

COERCED INTERNALIZED FALSE CONFESSIONS AND POLICE INTERROGATIONS: THE POWER OF COERCION

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ABSTRACT

This paper examines false confessions, and in particular the misunderstood typology of “coerced-internalized” false confessions. These confessions are made by individuals who falsely confess, but truly believe in their guilt despite objective evidence to the contrary. The paper will begin with an examination of false confessions and police interrogation in general, and then will focus on coerced-internalized confessions in particular. Various case examples will be examined in brief, but the case example of Billy Wayne Cope will be discussed at length including the reported South Carolina Court of Appeal case, the transcripts of experts and the accused from trial, as well as an discussion of the extensive television documentary highlighting the possibility that Cope was wrongfully convicted. By looking at the specific words and reasoning of Billy Wayne Cope, this paper attempts to examine the impact of one of the most unique and misunderstood forms of false confessions, and to suggest what needs to be done differently in the future to prevent further miscarriages of justice.

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INTRODUCTION

*The police interrogator is “a salesman, a huckster as thieving and silver-tongued as any man who ever moved used cars or aluminum siding—more so, in fact, when you consider that he’s selling long prison terms to customers who have no genuine need for the product.”*¹

*“Common sense tells us that regular eyewitness [sic] can make mistakes but that innocent people do not confess to crimes they did not commit.”*²

False confessions are very much alive and well in the legal system in North America today, and there is a very long history of these types of wrongful declarations. One of the first references to a false confession was recorded in 1660.³ A servant named John Perry was sent to look for his master, William Harrison.⁴ When Perry failed to return home for a prolonged period of time, it was suspected that he had robbed his master of the rent money he was collecting and had killed Harrison in the process.⁵ When Perry returned home, he originally maintained his innocence, saying that he believed that Harrison had been killed, but that he was not the murderer.⁶ Perry was urged by the Justice of the Peace to confess to the murder of Harrison.⁷ Instead, Perry proclaimed that his mother and his brother, Richard, were guilty of the crime and he had helped to dispose of the body.⁸ All three members of the Perry family were convicted of murder solely on the basis of John’s very detailed confession.⁹ John even claimed to have the string with which his brother strangled Harrison.¹⁰ Even though John retracted his confession (he claimed that he was “mad” at the time of the confession), all were executed.¹¹ Two years after the

1. DAVID SIMON, *HOMICIDE: A YEAR ON THE KILLING STREETS* 201 (1991).

2. Saul M. Kassin, *Internalized False Confessions*, in *HANDBOOK OF EYEWITNESS PSYCHOLOGY: MEMORY FOR EVENTS* 175, 177 (Michael P. Toglia et al. eds., 2007) [hereinafter Kassin, *Internalized False Confessions*].

3. LAWRENCE S. WRIGHTSMAN & SAUL M. KASSIN, *CONFESSIONS IN THE COURTROOM* 84 (1993).

4. See *THE CAMPDEN WONDER*, <http://www.campdenwonder.plus.com/Story.htm> (last visited Aug. 7, 2012).

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

execution of all three suspects, the “victim,” William Harrison, returned alive and well, claiming that he had been kidnapped and held as a slave in Turkey until he escaped years later.¹²

This paper will examine false confessions and, in particular, the difficult to understand typology of “coerced-internalized” false confessions. These confessions are made by individuals who falsely confess but truly believe in their guilt despite objective evidence to the contrary. The paper will begin with an examination of false confessions and police interrogation in general, and then will focus on coerced-internalized confessions in particular. Various case examples will be examined in brief, but the case example of Billy Wayne Cope will be discussed at length, including the reported South Carolina Court of Appeal case, the transcripts of experts and the accused from trial, as well as a discussion of a television documentary highlighting the possibility that Cope was wrongfully convicted. By looking at the specific words and reasoning of Billy Wayne Cope, this paper attempts to examine the impact of one of the most unique and misunderstood forms of false confessions and to suggest what needs to be done differently in the future to prevent further miscarriages of justice.

CONFESSIONS, INTERROGATIONS AND THE POLICE

“The modern equivalents to the third-degree practice of threatening harm and finding ways to injure the person without leaving marks have also developed. The modern equivalent to the rubber hose is the indirect threat communicated through pragmatic implication.”¹³

From a psychological perspective, there has been research for decades on the use of persuasion, advertising, false memories, false confessions and eye witness accounts.¹⁴ The psychological accounts are impactful as they involve mistaken identities, inaccurate memories, and faulty eyewitness

12. *Id.*; see also WRIGHTSMAN & KASSIN, *supra* note 3, at 84; GISLI H. GUDJONSSON, *THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK* 166 (2003).

13. Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 *DENV. U. L. REV.* 979, 1115 (1997).

14. See R.B. Cialdini & B.J. