confessions: Risk Factors and Recommendations" in *Law and Human Behavior*, 34, 3-38.

³³ Richard A. Leo (2008), *POLICE INTERROGATION AND AMERICAN JUSTICE* (Harvard University Press)

³⁴ Richard Ofshe and Richard A. Leo (1997) "The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions." *Studies in Law, Politics & Society*, Vol. 16. Pp. 189-251.

³⁵ Richard Ofshe and Richard A. Leo (1997) "The Social Psychology of Police Interrogation: The Theory and Classification of True and False Confessions." *Studies in Law, Politics & Society*, Vol. 16. Pp. 189-251.

³⁶ Richard A. Leo (2008), *POLICE INTERROGATION AND AMERICAN JUSTICE* (Harvard University Press) See also Deborah Wright, Kimberly Wade and Derrick Watson (2013). "Delay and Déjà Vu: Timing and Repetition Increase the Power of False Evidence," *Psychonomic Bulletin Review*, 20, 812-818; Julia Shaw and Don Read (2014). "Constructing Rich False Memories of Committing Crime," *Psychological Science*, Pp. 1-11. Published online, January 14, 2015.

punishment at all if the suspect perceives that there is no consequence to confessing (*i.e.*, either that the act to which the suspect is confessing is not a crime or that it carries little or no penalty).³⁷ In his interrogation of James Irby, Detective Morgan used several minimization strategies, each of which seeks to minimize Mr. Irby's moral and/or legal blameworthiness in order to move him from denial to admission. For example, at one point he told Mr. Irby, "The contact between you and *DECOLE*... that could be something fairly minor" (Interrogation Transcript, P. 70). Or: "It could be something she initiated herself" (Interrogation Transcript, P. 70). Or: "I don't think that you're a bad person" (Interrogation Transcript, P. 70). Or: "I don't believe that you would have done these things without *DECOLE* initiating them, okay?" (Interrogation Transcript, P. 70). As discussed above, the social science research literature has established that by downplaying a suspect's blameworthiness and culpability (if they comply and confess), minimization techniques increase the risk of eliciting false confessions from the innocent.

4) *Threats and Promises*. Minimization techniques sometimes imply that the suspect will receive help, leniency, immunity, freedom and/or a different benefit in exchange for compliance and confession. As discussed earlier, the use of implicit or explicit promises of leniency, immunity and/or a tangible benefit significantly increases the risk of eliciting a false and/or unreliable statement, admission, and/or confession when applied to the innocent. Indeed, as empirical social science research has repeatedly demonstrated, promises of leniency are widely associated with police-induced false confession in the modern era and are believed to be among the leading causes. Conversely, minimization techniques sometimes also implicitly threaten that a suspect will receive a higher charge, a more serious conviction, or a harsher punishment if he or she does not confess. As mentioned above, the use of implicit or explicit threats of harsher treatment or harsher punishment substantially increases the risk of eliciting a false and/or unreliable statement, admission or confession from the innocent.

In my professional opinion, Detective Morgan's interrogation of James Irby contained numerous implicit, if not explicit, threats and promises, and these threats and promises led Mr. Irby to stop denying the accusations and ultimately admit to them, he says falsely. Detective Morgan conveys these threats and promises by focusing Mr. Irby on his future and what is going to happen, or likely happen, to him if he confesses versus if he continues to deny Detective Morgan's accusations. For example, Detective Morgan tells Mr. Irby: "I can help you to understand what's going to happen, or what is likely to happen if you go this way, what's likely to happen if you go that way" (Interrogation transcript, P. 71).

Detective Morgan continues: "James, there has been sexual contact between you and Decole. You have been involved in having sex with her. The thing is, I don't want to just see you being thrown to the wolves with this" (Interrogation transcript, P. 80). The clear implication here is that Mr. Irby will receive significantly harsher punishment and treatment by the criminal

³⁷ Saul Kassin, Steven Drizin, Thomas Grisso, Gisli Gudjonsson, Richard A. Leo and Allison Redlich (2010). "Police-Induced Confessions: Risk Factors and Recommendations" in *Law and Human Behavior*, 34, 3-38.

justice system – quite literally thrown to the wolves – if he does not stop denying and start confessing to Detective Morgan’s accusations. This is the textbook definition of a threat. Moreover, it is clear that Mr. Irby understands that threat when, just a few pages later, he says he understands he is going to get charged – seemingly if he continues to deny the accusations, but Detective Morgan cuts Mr. Irby off before he can finish his sentence (Interrogation transcript, P. 83).

Detective Morgan continues to focus Mr. Irby on what will likely happen to him depending on whether he chooses to continue denying or starts to confess to Detective Morgan’s accusations:

“I’m going to tell you about my experience with doing this for so long, what I have seen happen with the criminal justice system with people who make certain choices” (Interrogation transcript, P. 84).

Shortly after this, Detective Morgan tells Mr. Irby that if he continues to deny:

“then it makes you look like you’ve been withholding stuff...which makes you look worse...which is kind of the situation you’ve got yourself in now by withholding the information about her performing oral sex on you.” (Interrogation transcript, P. 84).

In the context of being thrown to the wolves if he does not admit to the accusations, the clear implication is that by withholding an admission and thus looking worse, Mr. Irby will, again, receive harsher punishment and treatment by the criminal justice system than if he yields to Detective Morgan’s interrogation pressure persuasion and confesses to his accusations.

But every threat (of harm if the suspect continues to deny) implicitly contains a promise (of benefit if the suspect confesses). So Detective Morgan continues, this time suggesting that if Mr. Irby shows remorse, there will be a benefit, implying that he will not be thrown to the wolves: “

But I’m trying to give you the opportunity – it looks so much better on your part...when you are the one who puts everything on the table...because when you put everything on the table, then it looks like you are truly remorseful” (Interrogation transcript, P. 86)

Detective Morgan continues, implying that Mr. Irby is backed into a corner and that he will receive more sympathetic treatment if he “puts everything on the table” (i.e., confesses):

“Some guys, though are going to make me push them to put everything on the table. They’ll put everything on the table once they’ve been backed into a corner and they have no other choice...For that individual, how do you look at two guys, who have both put everything on the table, the one buy puts it on voluntarily, and the other guy makes you drag it out.... Which guy are you gonna look at from the standpoint of being an outside

individual – which one are you going to be more sympathetic towards?” (Interrogation transcript, P. 86).

At the same time Detective Morgan reminds Mr. Irby of the seriousness of his choice, and the long term implications of his decision to continue to deny the accusations versus confessing:

“I want to be able to help you put this all down on paper so that the best possible light can be shown... You are truly looking at the rest of your life here... I’m not talking about the standpoint of jail or anything like that, I’m talking about what you do right now is going to impact the rest of your life, okay?”

However, perhaps the baldest threat issued by Detective Morgan – other than suggesting that Mr. Irby will be thrown to the wolves if he does not confess – occurs through Detective Morgan’s use of what police interrogators call “third party themes”. This is where the interrogator tells the suspect a story about what happened to someone else who denied the accusations and did not confess (e.g., they were charged with more counts, convicted of higher crimes, received longer sentences, etc.) and/or what happened to someone else who did confess (e.g., they received leniency or immunity).

Using this strategy, Detective Morgan issues and elaborates the following third party threat:

“If you go ahead and get all of that out in the open, then everybody who has to deal with you from this point on is able to look at you in one light – they can either look at you in this light or in that light. One way they can look at you is: here’s a man who has admitted that he made mistakes and made bad choices. He’s admitted that he screwed up. He’s remorseful about what he did. Here’s a person that could probably be one of the few out there who would actually benefit from counselling. Who would benefit from therapy. Who can overcome this. Who is not likely to, with the proper amount of therapy and counseling and whatever else, is not likely to be a threat to another child in the future. This is somebody who can be rehabilitated. Okay. But the only time they’re going to look at somebody and say “this is the person who probably can be rehabilitated” is when they can believe that that person has been completely upfront and honest.”

Detective Morgan continues:

“And that they are remorseful, sorry about the choices that they made. Okay? When you’ve got somebody who gets backed into the wall, okay? This is a prime example: A case that I did about two years ago, I had a guy who eventually told me everything that he had done... And he had done everything... But the children in this case were 6 and 7 years old, okay. It took him a long time to get around to the realization that the only thing he could do was tell the truth. Okay? He wound up – because nobody wanted to cut this guy a break. Nobody was looking to do anything for this person. This guy ultimately got the maximum sentence of 30 years... for

each child. And on top of that, not 30 years concurrent, running today, but 30 years consecutive...He's going to do 30 years for the first child, and when that one's finished, he's going to do 30 years for the next one...He got the absolutely most sentence that he could possibly get, and the reason was nobody believed that he was telling the truth about what happened because he wasn't remorseful." (Interrogation transcript, Pp. 87-89).

The clear implication of this passage is that if he confesses, Mr. Irby will receive therapy, counselling and rehabilitation (e.g., promise of softer treatment, i.e., leniency), but that if he continues to deny, like the other person mentioned in this third-party scenario, no one in the system will want to help him, and not only may he receive the maximum sentence, but he may receive maximum concurrent sentences (i.e., threat of harsher punishment). Immediately after this exchange, Mr. Irby starts to give Detective Morgan the confession that Detective Morgan had been pressuring him to make and that Mr. Irby subsequently recant and has always insisted was and is false. In his various court testimony, Mr. Irby explains that he understood Detective Morgan's implicit, if not explicit, threats of harsher punishment and implicit, if not explicit, promises of leniency and that is what motivated him to confess, he asserts falsely.

Detective Morgan's interrogation of James Irby not only contains threats and promises, but the presence of threats and promises here significantly increased the risk of eliciting a false confession from Mr. Irby. Moreover, Mr. Irby's explanation for how he understood Detective Morgan's interrogation techniques to convey threats and promises depending on whether he complied is consistent with substantial social science research on how and why police interrogation can transform the perception of an innocent person to confess falsely because he comes to believe it is the only way to escape the interrogation and minimize future damage. Detective Morgan's interrogation techniques, and Mr. Irby's understanding of the messages they conveyed and how it motivated him to move from denial to admission, essentially track the logic of a *coerced-compliant* false confession.

5) *Psychological Coercion and the Risk of False Confession*. As discussed earlier, it is well-established that psychologically coercive interrogation techniques increase the risk of eliciting false and/or involuntary incriminating statements, admissions and/or confessions. In my professional opinion, Detective Morgan's interrogations of James Irby was psychologically coercive for at least two reasons. First, as just discussed, these interrogations contained implicit, if not explicit, threats of harsher punishment (If Mr. Irby did not confess) and promises of leniency (if Mr. Irby did confess), techniques that are regarded as inherently psychologically coercive because they are so likely to overbear a suspect's will and lead to involuntary statements. Second, Detective Morgan's interrogation techniques in my professional opinion caused Mr. Irby to perceive that she had no meaningful choice but to cooperate and comply with Detective Morgan's requests and/or demands if Mr. Irby wished to terminate an interrogation in which he felt intimidated in the present and frightened about his future.

X. Conclusion

In conclusion, it has been well-documented in the empirical social science research literature that a substantial number of innocent suspects have confessed during police interrogation to crimes (often very serious crimes such as murder and rape) that it was later objectively proven they did not commit. It has been well-documented in the empirical social science research literature that the primary, sequential causes of false confession are: 1) flawed and/or overzealous police investigation leading to a premature and erroneous misclassification of an innocent person as a guilty suspect; 2) subjecting that factually innocent but misclassified person to a guilt-presumptive, accusatory and psychologically deceptive, manipulative and/or coercive interrogation; and 3) feeding (i.e., "contaminating") that suspect (with) non-public case facts that he or she is pressured and/or persuaded to incorporate into a fabricated false confession. For these reasons, it is extremely important that individuals who allege they have been coerced into falsely testifying be allowed to present expert witnesses in disputed interrogation and/or disputed confession cases.

