

“allegiance effects” have also been demonstrated experimentally, in which after retention, evaluators interpret case data in a way that supports the side that retained them (Murrie DC *et al.*, Are Forensic Experts Biased by the Side That Retained Them? *Psychol. Sci.*, 2013; 24(10):1889–97).

Hence, experts should prepare themselves to be cross-examined about their potential biases. For example, bias may be suggested by an expert’s predilection toward testifying for a particular side, by previous opinions given, and by previously published writing. Research suggests that introspection is a poor strategy for mitigating one’s own biases; a better approach involves structured self-monitoring, with tracking and analysis of one’s evaluations and opinions (Gowensmith WN, McCallum KE. Mirror, mirror on the wall, who’s the least biased of them all? Dangers and potential solutions regarding bias in forensic psychological evaluations. *S. Afr. J. Psychol.*, 2019; 49(2):165–176).

## Exclusion of Expert Exposition Testimony for a Lack of Fit with the Facts in a Hit and Run Homicide Case

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**Exposition Testimony on General Principles Must Assist the Factfinder in Connecting the Witness’s Expertise to the Particular Facts of the Case**

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**Key words:** exposition testimony; custodial interrogation; *Miranda*; Federal Rule of Evidence 702; expert testimony

In *State v. Dobbs*, 945 N.W.2d 609 (Wis. 2020), Timothy E. Dobbs appealed his convictions of homicide by intoxicated use of a vehicle and hit and run

resulting in death to the Wisconsin Supreme Court on the claim that the circuit court improperly excluded an expert’s exposition testimony and the circuit court improperly allowed pre-*Miranda* statements while Mr. Dobbs was in custody. The court of appeals affirmed the judgment of conviction in an unpublished, *per curiam* decision. The Supreme Court of Wisconsin also affirmed the decision of the circuit court, while ruling that the admission of pre-*Miranda* statements was harmless error.

### Facts of the Case

On September 5, 2015, Mr. Dobbs drove his vehicle across several lanes of traffic and a median and over a curb, striking and killing a pedestrian. He then drove away from the scene and was found in the damaged vehicle several blocks away by Madison Police Officer Jimmy Milton. Mr. Dobbs was handcuffed and placed in Officer Milton’s squad car. Officer Milton informed Mr. Dobbs that he was being detained for an ongoing accident investigation and that he was suspected of striking a pedestrian. Officer Milton later learned that the pedestrian had died. Officer Milton began questioning Mr. Dobbs in the back of the squad car about his birthdate, vehicle registration, medical history, whether he was taking medications for depression and anxiety, and whether he was injured. Mr. Dobbs told Officer Milton that he had not slept in 40 hours, that he had not taken his medication that morning, and that he was adjusting his arm in a sling, and he lost control of the vehicle, hitting a curb, which caused the observed damage to his vehicle. While observing Mr. Dobbs’ vehicle, Officer Milton observed a can of air duster in plain view on the front center console. Mr. Dobbs passed a field sobriety test, and a breath test was negative for alcohol two hours after he was initially questioned. He was transported to a nearby hospital for blood alcohol testing.

Mr. Dobbs was read his *Miranda* warnings by two different officers approximately three hours after he was first handcuffed and placed in a locked squad car. He waived his *Miranda* rights, was formally placed under arrest, and was informed the pedestrian had died. During questioning, he confessed that he had taken a puff of the air duster while he was driving, passed out, swerved, and then drove away from the scene. In the day following his initial arrest, Mr. Dobbs spontaneously confessed multiple times to “taking a puff of Dust-off” (*Dobbs*, p 616). Mr.

Dobbs was ultimately charged with one count of homicide by intoxicated use of a vehicle and one count of hit and run resulting in death.

Prior to trial, the circuit court heard several motions. Among these, Mr. Dobbs asserted that the circuit court improperly granted the state's motion to exclude the expert testimony of Dr. Lawrence White. Dr. White testified generally about the phenomenon of false confessions, including interrogation techniques and dispositional characteristics that make false confessions more likely. Dr. White did not review any reports or the specific facts of Mr. Dobbs' case and did not intend to offer an ultimate opinion on the truthfulness of Mr. Dobbs' confessions. For purposes of trial, Dr. White would provide "exposition testimony," providing education to the jury on the topic of false confessions in the most general sense without specific application to the facts of Mr. Dobbs' case. The circuit court ruled that Dr. White's testimony would not assist the jury because he never reviewed Mr. Dobbs' case, and his testimony did not satisfy the requirement for expert testimony in Wis. Stat. § 907.02(1) (2011) that "the witness has applied the principles and methods reliably to the facts of the case." On Mr. Dobbs' motion for reconsideration, the circuit court added that Dr. White's exposition testimony did not "fit" the particular facts surrounding Mr. Dobbs' confessions. Mr. Dobbs made no showing that the police employed the techniques Dr. White would testify about.

