

Exclusion of False Confession and Eyewitness Identification Testimonies

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Trial Court Did Not Abuse Its Discretion by Excluding Expert Witnesses' Testimonies Where the Proposed Testimonies Lacked Relevance to the Particular Facts of the Case

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In *People v. Powell*, 182 N.E.3d 1028 (N.Y. 2021), the New York Court of Appeals affirmed that the Queens County Supreme Court did not abuse its discretion by excluding the testimony of two expert witnesses. The testimony of the expert on false confessions was excluded because it was not applicable to the case, while the expert on eyewitness identification was precluded from testifying because of the presence of other evidence linking the defendant to the crime. The court concluded that the testimonies would not have aided the jury in making a decision.

Facts of the Case

Howard Powell was arrested for possession of cocaine in March 2010. While in custody, he gave the police two statements in which he confessed to two separate robberies. The first statement was handwritten by Mr. Powell. The second statement was typed by the detective and signed by Mr. Powell on a blank second page. The assailant in the second robbery was captured on two different surveillance videos. In addition, in two separate line-ups conducted by the police, both robbery victims visually identified Mr. Powell, who was subsequently charged with two counts of robbery in the first degree.

Sanford Drob, a psychologist retained by the defense, stated that Mr. Powell had severe mental

illness and an IQ of 78. He concluded that these factors could make Mr. Powell susceptible to manipulation during interrogation. Thereafter, Mr. Powell moved to suppress his confession statements and to introduce evidence of mental illness that compromised the voluntariness of his statements.

Based on the standard set by *People v. Huntley*, 204 N.E.2d 179 (N.Y. 1965), the court conducted a hearing to determine if Mr. Powell's confession had been made voluntarily. During the *Huntley* hearing, Mr. Powell's version of events was different from the version reported by Detective Grinder, who interrogated him. Mr. Powell testified that after he was arrested, he had a seizure and urinated on himself at the precinct. He also reported being deprived of food and his medications. According to Mr. Powell, he ultimately provided the first statement to the detective to receive food and his medications, fearing that without the medications he would have another seizure. Mr. Powell denied knowledge of the second statement.

Detective Grinder testified that Mr. Powell was uncooperative on his first day in custody. He reported that Mr. Powell received his medications, though he was not sure if Mr. Powell took them. The next day Mr. Powell provided a handwritten statement in which he noted that while under the influence of drugs he "did a few robbery [sic]" (*Powell*, p 1045). After being recognized in the lineups, Mr. Powell reportedly provided a more detailed oral statement, confessing to four robberies, including the two robberies of interest. Detective Grinder did not take notes while Mr. Powell spoke, but later typed up a statement which Mr. Powell allegedly signed on an empty second page. The trial court denied the motion to suppress the statements.

At the *Frye* hearing (relying on *Frye v. United States*, 293 F.1013 (D.C. Cir. 1923) for admission of expert testimony), Mr. Powell moved to admit the testimonies of both Allison Redlich, PhD, and Nancy Franklin, PhD, as expert witnesses to educate the jury on factors associated with false confessions and eyewitness identifications, respectively. Dr. Franklin's testimony was proffered because when the victim of the first robbery described her assailant, some of the characteristics she described were inconsistent with Mr. Powell's physical appearance.

Dr. Redlich described the factors that made Mr. Powell potentially vulnerable to psychological manipulation. They included dispositional factors such as

mental illness, intellectual disability, and substance use, along with situational factors. The latter included his being in custody and intermittently questioned for more than 24 hours, the confession statements only describing information already known to police, and the fact that his statements minimized responsibility for the crimes by highlighting Mr. Powell's substance use.

The trial court precluded Dr. Redlich's testimony, noting that it was unpersuasive and lacked personal knowledge of the circumstances of the defendant's confession. Dr. Franklin's testimony was admitted for the first robbery but excluded for the second robbery, because the statement and surveillance videos corroborated the eyewitness evidence against Mr. Powell. The jury convicted him of first-degree robbery for the second robbery, and he pled guilty to a second count of first-degree robbery for the initial robbery. Mr. Powell appealed, and the appellate division affirmed. He was granted leave to appeal.

Ruling and Reasoning

In a 4-3 decision, the majority stated that an expert's opinion may be excluded, even if it passes the *Frye* test, if "there is simply too great an analytical gap between the data and the opinion proffered" (*Powell*, p 1055).

The court stated that the dispositional and situational factors outlined by Dr. Redlich did not apply to Mr. Powell because in his testimony, Mr. Powell did not appear to lack understanding of the circumstances of his interrogation, he was not intoxicated or in withdrawal when he made the statements, and Dr. Redlich was unable to make a link between his mental illness and confessions. They added that it was unlikely that Mr. Powell was under interrogation for more than 24 hours and that there was new information in his confession because he confessed to two other robberies that the police were unaware of before his interrogation. The court also noted that Dr. Redlich did not know which technique had been used by the police in the interrogation of Mr. Powell. The court noted Dr. Redlich's foregrounding of several elements that were irrelevant to the case.

In light of Mr. Powell's continued assertion that he was forced to make the first statement and had not written the second one, the court stated that the average juror would subsequently be able to infer potential cases of coercion and denial. Therefore, educating the jury on psychological manipulation would be

irrelevant. In the end, the majority found that Dr. Redlich's testimony was "broad, unmoored."

Regarding the preclusion of Dr. Franklin's testimony, the majority concluded that there was no abuse of discretion as the conviction was not based entirely on eyewitness identification.

Dissent

The dissent stated that under the *Frye* standard, Dr. Redlich had fulfilled the requirement as she showed that the phenomenon of false confession and the association of dispositional and situational factors are generally accepted in the scientific community. They stated that "validity and reliability" as discussed by the majority are *Daubert* requirements and should not have applied in this case because New York has adopted the *Frye* standard.

The dissent considered Dr. Redlich's testimony relevant because an average juror may not understand the complexities associated with false confessions, noting that Dr. Redlich attempted to testify to the facts of the case, but the *Frye* hearing was not the right time for such testimony. They believed Dr. Redlich was thorough and professional in her broadness rather than "speculative."

Addressing the exclusion of Dr. Franklin's testimony for the second robbery, the dissent noted that the corroborating evidence was unreliable because the statement was disputed, and the face of the perpetrator was not discernable on the surveillance videos.

Discussion

A review of DNA-related exonerations in the United States by the Innocence Project revealed that 69 percent of overturned cases involved eyewitness misidentifications and 29 percent involved false confessions (Innocence Project. DNA exonerations in the United States. Available from <https://innocenceproject.org/dna-exonerations-in-the-united-states>. Accessed September 19, 2022). The majority in *People v. Powell* dismissed Dr. Redlich's testimony, noting that psychological manipulation was not applicable to the case. The court considered her testimony irrelevant, concluding that there was no need to educate the jurors on psychological risk factors as they are already familiar with the phenomenon of false confessions.

The court may have overestimated the experience of an average juror because, as the dissent noted, the knowledge of the existence of false confessions is likely to differ significantly from understanding the

factors that predispose an individual to false confessions. Considering the evidence of substantial error in exoneration cases and the esoteric nature of these types of evidence, one could argue that the jury may have benefitted from the knowledge of these experts.

The majority also discounted the identified dispositional factors because these factors were not obvious during Mr. Powell's testimony at the *Huntley* hearing. For psychiatrists, it is relevant that this may have occurred because Mr. Powell was adequately prepared for the court hearing with the right treatment and sufficient guidance. In contrast, he may not have been as functional when he was under custodial interrogation.

Likewise, testimony on the effects of Mr. Powell's mental illness was minimized because "Dr. Redlich testified that there was 'some evidence' that there was a link between depression or anxiety and susceptibility to false confessions but then conceded that the 'evidence is not entirely clear on that'" (*Powell*, p 1041). Persons with severe mental illness, like Mr. Powell, can experience significant depression and anxiety, especially when exposed to a major stressor like interrogation.

Claims of Inadequate Mental Health Treatment and Prolonged Solitary Confinement

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Court Upheld Denial of Claims That Inmate Suffered Eighth Amendment Violations from Inadequate Mental Health Treatment and Inhumane Conditions While in Solitary Confinement

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In *Johnson v. Prentice*, 29 F.4th 895 (7th Cir. 2022), the U.S. Court of Appeals for the Seventh

Circuit considered Michael Johnson's claims that he suffered Eighth Amendment violations under 42 U.S.C. § 1983 (2012) while he spent three years in disciplinary segregation in Illinois state prison, and that he received inadequate mental health care. The lower court concluded that the record did not support Mr. Johnson's claims. The Seventh Circuit upheld the district court's decision to deny his claims.

Facts of the Case

In February 2007, Mr. Johnson was incarcerated in the Illinois state penitentiary system. During his nine-year incarceration, he exhibited frequent conduct problems and a failure to comply with prison rules, which resulted in his transfer between multiple facilities. Because of his many conduct violations, he received extended periods of disciplinary segregation, more commonly known as solitary confinement. In 2013, he was transferred to Pontiac Correctional Center (PCC), a maximum-security prison. While at PCC, he accumulated additional conduct violations resulting in a total of over three years served in disciplinary segregation. He was further penalized with yard privilege restrictions for poor conduct, which included throwing feces, fighting, and assault.

Mr. Johnson had a history of serious mental health conditions that predated his incarceration. When transferred to PCC, he was evaluated for mental health concerns by medical staff. They determined a treatment plan and evaluated him on a monthly basis. He was diagnosed with a number of mood and anxiety disorders and antisocial personality disorder, and treated with numerous mood stabilizing, antipsychotic, and antidepressant medications, though he never achieved stability. While in disciplinary segregation, he was placed on crisis watch on nine occasions when reporting suicidal or homicidal thoughts. He also reported auditory hallucinations, he excoriated his flesh, and exhibited bizarre behaviors, including smearing himself with feces. During the three years, he frequently requested a transfer to a mental health unit, though his treating psychiatrists determined this was "not warranted" (*Johnson*, p 901). In August 2016, he was transferred to Joliet Treatment Center after he was evaluated to have "achieved a measure of compliance with his treatment plan," two months after filing the lawsuit (*Johnson*, p 901).

In June 2016, Mr. Johnson filed a *pro se* complaint under 42 U.S.C. § 1983 (2012), alleging that the inadequate mental health treatment and inhumane