Had I been called to testify at Mr. Irby's trial in November, 2012, I would have provided both general and case-specific expert testimony on the psychology of police interrogation, police interrogation techniques and strategies, and the causes and consequences of police-induced false confessions. Generally, I would have testified about the counter-intuitive phenomena of police interrogation and false and unreliable confessions to police. I would describe the social science research on the social psychology of police interrogation; the techniques police are trained to use; the techniques that social science research shows they do use in practice; how and why these interrogation techniques are designed to work to move presumed guilty suspects from denial to admission; how and why they can lead to involuntary statements; how and why they can, and sometimes do, lead to false and unreliable confessions from the innocent; which techniques increase the risk of eliciting false and unreliable confessions and why; the different types of police-induced false confession; the problem of interrogation contamination and how it relates to police elicitation of false confessions; and the indicia, patterns and characteristics of false and unreliable confessions

More specifically, I would have testified to the following case-specific opinions:

1) Detective Alridge's and Detective Morgan's pre-polygraph and post-polygraph interrogation of James Irby was guilt presumptive, accusatory, and theory-driven rather than evidence-driven. The interrogations were not structured to find the truth but, instead, to intentionally incriminate Mr. Irby by pressuring and persuading him to repeat back the alleged victim's allegations, which Detective Alridge and Morgan assumed must be true but never sought to independently verify with actual evidence.

2) Detective Morgan used interrogation techniques and practices that are known to increase the risk of eliciting false and unreliable statements, admissions and/or confessions when misapplied to the innocent (i.e., *situational* risk factors). These included: lengthy interrogation, false evidence plays, minimization, and implied promises of leniency (in exchange for a confession) and implied threats of harsher punishment (in the absence of a confession).

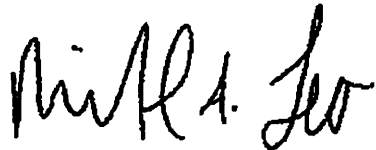
Tricia Blanchette, Esq.
Columbia, S.C. 29211
August 1, 2017
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3) Detective Morgan's interrogations of James Irby was psychologically coercive: Detective Morgan used interrogation techniques that social science research has shown to be highly likely to cause a suspect to perceive that he or she has no choice but to comply with the interrogator's demands and/or requests, and that are known to increase the risk of eliciting involuntary statements, admissions and/or confessions.

4) Detective Morgan's psychologically coercive interrogation techniques moved Mr. Irby from denial to admission, and in the process increased the risk of eliciting a *coerced-compliant* false confession from him.

If you have any questions, or need any additional information, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Richard A. Leo". The signature is fluid and cursive, with the first name "Richard" and last name "Leo" being the most prominent parts.

Richard A. Leo, Ph.D., J.D.
Hamill Family Professor of Law and Psychology
University of San Francisco

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

James Benjamin Irby, #352507,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2015-CP-42-0996

**ORDER OF DISMISSAL
WITH PREJUDICE**

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This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by James Benjamin Irby (Applicant) on March 25, 2015. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on November 16-17, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Tricia Blanchette, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Christopher Brough, Esquire, (Counsel), Bernadette Smith, Gaye Allen-Cook, Professor Richard Leo (false confession expert), and Captain Michael Prodan (of SLED) also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the direct appeal records, the PCR application, Respondent's return, Applicant's supplemental application all exhibits admitted during the hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at

the 2008 term of the Spartanburg County Grand Jury for criminal sexual conduct with a minor, second degree (2008-GS-42-1536). Christopher Brough, Esquire, represented Applicant. Assistant Solicitors Susan Reese and Jennifer Jordan represented the State.

On January 29, 2011, an extensive Jackson v. Denno hearing was held before the Honorable J. Derham Cole on Applicant's Motion to Suppress multiple statements made to law enforcement. After the hearing, Judge Cole found Applicant's statements were voluntarily given and denied Applicant's Motion to Suppress. Applicant then proceeded to trial on November 18-19, 2012, before Judge Cole and a jury. The jury found Applicant guilty as indicted. Judge Cole sentenced Applicant to imprisonment for a term of 18 years.

Applicant filed a timely Notice of Appeal. Robert M. Dudek, Esquire, represented Applicant on appeal. The issue briefed and argued on appeal was the knowing and voluntary nature of Applicant's statements to law enforcement. On January 14, 2015, the South Carolina Court of Appeals upheld Judge Cole's denial of the Motion to Suppress and affirmed Applicant's conviction. State v. Irby, Op. No. 2015-UP-021 (S.C. Ct. App. filed January 14, 2015). The remittitur was returned on March 03, 2015.

In his *pro se* application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel, in that;
 - a. Counsel failed to investigate, in that:
 - i. Counsel failed to "interview witnesses and victim" prior to trial
 - ii. Counsel "failed to go over or even consider possible defenses with petitioner"
 - iii. Counsel failed "to prepare for case and trial by not investigating evidence"
 - iv. Counsel failed to investigate the background of the witnesses and victim
 - v. Counsel "failed to obtain expert witnesses"

- vi. Counsel "failed to contact, interview and subpoena potential witnesses"
 - vii. Counsel failed to present character witnesses and evidence of Applicant's good character
 - b. Counsel abandoned trial strategy
 - c. Counsel "failed to motion [sic] for in camera hearing"
 - d. Counsel "failed to object to hearsay and perjury testimony"
 - e. Counsel failed to impeach witnesses and victim
 - f. Counsel "failed to object to prosecutor's unconstitutional, burden shifting, and prejudicial comments and motion for mistrial"
 - g. Counsel "failed to prepare and present mitigation [sic] evidence at trial"
 - h. Counsel "failed to disclose and go over discovery material with" Applicant
 - i. Counsel failed to object to irrelevant testimony and evidence
 - j. Counsel failed to object to the bolstering of witnesses and victim's testimony
 - k. Counsel failed at *Jackson v. Denno* hearing to submit relevant evidence to the judge
 - l. Counsel failed to file a motion to reconsider Applicant's sentence.
2. "Involuntary Assistance of Appeal Counsel," in that:
- a. Counsel "failed to present all available relevant and admissible mitigating evidence in brief"
 - b. Counsel "failed to brief all coercion issues on DVD and their time frames of events"
 - c. Counsel "failed to have records saved after he was informed testimony was missing"
 - d. Counsel "failed to brief direct verdict of acquittal issue which was preserved for Applicant review"
3. "Prosecutor Misconduct," in that:
- a. Prosecutor vouched for the credibility of government witnesses and victims;
 - b. Prosecutor presented and failed to correct perjured testimony by victims and witnesses;
 - c. "Prosecutor making misstatements of law and facts";
 - d. "Prosecutor made unfair improper prejudicial biased and burden-shifting statements at trial;
4. Rule 5/Brady Violation
- a. "Prosecutor violated Rule 5/Brady Motion for Discovery"

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On or about October 16, 2017, Applicant, through counsel, filed a supplemental application¹ alleging Ineffective Assistance of Counsel, in that:

1. Trial counsel rendered ineffective assistance regarding the admission and defense of Applicant's interrogation and statements, including but limited to:
 - a. Failure to properly utilize Dr. Richard Leo (or an expert in the area of false confessions) in trial preparation and as an expert witness at the suppression and trial stages. See Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).
 - b. Failure to properly prepare Applicant to testify at the suppression and trial stages regarding his interrogation and statements.
 - c. Failure to properly utilize the video evidence at the suppression and trial stages.
2. Trial counsel rendered ineffective assistance for failing to object to the qualification of Lynn McMillian as an expert and failing to object to her testimony thereafter. Trial Transcript p. 101.
3. Trial counsel rendered ineffective for failing to further cross-examine Dr. Nancy Henderson.
4. Trial counsel rendered ineffective assistance for failing to further cross-examine the victim.
5. Trial counsel rendered ineffective assistance in his handling of the decision to utilize Lillian Collins as a witness at trial and his handling of her trial testimony, to include but not limited to the following:
 - a. Failing to properly prepare for and handle impeachment of Ms. Collins.
 - b. Failing to advise Applicant that Ms. Collins testimony may open the door to otherwise inadmissible testimony from the State's witness regarding the victim's disclosure(s).
 - c. Opening the door to otherwise inadmissible testimony from the State's witness regarding the victim's disclosure(s). Trial Transcript pp. 185-191.
6. Trial counsel rendered ineffective assistance for failing to utilize an expert in the area of sexual abuse to assist in trial preparation, assist in trial and potentially be utilized as an expert at trial.
7. Trial counsel rendered ineffective assistance when he failed to utilize available evidence and witnesses, to include Bernadette Smith, for the defense.

¹ Applicant was initially appointed J. Brandt Rucker, Esquire, as PCR counsel. Subsequently, Applicant retained Mrs. Blanchette. At the start of the hearing, Applicant informed this Court he would only be proceeding on the amended allegations as filed by Mrs. Blanchette. Therefore, this Court considers the *pro se* allegations withdrawn and not part of this action.

8. Pursuant to Rule 1 5(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

STATEMENT OF FACTS

Jackson v. Denno Hearing

On January 29, 2011, the trial judge held a Jackson v. Denno hearing. The following testimony and evidence was presented:

Testimony of Brenda Azzara

On November 14, 2007, Brenda Azzara, an employee with the Department of Social Services, met with Applicant. According to Azzara, Detective Tonya Aldridge and Applicant's wife were both present during the interview. Applicant was not under arrest. Detective Aldridge read Applicant his rights under Miranda.² Applicant gave a written statement denying Victim's allegations of sexual abuse. Applicant claimed Victim got mad at him when he told her that she could not go on a field trip unless she cleaned her room, and the next thing he knew the police were at his home.

Testimony of Detective Aldridge

On November 30, 2007, Detective Aldridge ("Aldridge") met with Applicant at the detention center. Applicant was at the detention center for a family court issue. Aldridge read Applicant his rights under Miranda. According to Aldridge, Applicant agreed to take a polygraph examination, which was eventually scheduled for December 5, 2007. On December 5, 2007, before the polygraph was administered, Detective Aldridge read Applicant his rights under Miranda, and Applicant gave another statement denying the allegations. Detective Danny Morgan ("Morgan") administered the polygraph examination. After the polygraph examination, Aldridge transported Applicant to the courthouse for a family court hearing. After the hearing, which lasted

² Miranda v. Arizona, 384 U.S. 436 (1966).

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approximately one hour, Aldridge stopped at McDonald's in order to get Applicant something to eat. Thereafter, Aldridge took Applicant back to the sheriff's office to see Morgan. According to Aldridge, she did not witness any threats or coercion by Morgan. Moreover, Applicant never requested an attorney or asked to stop the interview. Applicant apologized for not being completely truthful. After the interview was over, Aldridge transported Applicant back to the detention center. According to Aldridge, Applicant never told her that he was threatened or coerced by Morgan.

Testimony of Detective Morgan

On December 5, 2007, Morgan performed a polygraph examination on Applicant. Before Morgan began the examination, he read Applicant his rights under Miranda and went over the waiver of rights form with Applicant. According to Morgan, Applicant was not under the influence of drugs or alcohol at that time. Further, Applicant's speech was coherent, and Applicant seemed to understand Morgan's questions. Additionally, Applicant did not appear to have any mental health issues.

After Applicant completed the polygraph examination, Applicant went to a family court hearing. After the family court hearing, Applicant returned to the sheriff's office in order to discuss the results of his polygraph examination. Morgan testified that he did not threaten Applicant, coerce Applicant, or promise Applicant anything. In addition, Detective Morgan offered Applicant breaks throughout the course of the interview. Morgan also testified that he never offered Applicant a sentence of four years if Applicant would just confess to the crime. In fact, Morgan told Applicant he did not have the power to make any deals. In addition, Morgan told Applicant that he was not making Applicant any promises and was not threatening Applicant.