Second, Mr. Dobbs claimed the circuit court erred in denying his motion to suppress statements that he made to law enforcement because he was subject to custodial interrogation and not read his *Miranda* rights, or, in the alternative, because his statements were not voluntarily made. The circuit court denied Mr. Dobbs' motion to suppress these statements, concluding that he was read his *Miranda* warnings during the first interrogation that required the warning. They also concluded that each of the statements made by Mr. Dobbs to the officers was voluntary and not the product of coercion to any degree.

After being found guilty at trial, he was sentenced to 20 years imprisonment, consisting of 12 years of initial confinement followed by 8 years of extended supervision. Mr. Dobbs appealed, challenging the trial court's decision to grant the state's motion to

exclude Dr. White and denying his motion to suppress statements. The court of appeals affirmed the judgment of conviction in an unpublished, per curiam decision. Mr. Dobbs then petitioned the Supreme Court of Wisconsin for review.

#### Ruling and Reasoning

The Wisconsin Supreme Court affirmed the ruling of the appeals court. The court concluded that the circuit court properly exercised its discretion when it excluded Dr. White's exposition testimony for a lack of fit with the facts of Mr. Dobbs' case. Dr. White's exposition testimony would not assist the trier of fact to understand the evidence. Mr. Dobbs also failed to show that the types of tactics that were employed in his case would correspond to any of the generalized opinions that Dr. White held about false confessions and police interrogations.

Regarding the admissibility of Mr. Dobbs' statements made to law enforcement before he was read his *Miranda* warnings, the Supreme Court of Wisconsin first evaluated whether Mr. Dobbs was in custody when these statements were made. The court concluded that he was in custody, citing *State v. Bartelt*, 906 N.W.2d 684 (Wis. 2018) and *State v. Morgan*, 648 N.W.2d 23 (Wis. Ct. App. 2002), and it looked at "the defendant's freedom to leave; the purpose, place, and length of the interrogation; and the degree of restraint" (*Dobbs*, p. 627).

The court determined that several of Mr. Dobbs' statements should have been suppressed because he was subjected to custodial interrogation and was not read the *Miranda* warnings; but, the court concluded that the error was harmless based on the numerous spontaneous confessions introduced into evidence. The court further concluded that all of Mr. Dobbs' statements were voluntary because there was no evidence of improper police practices deliberately used to procure a confession and Mr. Dobbs' physical and emotional duress alone could not form the basis for finding his statements involuntary.

#### Discussion

This case provides an examination into the admissibility of exposition testimony and the topic of "fit." Exposition testimony differs from opinion testimony because it does not in and of itself explicitly connect the witness's expertise to the particular facts of the

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case. Here, the court decision illustrates how the trial judge must stand as a gatekeeper to prevent irrelevant or unreliable testimony from being admitted. When evaluating this standard, the following four factors are relevant for consideration: “(1) Whether the expert is qualified; (2) whether the testimony will address a subject matter on which the factfinder can be assisted by an expert; (3) whether the testimony is reliable; and (4) whether the testimony will ‘fit’ the facts of the case” (Blinka DD. Wisconsin Practice Series: Wisconsin Evidence § 702.4032 (4th ed. 2017), p 673-4; citing Fed. R. Evid. 702, Advisory Committee Notes to the 2000 Amendment).

In this case, the circuit court ruled that Dr. White’s testimony would not assist the jury because he never reviewed Mr. Dobbs’ case and therefore could not explicitly apply his expertise to the specific facts of the case. Mr. Dobbs also failed to show that the techniques used by police investigators would correspond to any of Dr. White’s generalized opinions. As forensic evaluators and experts in the court, we often define ourselves as educators in the courtroom. This case provides interesting insights into the difference between exposition testimony and opinion testimony, and limitations on the educational role of the expert witness.