

## **7.15. Expert Testimony on Reliability of Confessions**

**(1) Expert testimony regarding the reliability of a confession may be admitted, limited, or denied in the discretion of the trial court.**

**(2) In the exercise of its discretion, the trial court should consider (a) whether the proposed expert testimony is based on principles that are generally accepted within the relevant scientific community; (b) whether the proffered testimony meets the general requirements for the admission of expert testimony (Guide to NY Evid rule 7.01 [1]), in particular, whether the testimony is beyond the ken of the jury and would aid the jury in reaching a verdict; (c) whether the proffered testimony is relevant to the defendant and interrogation before the court; and (d) the extent to which the People's case relies on the confession.**

**(3) Expert testimony regarding the reliability of a confession generally falls within the following parameters: (a) testimony that purports to identify those "dispositional factors" of an individual that make it more likely that he or she may be coerced into giving a false confession (e.g. individuals who are highly compliant or intellectually impaired, suffer from a diagnosable psychiatric disorder, or are for some other reason psychologically or mentally fragile) or (b) testimony that purports to identify conditions or characteristics of an interrogation ("situational factors") that might induce someone to confess falsely to a crime.**

**(4) An expert who testifies may not render an opinion as to the truth or falsity of the confession.**

**(5) To the extent the proffered testimony involves novel scientific theories and techniques not yet found by courts to be generally accepted by the relevant**

**scientific community, the trial court should conduct a *Frye* hearing to determine the issue. (Guide to NY Evid rule 7.01 [2].)**

**Note**

This rule is derived from Court of Appeals decisions. (*People v Bedessie*, 19 NY3d 147 [2012]; *People v Powell*, 37 NY3d 476 [2021].)

In the words of *Bedessie*:

“False confessions that precipitate a wrongful conviction manifestly harm the defendant, the crime victim, society and the criminal justice system. And there is no doubt that experts in such disciplines as psychiatry and psychology or the social sciences may offer valuable testimony to educate a jury about those factors of personality and situation that the relevant scientific community considers to be associated with false confessions.” (*Bedessie* at 161; *see also Powell* at 491 [“There is a difference between the classically, inherently coercive interrogation that produces an involuntary confession—an issue that the jury is well-equipped to understand . . . and the phenomenon of false confessions involving the interplay of situational and dispositional factors that produce a coercive compliant false confession from an innocent suspect, an occurrence that the jury may find counterintuitive”].)

The rules applicable to the admissibility of an expert on the reliability of a confession parallel the rules applicable to an expert on the reliability of identification evidence. (*See Bedessie* at 156 [analogizing to the law on the reliability of expert identification testimony set forth in *People v Lee* (96 NY2d 157 [2001])]; Guide to NY Evid rule 7.17.)

**Subdivision (1)** states the rule of *Bedessie* and *Powell* that “ ‘admissibility and limits of expert testimony’ ” on the reliability of a confession “ ‘lie primarily in the sound discretion of the trial court.’ ” (*Bedessie* at 156, quoting *Lee* at 162; *Powell* at 489 [the “admissibility and scope of expert testimony are subject to the discretion of the trial court”]; *cf. People v Santiago*, 17 NY3d 661, 668 [2011] [a “trial court may, in its discretion, admit, limit, or deny the testimony of an expert on the reliability of eyewitness identification”].)

A trial court’s exercise of discretion in denying or limiting an expert’s testimony on the reliability of a confession is subject to appellate review for an abuse of discretion. (*Powell* at 489 [“The admissibility and scope of expert testimony are subject to the discretion of the trial court . . . (thereby) limiting our scope of review to whether the determination to exclude the proffered expert testimony was an abuse of that discretion as a matter of law”]; *Bedessie* at 161 [the

trial court did not “abuse his discretion” when “he excluded the proposed testimony” by an expert on the reliability of confessions]; *cf. People v McCullough*, 27 NY3d 1158, 1161 [2016] [summing up the criterion for appellate review of the exercise of discretion in denying or limiting expert identification evidence by stating: “Courts reviewing (the exercise of discretion) simply examine whether the trial court abused its discretion in applying the standard balancing test of prejudice versus probative value (*People v Powell*, 27 NY3d 523, 531 [2016])” (internal quotation marks omitted)]; *see* Guide to NY Evid rule 4.07.)