Testimony of Applicant

During the PCR hearing, Applicant testified on his own behalf. Applicant claimed that he was not advised of his rights under Miranda when Aldridge picked him up from the detention

center on December 5, 2007. Applicant claimed he "felt threatened" during his interview with Morgan. Applicant claimed he felt threatened because Morgan allegedly said to him that "if [Applicant] didn't tell [Morgan] something they would give [him] so many years, and if [he] did tell [Morgan] something, then they would only give [him] like five or four years."³ Further, Applicant claimed he felt threatened when Morgan stated that he did not want to see Applicant thrown to the wolves. But when defense counsel asked Applicant why he felt threatened by Morgan's wolves comment, Applicant stated: "Well, I mean, in the video, I mean, he told me about, you know, if I told him something he would give me five years, but if I didn't tell him something he would give me 20 years." Further, Applicant admitted that one of the officers got him lunch that day.

On cross-examination, the solicitor asked Applicant what Morgan said to make Applicant feel threatened. In response, Applicant stated: "I believe he told me if I tell him something they would give me only five years or four years, but if I didn't tell him something, then they was going to give me the maximum." Applicant admitted that Morgan read him his rights under Miranda, and Applicant knew he had the right to an attorney and could stop the interview. In addition, Applicant admitted that he signed a form waiving his rights.

Notably, after Applicant gave the five page statement, Morgan questioned Applicant regarding another allegation involving a different minor ["Victim 2"]. Applicant refused to make any admissions regarding the allegations made by Victim 2 and repeatedly denied all allegations made by Victim 2. Interestingly, Applicant testified: "If [Morgan] asked me anything about [Victim 2], nothing happened with [Victim 2], so I had no reason to, you know, go into that."

State's Exhibits 2 & 3

³ Nowhere in the video does Detective Morgan tell Applicant that he would get four or five years if he confessed. In fact, Detective Morgan denied making that statement. (R. p. 58.)

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During the Jackson v. Denno hearing, the State introduced a video of the polygraph examination and a video of the interview that occurred on December 5, 2007.

Before the polygraph examination began, Applicant told Morgan that he was not under the influence of drugs or alcohol and was in good mental health. Approximately two hours and thirty minutes later, Applicant had to take a break in order to go to family court.

After Applicant returned from family court, Morgan told Applicant that he failed the polygraph examination. Thereafter, Applicant implied that Victim was involved in sexual activities with someone else. Approximately twenty-five minutes into the second video, Morgan told Applicant that Victim probably turned to Applicant because she either liked him, and wanted to feel that way with him, or Victim turned to Applicant because she is devious and wanted to have something over Applicant to hang him. A few seconds later, Morgan stated: "James, there has been sexual contact between you and [Victim]. You have been involved in having sex with her. The thing is I don't want to just see you being thrown to the wolves on this . . . I think it needs to be clear what she was doing – how she did this. . . ."

Around twenty-eight minutes into the interview, Applicant stated that he and Victim had sex. However, Applicant claimed Victim came into the living room where Applicant was sleeping. Applicant's penis was exposed. When Applicant woke up, Victim had her mouth on his penis. Applicant told Victim to go to her room. Applicant claimed he did not tell anyone of this event because he wanted to protect his family.

Morgan told Applicant that it was important to be honest. Around thirty-one minutes into the second video, Morgan told Applicant that this alleged living room incident could have caused Applicant to fail the polygraph examination. However, it was unlikely. Morgan reminded Applicant that the question Applicant failed on the polygraph examination was "did you put your

Around thirty-two minutes into the second interview, Morgan reminded Applicant that it was important for Applicant to be completely honest. "I'm not telling you that if you do this then you're going to get this kind of deal . . . I do not have any kind of power at all to make deals." Morgan explained that he was going to tell Applicant about things he had seen in his experience. Morgan stated: "None of this is designed to tell you that you should do this or you should do that. Those are choices you are going to have to make." Thereafter, Morgan told Applicant that he believed that more sexual activity occurred between Victim and Applicant.

Thereafter, Applicant denied committing the alleged acts while blaming Victim for inappropriate behavior. Applicant did not confess to any involvement on his part. In response, Morgan told Applicant that there was more sexual contact between Applicant and Victim than what Applicant claimed occurred. Detective Morgan stated: "I know you had sex with her. I know your penis has been inside her vagina."

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Around forty-four minutes into the second interview, Applicant told Morgan he was going to tell what really happened. Applicant claimed he was sleeping naked in the living room. He claimed he had a "hard on." When Applicant woke up, Victim was on top of and straddling Applicant, and his penis was on the lips of her vagina. Applicant claimed he whipped Victim and sent her to her room.

Approximately fifty-eight minutes into the second interview, Morgan stated: "I believe that there's been an ongoing sexual relationship here." Morgan told Applicant that he believed there has been more sexual activity that occurred than what Applicant described. However, Morgan explained that Applicant's best bet was to tell the truth about everything and get everything out in the open. Once again, Applicant blamed Victim. Applicant did not admit to any culpability on his part. Applicant stated he never had "full force vaginal sex with [Victim]."

Around one hour and eight minutes into the second interview, Morgan offered Applicant water. Approximately one hour and twenty-four minutes into the interview, Morgan asked Applicant if he wanted to provide a corrected statement. Applicant stated he wanted to provide a corrected statement, and that he was "not trying to do no 30 or 60 years. . . ." Morgan told Applicant he was not threatening Applicant with 30 or 60 years and explained the case he described earlier involved younger girls. Applicant indicated he understood and asked what the sentence for what he was charged with carried. Applicant stated he was "going to get pinned with this anyway."

Before Applicant gave a written statement, approximately one hour and twenty-seven minutes into the second interview, Morgan offered Applicant water, but Applicant refused. Morgan left the room to get himself some water for a few minutes. Morgan brought back Applicant water and asked if he needed anything else. Thereafter, Applicant asked if he would be charged

even though he did not initiate any of the sexual activity. Applicant wrote a statement, which blamed Victim for the sexual activity that occurred. Applicant denied any culpability on his part.

Approximately two hours and thirty-five minutes into the second interview, Applicant stated that he had been treated professionally, not coerced or threatened, and was offered breaks. About nine minutes later, Applicant stated he told the truth because it was the right thing to do, not because he was coerced or threatened. Around two hours and fifty-five minutes into the second interview, Applicant took a break for approximately five minutes.

When Applicant returned from the break, Morgan brought up the allegations made by Victim 2. Applicant repeatedly denied touching or doing anything sexual with Victim 2.

Applicant continued to deny the allegations made by Victim 2. When Morgan tried to end the interview, approximately three hours and eighteen minutes into the second interview, Applicant stated he wanted to tell him one more thing. He then admitted he let Victim perform oral sex on him in Victim's bedroom. However, Applicant once again denied the allegations made by Victim 2. Towards the end of the second interview, Applicant denied having sex with Victim 2. he only admitted to oral sex.

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Trial

On November 18, 2012, Applicant proceeded to trial. Before the trial began, the trial Court denied Applicant's Motion to Suppress his statements.

Testimony of Victim

On one occasion, Applicant forced Victim to the floor and performed digital penetration on Victim. Victim told her mother, but Applicant continued to live in the house with Victim. On another occasion, Applicant came into Victim's room, pulled her clothes down, and touched her

legs. Victim told her mother of this occurrence, but Applicant continued coming into Victim's room. At one point, Victim started placing a dresser in front of her door and wearing blue jeans to bed so that Applicant could not bother her.

In November of 2007, Applicant came into Victim's room while Victim was sleeping and pulled down her clothes. Thereafter, Applicant put his penis inside Victim's vagina. Victim told Applicant to stop and called out for her mother, but Applicant hit her, covered her mouth, and told her to "shut up." Victim called her aunt to tell her what happened, and Victim's aunt called the police.

Testimony of Jennifer Turner

Turner is Victim's aunt. Turner received a phone call from Victim disclosing a sexual assault that occurred in Victim's home. Victim was very upset and crying. Turner maintained contact with Victim and since that time, Victim has disclosed sexual abuse that occurred in Victim's home.

Testimony of Brenda Izarra

At the time of Applicant's arrest and investigation, Izarra worked for the Spartanburg Department of Social Services (DSS). There was an ongoing DSS case involving the same allegations of abuse. On November 14, 2007, Izarra interviewed Applicant. Izarra was present when Aldridge read Applicant his rights under Miranda. Applicant denied the allegations made against him. In fact, Applicant grabbed his crotch and said he was not an average sized man so if he had touched Victim, she would have been "torn up." Izarra also interviewed Victim's mother, Lillian (Dannette) Collins. Izarra understood Ms. Collins did not believe any sexual abuse had occurred.

Testimony of Tanya Aldridge

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Aldridge was an investigator of juvenile sexual assault cases with the Spartanburg County Sheriff's Office. On November 14, 2007, Aldridge was present during an interview with DSS. Applicant, his wife, Aldridge and Izarra were present during the interview. Aldridge read Applicant his Miranda rights from a pre-interrogation waiver form and witnessed Applicant sign the waiver.

On December 5, 2007⁴, Aldridge again met with Applicant at the Sheriff's Office. Aldridge informed Applicant of his Miranda rights again, but did not have a signed waiver form. Applicant then wrote a statement which accused Victim of fabricating allegations because she misbehaved regularly and did not like being punished. The statement also accused Victim of making inappropriate comments to him like asking him if he "wanted to smell her cookies" and telling him she had smelled his underwear. Applicant did not mention this information during his previous interview with DSS.

After giving the statement, Applicant agreed to speak to another investigator. Although Aldridge did not stay in the room during the subsequent interview, Applicant did receive an extended break during which time Aldridge transported him to a family court hearing and then to McDonald's for lunch. During the interview with Detective Morgan, Aldridge was asked to notarize two other written statements signed by Applicant.

Testimony of Lynn McMillian

McMillian was qualified as an expert witness in the field of child abuse assessments. McMillian interviewed Victim on two occasions at the Children's Advocacy Center. Victim disclosed sexual abuse that had occurred in her home between 2006 and 2007.

Testimony of Dr. Nancy Henderson

⁴ The transcript reads December 15th, but this appears to be in error given the surrounding testimony and evidence.



Dr. Henderson is a child abuse pediatrician employed by the Greenville Hospital System. Dr. Henderson was qualified as an expert witness in the field of child sexual abuse. Dr. Henderson explained that the common myth that if a child is sexually abused, a physical exam will show evidence of that abuse by damage to the hymen, is not true. Dr. Henderson opined a physical exam of a child who has alleged sexual abuse can appear normal. Dr. Henderson's opinion was based both on her experience and on the medical literature in the field, and made specific reference to a landmark paper from 1994 entitled, "It is Normal to be Normal," authored by Joyce Adams.

Testimony of Danny Morgan

Detective Morgan was working for Spartanburg Sheriff's Office at the time of Applicant's investigation. Morgan interviewed Applicant on December 5, 2007 and read Applicant his Miranda rights, which Applicant appeared to understand. Morgan described his interview with Applicant in detail. He used the first couple hours to get to know Applicant and his background to establish a rapport with him. After the initial interview, Applicant left for a family court hearing and lunch, then returned to complete the interview. During the second phase of the interview, Morgan began directly questioning him regarding the allegations made by Victim. Applicant then gave Morgan a statement describing an event in which Applicant was sleeping in his living room in boxer shorts and awoke to Victim performing oral sex on him. Later, Applicant made another disclosure indicating he was sleeping naked in the living room another time and had awoken to Victim straddling him and beginning to have vaginal intercourse with him. Morgan reduced Applicant's statements to writing which Applicant reviewed, initialed, and signed. Morgan read Applicant's full statement into the record.

After Applicant signed the first statement, Morgan continued to question him regarding the location Victim alleged the sexual abuse occurred. Applicant made another disclosure in which



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he stated that during the summer when he went to Victim's bedroom to turn off her TV, that she offered to perform oral sex on him and he allowed her to. This statement was again reduced to writing, reviewed, initialed, and signed by Applicant.

Testimony of Lillian Dannette Collins

Applicant called Collins to testify for the defense. Collins is the mother of Victim. Collins testified that during one of Victim's sessions with a counselor, Victim recanted the allegations and claimed nothing happened. On cross-examination, Collins testified Applicant had admitted putting his finger in Victim's vagina. Collins also testified that on one occasion, she caught Applicant standing naked in the hallway of their home in the middle of the night.