**Subdivision (2)** recites factors a trial court should consider in determining whether to admit expert testimony on the reliability of a confession which are reflected primarily in the opinions of *Bedessie* and *Powell*.

*Bedessie* summed up the “broad principles” for determining admissibility; namely, a trial court’s discretion should be guided by “whether the proffered expert testimony would aid a lay jury in reaching a verdict; courts should be wary not to exclude such testimony merely because, to some degree, it invades the jury’s province; [d]espite the fact that jurors may be familiar from their own experience with factors relevant to the reliability of the evidence at issue, it cannot be said that psychological studies bearing on reliability are within the ken of the typical juror; and since the expert testimony may involve novel scientific theories and techniques, a trial court may need to determine whether the proffered expert testimony is generally accepted by the relevant scientific community.” (*Bedessie* at 156-157 [internal quotation marks and citation omitted].) In addition, “the expert’s proffer must be relevant to the defendant and interrogation before the court.” (*Id.* at 161.)

*Powell* added that “the scientific principles involve more complexity than the general conclusion that false confessions do occur, and the expert is supposed to articulate those principles so a jury can apply the information to the actual evidence in the case—not merely speculate in the absence of that evidence. We therefore hold that there is no abuse of discretion when the trial court disallows expert psychological testimony as to false confessions when it is not relevant to the circumstances of the custodial interrogation in the case at hand.” (*Powell* at 495.)

Neither *Bedessie* nor *Powell* quoted the criterion included for consideration in determining whether to allow expert identification testimony, namely, whether “there is little or no corroborating evidence connecting the defendant to the crime.” (*People v LeGrand*, 8 NY3d 449, 452 [2007].)

*Bedessie*, however, discussed the nature of the non-confession evidence, which appeared to rest solely on the identification by the complainant, noting that “certainly this is not a case where there was corroboration by verifiable evidence supplied in a defendant’s confession itself and previously unknown to the police”

and, regardless of the evidence of corroboration, the expert's "proffer had nothing to say that was relevant to the circumstances of this case." (*Bedessie* at 157.) Thus, the trial judge did not abuse his discretion when he excluded the proposed testimony, "even assuming that the confession was not corroborated." (*Id.* at 161.)

*Powell* observed that the defendant was identified via a lineup as the perpetrator of a robbery, and that video surveillance evidence supported the identification but did not conclusively show the perpetrator's face. As in *Bedessie*, *Powell*'s holding that the court did not abuse its discretion in denying the motion for an expert on the reliability of confessions rested on a determination that the proffered expert testimony was "not relevant to the circumstances of the custodial interrogation in the case at hand." (*Powell* at 495.)

The Appellate Division cases following *Bedessie* have weighed the "extent to which the People's case relied on the confession" in determining whether the trial court abused its discretion in denying a motion for expert testimony on the reliability of confessions. (*People v Evans*, 141 AD3d 120, 126 [1st Dept 2016] [*Bedessie* "asks us to examine whether the proffered expert testimony is warranted based on the nature of the interrogation, the applicability of the science of false confessions to the defendant and the extent to which the People's case relied on the confession. All three factors must be considered and weighed to determine the admissibility of the expert testimony on false confessions"]; *People v Jeremiah*, 147 AD3d 1199, 1205 [3d Dept 2017]; see *People v Roman*, 125 AD3d 515, 516 [1st Dept 2015] ["this is not a case that turns on the accuracy of defendant's confession"].)

*Evans*, for example, accepted that "the relevant inquiry here is whether the confession was corroborated by overwhelming evidence, thereby undermining the usefulness of expert testimony on the issue of false confessions." On the facts of the case, however, the Court held that "the confession was a central component of the People's case, and thus does not undermine the usefulness of expert testimony on the issue of false confessions." (*Evans* at 126.)