Testimony of James Irby

Irby testified in his own defense. During direct examination, he testified he never did anything sexually inappropriate with Victim. Applicant testified Victim was upset with him because he would not allow her to go on a field trip after she failed to clean her room.

On cross-examination, Applicant claimed he felt threatened during Detective Gordon's questioning so he told him "what they wanted." Applicant also testified about the inappropriate overtures Victim made toward him.

Testimony of Gina Odom

Victim's mother testified that during the therapy session with Gina Odom, a contract therapist with the Children's Advocacy Center in Spartanburg, Victim denied the sexual abuse by Applicant. However, at trial, Odom testified that Victim never recanted the allegations she made against Applicant. In fact, according to Odom, Victim disclosed the sexual abuse to her and Victim's mother during the counseling session. Further, Odom testified Victim's mother did not support Victim in this matter.



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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that Applicant was prejudiced by any deficiency. Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient and that the deficiency prejudiced the outcome of his trial. Applicant has failed to do so.

I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its

"reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18.

A. Interrogation and statements

Applicant alleged Counsel did not properly utilize Dr. Richard Leo, an expert in the area of false confessions. At the PCR hearing, Applicant presented the testimony of Dr. Richard Leo and a report generated by Dr. Leo. Respondent objected to the qualification and testimony of Dr. Leo on the basis that his testimony would not assist the Court to understand the evidence or determine a fact in issue as required by Rule 702, SCRE, and that his testimony was based on science, theories, and methodologies that are unreliable. Dr. Leo's extensive curriculum vitae was admitted into evidence. This Court allowed Dr. Leo to testify as an expert regarding false confessions and coercive police interrogation tactics during the PCR hearing.⁵

Dr. Leo testified as to the contents of his report. Dr. Leo testified that several police interrogation tactics that increase the likelihood of eliciting false confessions were present during Applicant's interrogation. Some of the tactics he discussed were "presumption of guilt" and "investigative bias," lengthy interrogation, fatigue and exhaustion, false evidence, minimization, threats, and promises. Although Dr. Leo testified that these tactics increase the likelihood of eliciting a false confession, he also conceded that they increase the likelihood of eliciting true confessions. Notably, he cannot determine at what rate the likelihood for each

⁵ At the hearing, there was some confusion over whether the State was making a Daubert motion, Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), to exclude Dr. Leo's testimony, however, South Carolina has declined to adopt the Daubert standard. Expert testimony in South Carolina is governed by South Carolina Rule of Evidence 702 and State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979). Although the Jones standard is not useful in cases of non-scientific evidence challenges, the court "must still exercise its role as gatekeeper and determine whether the proffered evidence is reliable." Graves v. CAS Medical Systems, Inc., 401 S.C. 63, 75, 735 S.E.2d 650, 656 (2012).

increases, or if the likelihood of eliciting a false confession is higher or lower than the likelihood of eliciting a true confession.

Dr. Leo did not consider either the legal distinction or the practical distinction between confessions and statements from which guilt can be inferred, in either his decision to testify in this case or his analysis. See State v. Cunningham, 275 S.C. 189, 192, 268 S.E.2d 289, 291 (1980) ("A 'confession' in legal sense, is restricted to acknowledgment of guilt, and does not apply to a mere statement of fact from which guilt may be inferred.") (citing State v. Miller, 211 S.C. 306, 45 S.E.2d 23 (1947) (citing State v. Pittman, 137 S.C. 75, 134 S.E. 514 (1926))). Applicant never confessed to the crime he was accused of having committed. Rather, Applicant gave statements calculated to deflect guilt while supplying Morgan information he presumably believed would justify his failing the polygraph examination. So, while Dr. Leo's report states,

Detective Alridge's (sic) and Detective Morgan's pre-polygraph and post-polygraph interrogation of James Irby were guilt-presumptive, accusatory, and theory-driven rather than evidence driven. The interrogations were not structured to find the truth but, instead, to intentionally incriminate Mr. Irby by pressuring and persuading him to repeat back the alleged victim's allegations, which Detective Alridge (sic) and Morgan assumed must be true but never sought to independently verify with actual evidence[.]

Applicant never did repeat the victim's allegations. Victim alleged Applicant digitally penetrated her and vaginally raped her in her bedroom. Notwithstanding the fact Applicant vehemently repetitively denied digitally penetrating the victim. Applicant told Detective Morgan the twelve year-old victim had been coming onto him for a while and that he woke up while sleeping to find her performing fellatio on him. Another time he awoke to find her straddling him with her vagina on his hard penis, and that both times he immediately stopped and chastised her. Applicant never once made an acknowledgment of guilt, rather he consistently projected blame on Victim. This Court finds Dr. Leo's testimony is a criticism of interrogation tactics used to elicit confessions.

Captain Michael Prodan of SLED was qualified as an expert in the area of police interrogations. Captain Prodan testified all of the tactics criticized by Dr. Leo have been practiced, studied, analyzed, and perfected over many years. Without such tactics, law enforcement would be left simply "interviewing" (as opposed to "interrogating") suspects in the hopes they would confess without any sort of technique or tactic applied to encourage confessions. Without confessions from the prime suspects, many sex offenders would go unpunished. Our criminal justice system offers ample protections for those instances of police misconduct during interrogations, without the need for expert testimony. See State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010) (incriminating statements involuntary where police questioned defendant without Miranda warnings until incriminating information was elicited, then administered Miranda warnings and again re-eliciting incriminating information); State v. Corns, 310 S.C. 546, 426 S.E.2d 324 (1992) (defendant's statement involuntary where police coerced it through implied threats to arrest defendant's wife and take his children); State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987) (defendant's inculpatory statement involuntary where police induced it by promising not to seek the death penalty).

This Court finds Counsel was not deficient for not calling Dr. Leo to testify, but in finding Counsel's performance by consulting with him was reasonable – and more than what is required by prevailing professional norms. To find Counsel ineffective for failing to utilize a false confession expert in this case would require a different standard be applied to Counsel than that which Strickland requires. If Counsel's performance is analyzed based on a reasonable standard in light of prevailing professional norms, calling false confession experts to testify in cases where there is a confession would have to be the accepted and prevailing norm. This is not the case.



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Notwithstanding, Counsel went beyond expectations by consulting with Dr. Leo, and he also had valid reasons for not further retaining him to testify. First, although Applicant could afford to retain Counsel and pay Dr. Leo \$2,500 to "consult," he and his family could not afford to hire Dr. Leo to testify. Secondly, Counsel discussed the case with Dr. Leo who advised Counsel of what he could testify to at trial. Counsel did not believe his testimony would sway the Court in the suppression hearing, or the jury in the trial. Thirdly, Dr. Leo could not testify to the ultimate conclusion that Applicant's statements were false or coerced. Dr. Leo's testimony would criticize Detective Morgan's performance based on the indicators he saw present in the interview, rather than identify which of Applicant's statements were untrue. Lastly, Applicant never recanted to Counsel. These are legitimate concerns. This Court finds Counsel's decision was reasonable.

Applicant also alleged Counsel failed to properly prepare him to testify both at the Jackson v. Denno hearing and trial regarding his statements. This Court finds Applicant has failed to meet his burden in proving Counsel was deficient or that he was prejudiced by any deficiency. While preparation of a defendant's testimony is important, it is incumbent upon a defendant to testify to the truth. This Court notes Applicant's testimony was inconsistent in the DSS case, the Jackson Denno hearing, and the PCR hearing in various respects.

Counsel spent time discussing the case with Applicant and preparing for the Jackson Denno hearing and the trial. However, once a defendant takes the stand, Counsel cannot control his testimony. Counsel advised Applicant against testifying. Counsel was cautious in limiting Applicant's time on the stand because he was concerned he would testify to the version of events he had disclosed to Counsel – that Applicant woke up to Victim performing oral sex on him and he allowed it to go on for a minute or two before stopping her. Counsel testified that even under Applicant's version of events, he could still be convicted. Counsel sought the advice of Dr.

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Richard Leo, the false confession expert, in order to make strong arguments to suppress Applicant's statements. Counsel thoroughly argued for the suppression. That was the issue taken up on appeal and affirmed by the Court of Appeals. This Court fails to see how any further preparation of Applicant on the issue of the statements would have affected either the outcome of the Jackson v. Denno hearing or the trial, because the video recorded interview illustrates his statements were voluntarily given.

Applicant also alleged ineffective assistance at trial for failing to use the video recorded interview during the suppression and trial stages. However, this Court has reviewed the police interview in its entirety, and finds Applicant was in control of his responses in the interview, even contributing additional unsolicited information at times while maintaining his denial of various allegations. There is no sign that his will was overborn or that Detective Morgan used coercive tactics. Applicant was offered multiple bathroom breaks, provided plenty of water, and taken to lunch in the middle of the interview. The video undermines Applicant's claims that his statement was false or involuntary. It also contradicts Applicant's testimony regarding the threats and promises he received regarding sentencing. Counsel was prudent in only playing the few portions that could arguably be characterized as coercive. Therefore, Counsel was not deficient in not using it.

B. Failure to object to expert qualification and testimony of Lynn McMillian

Applicant alleged Counsel was ineffective for failing to challenge the expert qualification of Lynn McMillian and her testimony. First, this Court can find nothing objectionable about her qualifications as an expert. McMillian was not offered as an expert in "forensic interviewing," but rather, she was qualified as an expert witness in the field of child abuse assessments. Our Supreme Court has approved the use of experts in the field of child abuse assessment. In State v. Anderson,

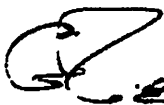
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for example, the Supreme Court held that a forensic interviewer may be qualified as an expert in child abuse assessment to “testify to the behavioral characteristics of sex abuse victims,” 413 S.C. 212, 218, 776 S.E.2d 76, 79 (2015). Even more recently, the Supreme Court found a trial attorney not deficient for not objecting to the qualification of a child abuse assessment expert, similar to McMillian in this case. Briggs v. State, 421 S.C. 316, 806 S.E.2d 713 (2017). Therefore, Counsel was not deficient for not objecting.

Additionally, this Court sees nothing objectionable about McMillian’s testimony. Her testimony was limited as she explained what a forensic evaluation was and what the rules were. In describing the rules, she testified, “specific to the child there are rules about truth telling.” She testified that she interviewed Victim on two occasions at the Children’s Advocacy Center and Victim disclosed sexual abuse that had occurred in her home between 2006 and 2007. Her testimony is consistent with the state of the law as it existed at the time of Applicant’s trial in 2012. State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009) was controlling at the time. In Douglas, the Supreme Court found a forensic interviewer’s testimony about truth telling rules was not error and was not improper vouching or bolstering of the victim’s veracity. It was not until 2015 Anderson when the Court changed directions and held “there is to be no testimony” before the jury from a forensic interviewer about instructing the victim on the importance of telling the truth. Anderson, 421 S.C. at 221, 776 S.E.2d at 80; See also Briggs, 421 S.C. at 322–23, 806 S.E.2d at 717 (Counsel’s decision not to object to truth telling rules was reasonable under the circumstances that existed at the time of Briggs’ trial in 2010.) Thus, on this issue, Counsel was not deficient based on the circumstances that existed at the time of the trial.

C. Failure to further cross-examine Dr. Henderson

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Applicant alleged Counsel failed to further cross-examine Dr. Henderson regarding her testimony that a normal physical exam can be consistent with sexual abuse. In support of his argument, Applicant offered some of the article to which Dr. Henderson referred at trial – “It’s Normal to be Normal,” by Joyce Adams. However, Applicant failed to prove how Counsel was deficient for failing to read the article. Dr. Henderson’s opinion was based on more than just the article. Counsel also had experience with Dr. Henderson in trial. Counsel testified, as with most State expert medical witnesses in sexual abuse cases, that Dr. Henderson will testify that normal exams are consistent with sexual abuse and then on cross-examination, she will testify that normal exams are also consistent with no abuse. Counsel elicited that testimony. This Court finds Counsel’s cross examination of Dr. Henderson reasonable and not deficient.

D. Testimony of Lillian Collins

Applicant alleged Counsel rendered ineffective assistance in calling Lillian Collins as a defense witness at trial. This Court finds Counsel’s testimony on this issue credible and agrees. Counsel testified Applicant told him Collins, Applicant’s wife at the time of the allegations and investigation, wanted to testify that Victim had recanted her accusations. Counsel was concerned about Collins’ truthfulness. When Collins provided his office with an affidavit swearing Victim had recanted, Counsel felt compelled to present her testimony at trial. Applicant was also adamant that Counsel call Collins to the stand to testify to the recantation.

In *hindsight*, Counsel conceded the consequences of doing so. However, Counsel stands by his decision to elicit recantation testimony from Collins and believes not doing so would have been ineffective. Counsel opined that he needed to plant some seed of doubt in the jurors’ minds and could think of no better way than Victim’s own mother saying Victim denied the allegations. When asked why he asked Victim about recantation, Counsel explained the question was strategic

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in order to ensure he could get Collins' hearsay testimony in as a prior inconsistent statement. After Collins' testimony opened the door to Odom's testimony that Victim always remained consistent in her disclosures, Counsel moved for a mistrial citing State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (2012).

This Court agrees with Counsel. Collins was Victim's mother, claiming Victim denied the allegations at one point. It was Applicant's wish for Counsel to call her. In hindsight, it is apparent the decision to call her did not come without consequence. The decision to present Collins as a witness was reasonable in light of the circumstances.

E. Failure to further cross-examine Victim

Applicant alleged Counsel was ineffective for further cross-examining Victim. Specifically, Applicant testified that when Victim testified that her little sister slept on the top bunk bed, Counsel should have more thoroughly cross-examined her on that point because, according to Applicant, those were never the sleeping arrangements. Also, Applicant testified Counsel should have more thoroughly cross-examined her regarding whether Victim's little sister was home the night of November 7. This Court does not find these arguments compelling.

This Court notes the allegations in this case involve Applicant sexually abusing Victim, a twelve year-old step-daughter. Victim testified at trial, at which time she was only seventeen years-old. Counsel's questions were calculated to elicit only testimony Counsel believed was necessary, while treading carefully so not to engage in meaningless debate over specifics or appear aggressive or condescending. This Court cannot find Counsel's cross-examination, on the whole, unreasonable or deficient, because he did not question her on insignificant portions of her direct

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testimony. Additionally, this Court believes it is conjecture to claim such further questioning would have potentially affected the outcome of the trial.

F. Failure to utilize expert in sexual abuse

Applicant alleged Counsel was ineffective for failing to utilize an expert in sexual abuse. Applicant offered the testimony of Gaye Allen-Cooke to support his allegation. Allen-Cooke essentially testified that she would have advised against presenting lay testimony from Collins regarding recantation because it is a “delicate issue” that and not something the “average joe” can discuss. She also testified she would advise not to present Collins’ testimony because she did not see any evidence of recantation in the defense file. However, on cross-examination, she conceded she saw Collins’ affidavit swearing her daughter denied anything happened. This occurred during a counseling session, which Allen-Cooke testified was not recorded.

Allen-Cooke also testified that if Counsel did choose to call Collins, she would strongly advise Counsel to have an expert, like herself, to come testify to address the recantation. She testified that for a \$1,500 fee plus \$250 per hour she would offer her expertise and guidance to a defense attorney about recantation issues. However, she did not provide any testimony on what that advice, expertise, or guidance would have been in this case – other than to not call Victim’s own mother to testify that Victim denied the allegations. She did not explain how or why recantation is a delicate issue not meant to be discussed by lay people, nor did she testify to what useful information she could have provided with regard to the recantation issue in this case.

Finally Allen-Cooke testified that standard procedure calls for only one forensic interview of a child alleging sexual abuse. However, she refused to agree that some children, who may not readily disclose to a stranger in their first interview, may require more interviews.

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This Court finds Counsel was not deficient in not utilizing the services of Allen-Cooke or any other expert purported to be an expert in child sex abuse. As discussed above, Counsel was compelled to present such exculpatory evidence despite the consequences.

F. Failure to utilize Bernadette Smith

Applicant alleged Counsel was ineffective for failing to utilize Bernadette Smith at trial. Smith testified she met Applicant by calling the wrong phone number and ending up on the phone with Applicant. They continued talking and became romantically involved. After he married Collins, Smith's relationship with Applicant was platonic. However, they continued to talk "all day and all night." Smith testified she was talking to him on the phone the entire night of the sexual assault. Smith testified Applicant would confide in her about his family dynamics. Smith advised him to leave Collins. Smith testified she appeared at every one of Applicant's court appearances, she met with Counsel to explain their relationship and provide Counsel phone records, and she was subpoenaed by Counsel to court. She also provided a letter to Counsel dated May 5, 2008, which was admitted into evidence, attesting to Applicant's good character. However, she did not testify at trial.

Counsel testified he received the May 5, 2008 letter from Smith to use for Applicant's and hearing as a character reference. However, after a number of meetings with Smith, Counsel did not intend to call her as a witness. Counsel did not believe she could provide beneficial testimony merely because she had phone records showing she spoke to Applicant a lot. The allegations spanned an extended period of time and Counsel did not believe Smith could say she had been on the phone with him the entire time or knew everything that went on at his house. Counsel also believed Collins' testimony was much more beneficial. Because of the romantic nature of Smith's relationship with Applicant, and the already troubled marriage, Counsel believed Smith's

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testimony at trial, about how much she and Applicant conversed, would negatively influence Collins' (a key defense witness) testimony.

This Court finds Counsel's testimony on the issue to be credible. Counsel's decision not to utilize Smith was prudent and based on sound professional judgment. When balancing the lack of actual benefit Applicant would receive from having Smith testify with the risk of upsetting or influencing a very beneficial witness, it is reasonable Counsel chose not to call Smith to testify at trial. Therefore, this Court finds Counsel was not deficient in this regard. Even if he had called Smith to testify, there is no reasonable possibility the outcome of the trial would have been any different.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

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IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 31 day of May, 2018.


G. THOMAS COOPER, JR.
Presiding Judge
Seventh Judicial Circuit

Caldwell, South Carolina

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

James Benjamin Irby, III, 352507,
☒ Plaintiff

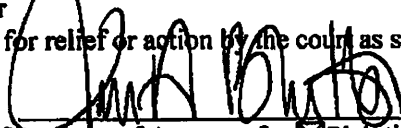
v.

State Of South Carolina
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2015-CP-42-00996

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Tricia A. Blanchette, Bar No. 74904 Address: PO Box 2147 Leesville, SC 2970 phone: 803-908-3266 fax: e-mail: blanchettelaw@gmail.com other:		Defendant's Attorney: Jordan Cox, Bar No. Address: PO Box 11549 Columbia, SC 29211 phone: 803-734-3737 fax: 803-734-4113 e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Reconsideration Estimated Time Needed: 1 hour Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant		June 7, 2018 Date submitted	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instruction Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-42-00996

JAMES BENJAMIN IRBY, 352507,)
Applicant,)
v.)
STATE OF SOUTH CAROLINA,)
Respondent,)
_____)

MOTION PURSUANT TO
RULE 59, SCRCP

Pursuant to Rule 59(a) and (e) of the South Carolina Rules of Civil Procedure,
Applicant would move before this Court for relief as follows.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post Conviction Relief filed on March 9, 2015. On October 30, 2017, Applicant, through counsel, submitted an Amendment to Application for Post Conviction Relief, which contained the following specific allegations of ineffective assistance of trial counsel:

1. Trial counsel rendered ineffective assistance regarding the admission and defense of Applicant's interrogation and statements, including but limited to:
 - a. Failure to properly utilize Dr. Richard Leo (or an expert in the area of false confessions) in trial preparation and as an expert witness at the suppression and trial stages. See Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).
 - b. Failure to properly prepare Applicant to testify at the suppression and trial stages regarding his interrogation and statements.
 - c. Failure to properly utilize the video evidence at the suppression and trial stages.
2. Trial counsel rendered ineffective assistance for failing to object to the qualification of Lynn McMillian as an expert and failing to object to her testimony thereafter. Trial Transcript p. 101.
3. Trial counsel rendered ineffective for failing to further cross-examine Dr. Nancy Henderson.

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4. Trial counsel rendered ineffective assistance for failing to further cross-examine the victim.
5. Trial counsel rendered ineffective assistance in his handling of the decision to utilize Lillian Collins as a witness at trial and his handling of her trial testimony, to include but not limited to the following:
 - a. Failing to properly prepare for and handle impeachment of Ms. Collins.
 - b. Failing to advise Applicant that Ms. Collins testimony may open the door to otherwise inadmissible testimony from the State's witness regarding the victim's disclosure(s).
 - c. Opening the door to otherwise inadmissible testimony from the State's witness regarding the victim's disclosure(s). Trial Transcript pp. 185-191.
6. Trial counsel rendered ineffective assistance for failing to utilize an expert in the area of sexual abuse to assist in trial preparation, assist in trial and potentially be utilized as an expert at trial.
7. Trial counsel rendered ineffective assistance when he failed to utilize available evidence and witnesses, to include Bernadette Smith, for the defense.
8. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

An evidentiary hearing was convened on November 16-17, 2017 at the Spartanburg County Courthouse in front of the Honorable G. Thomas Cooper, Jr.

Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Valerie Garcia Giovanoli, Esquire, formerly of the Office of the Attorney General.

At the conclusion of the evidentiary hearing, the Court requested the State further testimony from trial counsel, which was not provided. Thereafter, the Court requested proposed Orders from both parties. A copy of Applicant's proposed Order is attached and incorporated as referenced in the below argument.

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On May 31, 2018, the Honorable G. Thomas Cooper, Jr. signed an Order of Dismissal, which was filed on June 4, 2018. On June 5, 2018, Applicant's counsel received a copy of the signed and filed Order from the Spartanburg Clerk of Court via email, from which this Motion is timely filed.

ARGUMENT

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that this Court ensure that specific findings of fact and conclusions of law are entered and that the arguments and testimony of each witness is properly addressed. Applicant concedes that the standing Order provides a summary heading appearing to address the issues raised in the Amendment, but Applicant submits that the Order does not properly cite to the record, and the testimony and evidence offered that was favorable to Applicant is not properly addressed. Applicant would urge this Court to thoroughly address each issue raised and would further urge this Court to reconsider the reasoning used to deny each issue addressed.

Applicant would respectfully ask that the Court review the complete record and the evidentiary hearing transcript prior to reaching a final ruling. Specifically, Applicant would ask this Court to consider the following:

1. The Order states Applicant testified at the PCR hearing, yet appears to refer to testimony from prior proceedings. Citations from the record are not given for quoted testimony, which would clarify what is actually being referred to in this section of the Order. Order pp. 6-11.

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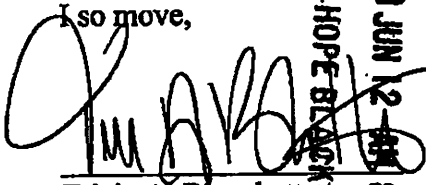
2. Throughout the Order, testimony of witnesses is summarized and quoted without citations to the record. Applicant is concerned that such summaries and quotations are not supported by the record.
3. The following allegations from the Amendment do not appear to be fully addressed in the Order:
 - a. Trial counsel rendered ineffective assistance regarding the admission and defense of Applicant's interrogation and statements, including but limited to:
 - i. Failure to properly prepare Applicant to testify at the suppression and trial stages regarding his interrogation and statements.
 - ii. Failure to properly utilize the video evidence at the suppression and trial stages.
 - b. Trial counsel rendered ineffective assistance in his handling of the decision to utilize Lillian Collins as a witness at trial and his handling of her trial testimony, to include but not limited to the following:
 - i. Failing to properly prepare for and handle impeachment of Ms. Collins.
 - ii. Failing to advise Applicant that Ms. Collins testimony may open the door to otherwise inadmissible testimony from the State's witness regarding the victim's disclosure(s).
 - iii. Opening the door to otherwise inadmissible testimony from the State's witness regarding the victim's disclosure(s). Trial Transcript pp. 185-191.