*Jeremiah*, on the other hand, found that "the People's case was not premised exclusively or primarily upon defendant's statement" and ruled that "the required showing of relevancy was not made." (*Jeremiah* at 1204-1205.)

**Subdivision (3)** sets forth a summary of the scope of expert testimony that is drawn from *Bedessie*, which began by declaring: "That the phenomenon of false confessions is genuine has moved from the realm of startling hypothesis into that of common knowledge, if not conventional wisdom" (*Bedessie* at 156), and then identified the expert testimony normally proffered on the issue of a false confession as follows:

"Research in the area of false confessions purports to show that certain types of defendants are more likely to be coerced into

giving a false confession—e.g., individuals who are highly compliant or intellectually impaired or suffer from a diagnosable psychiatric disorder, or who are for some other reason psychologically or mentally fragile . . . .

“Research also purports to identify certain conditions or characteristics of an interrogation which might induce someone to confess falsely to a crime.” (*Bedessie* at 159-160; *see also Powell* at 485 [noting that, at a *Frye* hearing, the defense expert “set forth the three types of false confessions: voluntary (not coerced—could be offered to protect another or attain notoriety), coerced compliant (where the suspect’s will is overborne) and internalized (through deceptive interrogation techniques, the suspect comes to believe he or she is guilty). (The expert) also set forth the paradigm of a series of dispositional and situational factors that have been recognized as contributing to the risk of false confessions”]; *Evans*, 141 AD3d at 124-125 [finding that the expert’s testimony was relevant with respect to the dispositional factors which the expert concluded the defendant exhibited]; *People v Days*, 131 AD3d 972, 979, 981 [2d Dept 2015] [“it cannot be said that psychological studies bearing on the reliability of a confession are, as a general matter, ‘within the ken of the typical juror,’ ” and “the defendant made a thorough proffer that he was ‘more likely to be coerced into giving a false confession’ than other individuals. His proffer clearly indicated that he was intellectually impaired, highly compliant, and suffered from a diagnosable psychiatric disorder, and also that the techniques used during the interrogation were likely to elicit a false confession from him . . . Further, there was little evidence to corroborate the defendant’s confession in this case, and his conviction turned almost entirely on his videotaped confession”].)

**Subdivision (4)** recites the rule set forth in both *Bedessie* (at 161 [the expert may not testify as to whether a particular defendant’s confession was or was not reliable]) and *Powell* (at 491 [“the proffered testimony would not have been admissible for the purpose of establishing that a false confession occurred”]).

**Subdivision (5)** recognizes the standard procedure for determining the admissibility of novel scientific theories and techniques not yet found by courts to be generally accepted by the relevant scientific community. (*See Bedessie* at 156-157 [“since the expert testimony may involve novel scientific theories and techniques, a trial court may need to determine whether the proffered expert testimony is generally accepted by the relevant scientific community” (internal quotation marks omitted)].)

*Powell* (at 495 n 15) explained that “even where there is general acceptance for a particular phenomenon . . . that does not mean that all evidence related to that field will be admissible. The court still has a gatekeeping function to perform in determining whether specific research areas relating to that field are generally accepted.”

On scientific evidence generally, the Court of Appeals has noted that a trial court “need not hold a *Frye* hearing where it can rely upon previous rulings in other court proceedings as an aid in determining the admissibility of the proffered testimony. ‘Once a scientific procedure has been proved reliable, a *Frye* inquiry need not be conducted each time such evidence is offered [and courts] may take judicial notice of reliability of the general procedure.’ ” (*LeGrand*, 8 NY3d at 458; *but see People v Williams*, 35 NY3d 24, 43 [2020] [“our *Frye* jurisprudence accounts for the fact that evolving views and opinions in a scientific community may occasionally require the scrutiny of a *Frye* hearing with respect to a familiar technique. There is no absolute rule as to when a *Frye* hearing should or should not be granted, and courts should be guided by the current state of scientific knowledge and opinion in making such determinations”].)