Again, Applicant would ask this Court to reconsider each issue raised and addressed at the evidentiary hearing. As detailed in the proposed Order, Applicant would submit that he has met his burden to show that counsel was ineffective in his handling of the admission and defense of Applicant's interrogation and statements, as is fully supported by the expert testimony of Dr. Richard Leo. Applicant would also ask the Court to reconsider the finding that utilization of a false confession expert is not a "professional norm." Order p. 19. As this Court noted at the evidentiary hearing, trial

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counsel should have utilized Dr. Leo if he was aware of his findings. PCR Transcript pp. 309-312. Despite this Court's request of the State, the fact that Mr. Brough was made aware of Dr. Leo's favorable findings, as testified to by Dr. Leo, was not refuted by the State via further testimony or Affidavit, and the testimony offered by Mr. Brough acknowledged that he had favorable findings from Dr. Leo. PCR Transcript pp. 93, 103, 309-312. Applicant would ask this Court to reconsider and find that the testimony and evidence offered at the evidentiary hearing supports a finding that a new trial must be granted to ensure that Applicant has been afforded his rights to effective representation and a fair trial pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution

In conclusion, Applicant would request that the Court review the full record, including the evidentiary hearing transcript provided by Applicant, reconsider the standing Order of Dismissal, reconsider Applicant's proposed Order Granting Application for Post Conviction Relief, and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRCP.

I so move,

Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
Attorney for Applicant

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-42-00996

JAMES BENJAMIN IRBY, 352507,)
Applicant,)
v.)
STATE OF SOUTH CAROLINA,)
Respondent,)
_____)

ORDER GRANTING APPLICATION
FOR POST CONVICTION RELIEF

This matter comes before the Court by way of an Application for Post Conviction Relief filed on March 9, 2015.

On October 30, 2017, Applicant, through counsel, submitted an Amendment to Application for Post Conviction Relief, which contained the following specific allegations of ineffective assistance of trial counsel:

1. Trial counsel rendered ineffective assistance regarding the admission and defense of Applicant's interrogation and statements, including but limited to:
 - a. Failure to properly utilize Dr. Richard Leo (or an expert in the area of false confessions) in trial preparation and as an expert witness at the suppression and trial stages. See Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).
 - b. Failure to properly prepare Applicant to testify at the suppression and trial stages regarding his interrogation and statements.
 - c. Failure to properly utilize the video evidence at the suppression and trial stages.
2. Trial counsel rendered ineffective assistance for failing to object to the qualification of Lynn McMillian as an expert and failing to object to her testimony thereafter. Trial Transcript p. 101.
3. Trial counsel rendered ineffective for failing to further cross-examine Dr. Nancy Henderson.
4. Trial counsel rendered ineffective assistance for failing to further cross-examine the victim.

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5. Trial counsel rendered ineffective assistance in his handling of the decision to utilize Lillian Collins as a witness at trial and his handling of her trial testimony, to include but not limited to the following:
 - a. Failing to properly prepare for and handle impeachment of Ms. Collins.
 - b. Failing to advise Applicant that Ms. Collins testimony may open the door to otherwise inadmissible testimony from the State's witness regarding the victim's disclosure(s).
 - c. Opening the door to otherwise inadmissible testimony from the State's witness regarding the victim's disclosure(s). Trial Transcript pp. 185-191.
6. Trial counsel rendered ineffective assistance for failing to utilize an expert in the area of sexual abuse to assist in trial preparation, assist in trial and potentially be utilized as an expert at trial.
7. Trial counsel rendered ineffective assistance when he failed to utilize available evidence and witnesses, to include Bernadette Smith, for the defense.
8. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

SUMMARY OF THE TRIAL RECORD

Applicant was indicted by the Spartanburg County Grand Jury for the offense of criminal sexual conduct with a minor in the second degree (Indictment No. 2008-GS-42-1536). In pertinent part, the indictment alleged, as follows:

That the Defendant, James Benjamin Irby, did in Spartanburg County, between the dates of October 29, 2005 and November 9, 2007, commit the crime of Criminal Sexual Conduct with a minor in the Second Degree in that the Defendant did engage in a sexual battery upon the minor, (victim), who was fourteen (14) years of age or less, but at least eleven (11) years of age at the time of the battery.

On January 29, 2011, the Honorable J. Derham Cole conducted a Jackson v. Denno hearing in Spartanburg County. Applicant was represented by Christopher Brough, Esquire. The State was represented by Susan Reese, Assistant Solicitor, and

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Jennifer Jordan, Assistant Solicitor. At issue was Applicant's written statement derived from a polygraph examination and extensive interview by law enforcement, primarily Danny Morgan, on December 5, 2007.

On November 18, 2012, Applicant was called to trial in Spartanburg County. Applicant was represented by Christopher Brough, Esquire. The State was represented by Susan Reese, Assistant Solicitor. At the beginning of Applicant's trial, Judge Cole ruled that Applicant's motion to suppress was denied. This decision was the subject of Applicant's direct appeal, whereby Judge's Cole's decision was affirmed along with Applicant's conviction and sentence. State v. James Irby, Op. No. 2015-UP-021 (S.C. Ct. App. filed January 14, 2015).

During the course of Applicant's trial, the State called the victim, Jennifer Turner, (victim's aunt), Brenda Izarra (Spartanburg County Department of Social Services), Tanya Aldridge (former of employee of Spartanburg County Sheriff's Department), Lynn McMillian (Children's Advocacy Center of Spartanburg), Dr. Nancy Henderson (expert in the field of child sexual abuse), Danny Morgan (former employee of Spartanburg County Sheriff's Department), and Gina Odom (Children's Advocacy Center of Spartanburg). During the presentation of the defense, Applicant took the stand, along with Lillian Danette Collins (Applicant's wife and mother of the victim).

While on the stand, victim, at the age of seventeen, testified that she was Applicant's stepdaughter and that one day when she was cleaning her room, she was "on the floored" by Applicant and he put his fingers in her private parts. Trial pp. 52-3. She told her mother, but nothing was done. Trial p. 53 During the next year, Applicant would come in her room and touch her on the legs. Trial pp. 54-5. In November of 2007,

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Applicant came in her room, pulled her clothes down and put his "private part" in her. Trial pp. 56-7. She did not tell her mother, but she told her aunt, who contacted law enforcement.

Via the testimony of Danny Morgan, the State admitted the written statements of Applicant deduced from his full day interview. Trial pp. 131, 142. By way of these statements, Applicant detailed victim's "suggestive comments and sexual overtures" towards him. Trial p. 134, Ins. 1-4. He also detailed three instances of sexual contact initiated by victim. Trial pp. 134-136, 140. Danny Morgan agreed that Applicant's statements did not match up with victim's allegations. Trial p. 155, Ins. 4-9.

When he took the stand, Applicant explained the disciplinary issues in the home and those involving victim. Trial p. 174. He also explained that immediately prior to the allegations being made, victim was upset with him about not being allowed to attend a field trip. Trial p. 176. On cross-examination, he was asked about his statement, and he testified it was not true and he had been threatened during his interrogation. Trial pp. 179-80.

On November 19, 2012, Applicant was found guilty as indicted. Trial p. 248. Judge Cole sentenced Applicant to a term of eighteen years. Trial p. 253.

A timely Notice of Appeal was filed, and the appeal was perfected by Robert M. Dudek, Chief Appellate Defenders from the South Carolina Office of Appellate Defense. Applicant's conviction and sentence were affirmed on January 14, 2015. State v. Jones Irby, Op. No. 2015-UP-021 (S.C. Ct. App. filed January 14, 2015). The Remittitur was issued on March 3, 2015.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). Where an application for post conviction relief alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. 466 U.S. at 686; see Butler v. State, 286 S.C. 441 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 691. The applicant must overcome this presumption in order to receive relief. Bell v. State, 321 S.C. 238 (1996); see also Cherry v. State, 300 S.C. 238 (1989); Rule 71.1(e), SCRCP.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117 (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18. "A reasonable probability is a probability

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sufficient to undermine confidence in the outcome.” Smith v. State, 386 S.C. 562, 566, 689 S.E.2d 629, 631 (2010).

1. Trial counsel rendered ineffective assistance regarding the admission and defense of Applicant’s interrogation and statements, including but limited to:
a) Failure to properly utilize Dr. Richard Leo (or an expert in the area of false confessions) in trial preparation and as an expert witness at the suppression and trial stages. See Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015); b) Failure to properly prepare Applicant to testify at the suppression and trial stages regarding his interrogation and statements; and c) Failure to properly utilize the video evidence at the suppression and trial stages.

A. Failure to Utilize Dr. Leo

By way of the Amendment and at the evidentiary hearing, Applicant alleged that trial counsel was ineffective for failing to properly utilize Dr. Richard Leo (or an expert in the area of false confessions) in trial preparation and as an expert witness at the suppression and trial stages. Applicant’s Amendment cited to Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015). In Reeves, the South Carolina Supreme Court reversed the denial of post conviction relief reasoning that trial counsel was deficient for failing to discuss with Reeves hiring a medical expert to more thoroughly challenge the State’s medical evidence presented at trial and finding that trial counsel did not present a legitimate trial strategy for failing to consult with an expert before trial or call an expert at trial. Id. at 377, 782 S.E.2d at 752 Following a jury trial, Reeves was convicted criminal sexual conduct, first degree, with a minor, and lewd act upon a child. Id. at 377, 782 S.E.2d at 750. He received concurrent fifteen year sentences. Id.

By way of a Post Conviction Relief Application, Reeves alleged that trial counsel was ineffective in failing to investigate and present the testimony of a gynecological expert witness at trial. Id. at 373, 782 S.E.2d at 750. In support of this allegation, a gynecological expert witness was called at the evidentiary hearing. When asked about the

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retainer of an expert, trial counsel testified, "Sir, all I remember is there was a question about money. I know I never did talk to an expert, but whether [Reeves] and I talked about that, I cannot tell you." Id. at 375, 782 S.E.2d at 751. The PCR court found Reeves failed to prove trial counsel was ineffective for failing to interview and present a medical expert at trial. Id. The PCR court noted trial counsel testified he had not retained a medical expert because Reeves did not have the funds to do so. Id. The PCR court stated, "A doctor could not state with certainty the exact cause of the injuries discovered and the determination of the cause of the injury was a question for the jury." Id. Further, the PCR court stated, "Dr. Thompson's testimony did not make it any less likely that [Reeves] had committed the crime, in fact, the substance of his testimony at the PCR hearing only confirmed that the cause of the injuries was unclear." Id. Accordingly, the PCR court denied and dismissed this ineffective assistance of counsel claim. Id.

Thereafter, the South Carolina Supreme Court found "trial counsel was deficient because he should have discussed hiring a medical expert with Reeves to more thoroughly challenge the State's medical evidence presented at trial." Id. at 377, 782 S.E.2d at 752. The Court also noted the availability of indigent funds via statute for cases whereby an indigent defendant lacks the financial resources to obtain a needed expert. Id. at 376, 782 S.E.2d at 752. The Court also found prejudice resulting from the expert testimony offered at the evidentiary hearing. Id. at 379, 782 S.E.2d at 753.

Here, Applicant has alleged that trial counsel was ineffective for failing to utilize Dr. Richard Leo (or an expert in his capacity) in trial preparation and as an expert witness at the suppression and trial stages. Unlike Reeves, Dr. Leo, Applicant and counsel all testified that trial counsel consulted with Dr. Leo prior to trial, and a retainer agreement,

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emails, a billing statement, and a motion and consent order for continuance were introduced into evidence. PCR pp. 96-98, Applicant's Ex. 6-10. Trial counsel also admitted that he had received favorable findings from Dr. Leo prior to the suppression hearing and trial. Specifically, he recalled Dr. Leo's findings that the "elements" of a false confession were present in Applicant's case. PCR pp. 93, 103. Applicant recalled trial counsel not informing him of any concerns regarding calling Dr. Leo. PCR p. 206.

Similarly to Reeves, trial counsel testified that money was the number one reason Dr. Leo did not testify. PCR p. 93, Ins. 21-25, 102, Ins. 6-12. Trial counsel admitted that he did not ask Dr. Leo for a reduced fee or look into an alternative to in person testimony. PCR pp. 104-105. Applicant testified that trial counsel did not further discuss Dr. Leo with him after telling him the fee for his travel and testimony. PCR pp. 206-208. Specifically, counsel never discussed trying to get a reduced fee, alternatives to live testimony or seeking indigent funds. PCR pp. 207-208. Dr. Leo testified that after providing counsel with his favorable findings, he did not recall hearing from counsel regarding financial concerns. PCR pp. 182. He explained that he had testified via computer in a South Carolina case, and counsel never discussed alternative to live testimony with him. PCR pp. 181-2. He simply remembered "just not hearing back from Mr. Brough." PCR p. 181, Ins. 22-24.

Where counsel articulates a valid trial strategy for failing to call an expert witness to testify at trial, such conduct will not be deemed ineffective. Legare v. State, 333 275, 281, 509 S.E.2d 472, 475 (1998). Pursuant to the testimony of both Applicant trial counsel, the defense trial strategy hinged on the suppression of Applicant's statement. PCR p.94, 209. Also, Applicant, Dr. Leo and trial counsel acknowledged that

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favorable findings were communicated by Dr. Leo prior to trial; thus, a continuance was obtained and arrangements were being made for Dr. Leo to testify. Therefore, this Court is left with the question raised at the conclusion of the evidentiary hearing: Why was Dr. Leo not utilized if he communicated favorable findings to trial counsel? After careful consideration, this Court finds that Dr. Leo was not utilized as a result of deficient performance on the part of trial counsel. Whereas here, trial counsel utilized the services of an expert, is provided with findings counsel and the expert deem favorable to the defense, and fails to utilize the expert for reasons that do not amount to reasonable trial strategy, such performance falls below the standard of reasonableness.¹

Regarding Dr. Leo's testimony and findings, this Court found Dr. Leo qualified as an expert, and finds he rendered opinions that were not utilized pre-trial or during trial. This Court finds the failure to utilize Dr. Leo (or an expert in his capacity) amount to deficient performance, and such deficiency prejudiced Applicant to the extent there is a reasonable probability the result of proceeding would have been different. This Court makes this finding based upon the record, which includes Dr. Leo's report, and testimony offered at the evidentiary hearing. Dr. Leo's findings are properly reflected in his lengthy report and testimony, but this Court must note that Dr. Leo made detailed findings regarding the interrogation techniques and practices utilized in the interrogation of Applicant that "empirical social science has shown to cause and/or significantly increase the risk of eliciting unreliable and false statement, admissions and/or confessions."

¹ At the evidentiary hearing, counsel provided confusing responses in trying to explain away his reasoning beyond finances, for not utilizing Dr. Leo. This Court finds counsel's reasoning that Applicant never admitted the statement to be false and other reasons given are directly refuted by Applicant's pre-trial, trial and evidentiary hearing testimony and are further refuted by counsel's utilization of Applicant in the pre-trial suppression hearing, counsel's arguments pre-trial and at trial, Applicant's trial testimony and counsel's request for a jury instruction regarding the voluntariness of Applicant's statement.

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Report p. 11. Dr. Leo identified the following techniques and practices in Applicant's interrogation: 1) Presumption of Guilt, Presumption of Guilty Knowledge and Investigative Bias; 2) Lengthy Interrogation, Fatigue and Exhaustion; 3) False evidence ploys; 4) Minimization; 5) Threats and Promises; and 6) Psychological Coercion. This Court is further persuaded by Dr. Leo's four case specific opinions reflected in his report and explained at the evidentiary hearing. Report pp. 19-20.

At the evidentiary hearing, the State called Agent Michael Prodan of the State Law Enforcement Division, in reply. Agent Prodan admitted that he had only reviewed the DVD of the interrogation and Dr. Leo's report, not the entire investigative file. PCR p. 325. This Court is concerned by Agent Prodan's testimony that he has conducted one thousand two hundred interrogations with zero false confessions identified, he is an employee of the State of South Carolina and he has he not done any research or studies in the area of false confessions. PCR pp. 322-24. It appears he was called at the evidentiary hearing to call into question the expert opinions of Dr. Leo, but this Court is not persuaded by Agent Prodan's criticisms of Dr. Leo's findings.

When asked if there was a pretrial suppression hearing, trial counsel responded: "Yes, a rather lengthy one, I believe, where I did absolutely, I think, everything I could possibly do in my power to try to get those statements suppressed." PCR p. 85, line 19-23. This Court does not agree with counsel's assertion. It is clear from the record that Dr. Leo's expert opinions that went directly to the voluntary nature and admissibility of Applicant's statements were prejudicially absent from the suppression hearing, trial and issue as raised on appeal.

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In Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015) and McKnight v. State, 378 S.C. 33, 661 S.E.2d 354 (2008), prejudice resulted from failure to refute the State's experts and failure to utilize an expert in the development of a defense, but here the deficiency and prejudice goes beyond that addressed in Reeves and McKnight. This Court finds that in the absence of Dr. Leo's testimony from the suppression hearing and trial, this Court does not have confidence in the outcome of Applicant's proceedings, to include the pre-trial, trial and appeal. Simply put, the case boiled down to the Applicant's words and the victim's accusations against Applicant's claims of innocence at trial. In a case involving accusations of this nature, the words that "he," the Applicant, said were used against him to secure a conviction. If the words Applicant said were not of consequence, the State would not have admitted them at trial. Therefore, this Court finds that a new trial is warranted since Applicant has established deficiency and resulting prejudice. See Strickland v. Washington, 466 U.S. 668 (1984).

B. Failure to properly prepare Applicant to testify at the suppression and trial stages regarding his interrogation and statements. Failure to properly utilize the video evidence at the suppression and trial stages.

By way of the Amendment and at the evidentiary hearing, Applicant alleged that counsel was ineffective for failure to properly prepare him to testify and for failure to properly utilize the video evidence. At the evidentiary hearing, Applicant testified regarding the interrogation. PCR pp. 202, 209-211, 213-214, 218-222. He provided further detail and even attempted to identify the coercive tactics he experienced and saw present in the interview. PCR pp. 218-222. He explained that he did not review the lengthy video with counsel prior to trial, but he had reviewed it prior to the evidentiary hearing. PCR pp. 203, 251, 256-257.

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While Applicant was called to testify about the interrogation and statement at the pre-trial suppression hearing, counsel did not ask him any questions about it at trial. Counsel explained that he chose to not question Applicant about his interrogation and statement at trial since he opined that the more it was discussed "the more potential there was for bad things to happen in that case." PCR pp. 91-92, p. 92, lns. 7-8.

This Court finds that any alleged deficiency and or resulting prejudice from counsel's failure to utilize the video or Applicant in defense of the statement at trial is subsumed by counsel's failure to utilize Dr. Leo or an expert in his capacity as discussed above. Here, the problem lies in counsel's defense of the statement, without the utilization of an expert, not in counsel's utilization of Applicant or the video. If counsel had continued with Dr. Leo or an expert in his capacity after receiving Dr. Leo's favorable findings the entire strategy in attempting to suppress and/or addressing the voluntariness of Applicant's statement to the jury would have been different. Therefore, standing alone, this Court cannot find that counsel was deficient and Applicant was prejudiced merely for how Applicant or the video were or were not utilized since this Court finds that counsel was deficient for failing to utilize an expert.

2. Trial counsel rendered ineffective assistance for failing to object to the qualification of Lynn McMillian as an expert and failing to object to her testimony thereafter.

By way of his Amendment and at the evidentiary hearing, Applicant alleged that trial counsel was ineffective for failing to object to the qualification of Lynn McMillian as an expert and failing to object to her testimony at trial. At trial, Ms. McMillian was qualified as an expert in the area of child abuse assessments not as a forensic interviewer. Trial pp. 99-101. Recently, the South Carolina Supreme Court has determined that it is

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proper for an expert to be qualified in the area of child abuse assessments and that counsel's failure to object to such a qualification is not deficient. State v. Anderson, 413 S.C. 212, 776 S.E.2d 76 (2015), Briggs v. State, 421 S.C. 316, 806 S.E.2d 713 (2017). As a result, this Court finds no deficiency in counsel's failure to object to Ms. McMillian's expert qualification.

Under the controlling law at the time of trial, this Court also finds that trial counsel was not deficient for not objecting to the testimony of Ms. McMillian. At the time of trial, State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009), was controlling and supported counsel's decision to not enter an objection. More recently, the South Carolina Supreme Court has held that such testimony regarding a forensic interview has no place in a criminal trial, but this change in law came well after Applicant's trial. State v. Anderson, 413 S.C. 212, 776 S.E.2d 76 (2015). The South Carolina Supreme Court has also reasoned that counsel was not deficient for failing to object to such testimony due to the law that was controlling at the time of trial. See Briggs v. State, 421 S.C. 316, 806 S.E.2d 713 (2017). As a result, this Court finds Applicant has failed to establish any deficiency on the part of counsel regarding the expert qualification and testimony of Ms. McMillian. Therefore, this claim must fail under Strickland.

3. Trial counsel rendered ineffective for failing to further cross-examine Dr. Nancy Henderson.

By way of the Amendment and at the evidentiary hearing, Applicant alleged that counsel was ineffective for failing to further cross-examine Dr. Nancy Henderson. At the evidentiary hearing, Applicant testified that he researched the article referenced by Henderson and he alleged that counsel was deficient for not asking Dr. Henderson about the contents of the article. PCR pp. 223-227. When asked about Dr. Henderson's

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testimony and the article at issue, trial counsel explained that he had not reviewed the article, but he was familiar with the expert testimony she typically offered for the State. PCR p. 108, lns. 8-19.

Upon review of the record and testimony offered, this Court finds that Appellant has failed to establish any deficiency on the part of trial counsel during his cross-examination of Dr. Henderson. On cross-examination, Dr. Henderson agreed that her medical findings were "completely consistent with absolutely nothing happening." Transcript p. 115, lns. 18-24. Applicant has failed to show how further cross-examination on the part of trial counsel would have affected the outcome of trial. Therefore, this claim must fail under both prongs of Strickland.

4. Trial counsel rendered ineffective assistance for failing to further cross-examine the victim.

By way of the Amendment and at the evidentiary hearing, Applicant testified that counsel was ineffective for failing to further cross-examine the victim. Specifically, while on the stand, Applicant explained that counsel failed to properly cross-examine the victim about the sleeping arrangements with her younger sister and the door being blocked. PCR pp. 228-229.

Upon review of the record and testimony offered, this Court finds that Appellant has failed to establish any deficiency on the part of trial counsel during his cross-examination of victim. Applicant has failed to show how further cross-examination on the part of trial counsel would have affected the outcome of trial. Therefore, this claim must fail under both prongs of Strickland.

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5. Trial counsel rendered ineffective assistance in his handling of the decision to utilize Lillian Collins as a witness at trial and his handling of her trial testimony, to include but not limited to the following: a) Failing to properly prepare for and handle impeachment of Ms. Collins; b) Failing to advise Applicant that Ms. Collins testimony may open the door to otherwise inadmissible testimony from the State's witness regarding the victim's disclosure(s); and c) Opening the door to otherwise inadmissible testimony from the State's witness regarding the victim's disclosure(s).

At trial, the defense called Lillian Collins, the mother of the victim and wife of Applicant (at the time of trial). Ms. Collins testified that it "was total chaos" regarding the discipline situation with victim after Applicant moved into the home. Trial p. 165, lns. 11-17. She was then asked about a joint counseling session with victim where she asked victim to explain to her what happened, and she recalled victim telling her "nothing happened." Trial p. 165, ln. 18 - p. 167, ln. 2. She stated that Gina Odom was the counselor present during the session when victim stated nothing happened. Trial p. 167.

On cross examination, she was asked about victim's disclosures to her regarding Applicant. Trial pp. 167-168, 171. She acknowledged that her continued relationship with Applicant after victim's disclosure upset victim. Trial p. 170. She admitted that she continued to communicate with Applicant after his arrest, but she was no longer with him at the time of trial. Trial pp. 169-170. She testified that she found Applicant in the hallway naked in the middle of the night. Trial p. 168. On redirect, she responded that she was "pretty sure" that Applicant had a new girlfriend. Trial p. 171.

After the defense rested, the State called Gina Odom in reply. Trial p. 183. She confirmed providing therapy to victim and having one joint session with Ms. Collins. Trial p. 183-184. She testified that she never left victim and her mother alone during the joint session and that victim never recanted or denied the allegation during the session. Trial p. 184-185. She recalled having no further joint sessions because it seemed

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"counterproductive to victim's progress." Trial p. 185, lns. 10-14. After she testified that victim "always remained consistent in her disclosures," defense counsel objected. Trial p. 185, lns. 20-25.

When the jury was out, defense counsel made a motion for a mistrial on the basis of prosecutorial misconduct due to the response elicited from Ms. Odom. Trial p. 188. In response, the State argued that the testimony did not rise "to the level of her giving an opinion about her reliability" and was on the heels of the defense "putting up a witness that said the child recanted." Trial p. 189, lns. 6-23. In ruling, the court noted that he agreed with the State and he found the testimony to be proper even though he sustained the objection. Transcript pp. 190-191. Specifically, he reasoned that the testimony was responsive to the testimony elicited from Mr. Collins. Trial p. 190, ln. 4 - p. 191, ln. 21. He stated: "I think that door was opened by the defense." Trial p. 191, lns. 2-3. As a result, he denied the motion for a mistrial. Trial p. 191.

At the evidentiary hearing, Applicant testified about the decision to call Ms. Collins as a witness at trial and her testimony at trial. He noted several areas of Ms. Collins' testimony that he thought he should have been asked to refute or that could have been refuted with the discovery. PCR p. 229-232. He admitted that it was his decision to call Ms. Collins, yet counsel did not advise him that calling Ms. Collins would open the door to otherwise inadmissible testimony. PCR pp. 232-234.

When trial counsel took the stand, counsel testified that he met with Ms. Collins at his office and she provided a written statement explaining that the victim had recanted during a counseling session. PCR p. 80. He recalled advising Applicant to take the plea offer and to not rely on Ms. Collins "to make the case for him." PCR p. 83, lns. 8-12. He

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explained that Ms. Collins was the only witness "that might be able to help us other than potentially him." PCR p. 95, Ins. 18-21. He went onto explain how Ms. Collins threw Applicant under the bus with her testimony, and he opined that the case was over after her testimony regarding the Applicant being in the hall naked. PCR p. 95.

Regarding the recantation testimony, he acknowledged that the victim denied the recantation before he called Ms. Collins to the stand. Trial pp. 62-63, PCR p. 109. In explaining his reasoning for calling Ms. Collins, he stated: "I think if the child tells her mother who's supposed to be her protector and guardian that something didn't happen, that's a pretty powerful evidence that it, in fact, did not happen." PCR p. 109, Ins. 21-24. He surmised that if he had failed to call her he would have been "ineffective." PCR p. 110, Ins. 13-16. When asked about the court's ruling that Ms. Collins testimony opened the door to the otherwise inadmissible testimony of Ms. Odom regarding the consistency of the victim's disclosure, trial counsel responded again that he would not have been effective if he did not ask her about the recantation. PCR pp. 110-113. When asked about his advice to Applicant, he could not recall specifically advising Applicant that the testimony of Ms. Collins could open the door to otherwise inadmissible testimony. PCR p. 113, Ins. 18-23.

Upon review of the record and testimony presented, this Court is not convinced that at the time of trial counsel was ineffective in his decision to call Ms. Collins nor in the handling of the testimony of Lillian Collins. Both Applicant and counsel agreed that the decision to call Lillian Collins was discussed, and Applicant wanted her to be utilized as a witness. Furthermore, she was the only witness that could testify to the recantation that was primary to Applicant's defense. When addressing the decision to call Lillian

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Collins, trial counsel explained: "So, what practically happened is we had one witness that might be able to help us other than potentially him, but I didn't feel like he could really help himself." PCR p. 95, lns. 18-20. It appears both Applicant and counsel were fully aware of the limited benefits but necessity of calling Ms. Collins.

Furthermore, when Ms. Odom was called in reply, counsel objected to her testimony that the victim "always remained consistent in her disclosures." Trial p. 185, ln. 20-23. He also moved for a mistrial, which was denied. Even though the trial court found counsel opened the door to the testimony of Ms. Odom, the door was opened as a result of a trial strategy that required calling Ms. Collins. This Court finds that the decision to utilize her, which opened the door to Ms. Odom's prejudicial testimony, was reasonable trial strategy.

This Court must note, as addressed above, that counsel was ineffective for not utilizing Dr. Leo. This Court finds that the necessity counsel placed on calling Ms. Collins could have been eviscerated by the utilization of Dr. Leo and/or Ms. Collins could have been utilized in conjunction with Dr. Leo, but the deficient performance is in counsel's failure to utilize Dr. Leo, which left him with the trial strategy of calling Ms. Collins to make a defense.

As a result, this Court finds that counsel's decision to utilize Ms. Collins was reasonable under the circumstances. Despite the resulting prejudice, this Court finds no deficiency, so this claim must fail under Strickland.

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6. Trial counsel rendered ineffective assistance for failing to utilize an expert in the area of sexual abuse to assist in trial preparation, assist in trial and potentially be utilized as an expert at trial.

By way of his Amendment and at the evidentiary hearing, Applicant alleged trial counsel rendered ineffective assistance for failing to utilize an expert in the area of sexual abuse to assist in trial preparation, assist in trial and potentially be utilized as an expert at trial. In support of this allegation, Applicant called Gaye Allen-Cook at the evidentiary hearing. She was qualified as an expert as a clinical child and family therapist specializing in trauma and abuse. PCR pp. 25-26.

Mrs. Allen-Cook detailed what she had been provided via court order to review. PCR p. 27. Upon review of the files, she explained that she was unable to find anything that would support an opinion that victim made a recantation or evidence, beyond the statement of Ms. Collins, that supported the assertion that victim recanted. PCR pp. 30-32, 49-50, 54, 56. She explained her opinion that a layperson should not be utilized to address a recantation as it is an area that requires expertise to address. PCR pp. 32-33, 50-51. She explained that she would have advised trial counsel that she found no evidence of a recantation. PCR p. 32.

Mrs. Allen-Cook also explained that she provided consultation to attorneys and was not always called to the stand to offer testimony. PCR p. 33. From the records, she found victim to be a troubled girl and shared her concern with victim gaining attention from process. She explained that gaining attention can "often take the allegation and cause it to continue, cause it to exasperate, cause it to become bigger than it could have been." PCR p. 35, lns. 15-25.

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After careful consideration of the record and the testimony offered, this Court is not convinced that counsel was deficient for failing to utilize Mrs. Allen-Cook or an expert in her capacity. Primarily, Mrs. Allen-Cook testified that she would have informed counsel that the file lacked evidence of a recantation and if he intended to offer testimony regarding recantation, an expert should be called. As discussed above, counsel, at the urging of Applicant, called Ms. Collins to testify about the recantation she reported. This Court finds that counsel was not ineffective when he failed to utilize an expert in conjunction with Ms. Collins.

Furthermore, this Court finds that Applicant has failed to establish prejudice. After considering the testimony and opinions offered by Mrs. Allen-Cook, this Court finds that her testimony does not support a conclusion that if she would have been utilized, the result of the trial would have been different. Therefore, this Court finds that this claim fails under both prongs of Strickland.

7. Trial counsel rendered ineffective assistance when he failed to utilize available evidence and witnesses, to include Bernadette Smith, for the defense.

By way of the amendment and at the evidentiary hearing, Applicant alleged that counsel was ineffective when he failed to utilize Bernadette Smith as a witness at trial. In support of this allegation, Bernadette Smith was called to the stand. Ms. Smith testified that she has known Applicant for fifteen years. PCR p. 59. She admitted that she had been in a romantic relationship with Applicant, but during the time in question they were just friends. PCR p. 59. She recalled providing a letter to trial counsel and bringing him phone records. PCR pp. 61-62. She explained her understanding of the family dynamic and information she could have provided at trial. PCR pp. 61-65. She stated that her

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biggest concern was that Applicant needed to get out of that home. PCR p. 66. She further recalled being subpoenaed and coming to court on several occasions. PCR p. 62. She was not told by counsel why she was not called as a witness. PCR p. 66.

When Applicant was on the stand, he testified that he was aware that counsel met with Ms. Smith, but he was not aware why she was not utilized at trial. PCR p. 234. He explained that he wanted her called as a witness since he was on phone with him during the time in question and knew about the situation in the home. PCR p. 234-235.

Trial counsel recalled meeting with Ms. Smith and the topic of phone records being discussed. PCR p. 72. Counsel surmised that Ms. Smith could not have possibly been on the phone with Applicant during all of the times encompassed in the indictment. PCR pp. 72-73. He also identified the letter he received from Ms. Smith, and he described it as a character letter that he utilized in obtaining a bond for Applicant. PCR p. 73. When asked if he intended to utilize Ms. Smith as a trial witness, he responded that he did not. PCR pp. 73-74. He explained:

Initially, it was my intent that she might be able to provide some helpful testimony. But in light of her relationship with Mr. Irby and the statement, key statement, that was given by his wife, Lillian, indicating that the victim on the case had potentially recanted her testimony and the problems and troubled relationship that James had with Lillian, it was my opinion that Ms. Smith could not nothing to essentially help the case but could infuriate a key witness in the case and potentially influence her testimony.

PCR p. 74, lns. 12-22.

This Court has considered the testimony provided at the evidentiary hearing and has reviewed the trial transcript. This Court is not convinced that Applicant has shown deficiency on the part of counsel for failing to utilize Ms. Smith as a witness at trial nor has Applicant shown how the utilization of Ms. Smith would have changed the outcome

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of Applicant's trial. Therefore, this Court finds that this claim fails under both prongs of Strickland.

IT IS THEREFORE ORDERED:

1. That Applicant has met his burden of proof as to his specific allegation of ineffective assistance of trial counsel as detailed above, but has failed to meet his burden of proof as to all other allegations of ineffective assistance of trial counsel as detailed above;
2. That the Application for Post Conviction Relief be granted and the Applicant's convictions be vacated and he be granted a new trial;
3. That Applicant be transferred from the custody of South Carolina Department of Corrections to the custody of Spartanburg County pending the disposition of his criminal case, with normal bond proceedings.

AND IT IS SO ORDERED this ____ day of _____, 201____

Honorable G. Thomas Cooper, Jr.
Presiding Circuit Court Judge

_____, South Carolina

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
James Benjamin Irby, 352507,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2015-CP-42-00996

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the United States Mail on this 7th day of June 2018, a copy of an Motion Pursuant to Rule 59, SCRPC, with postage prepaid and the return address clearly shown on said envelope to Jordan Cox with the Office of the Attorney General at:

Office of the Attorney General
ATT: Jordan Cox, Assistant AG
P.O. Box 11549
Columbia, SC 29211



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
Attorney for Applicant

June 7, 2018

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
James Benjamin Irby, III, #352507)
)
)
Applicant,)
)
v.)
)
State of South Carolina)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C/A No. 2015-CP-42-00996

**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND
THE JUDGMENT**

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After careful consideration of the Applicant's Motion and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby DENIES Applicant's Motion pursuant to Rule 59(e) SCRCP to Alter or Amend Judgment of this Court's Order entered on or about June 5, 2018. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.


G. Thomas Cooper, Jr.
Presiding Judge

June 20, 2018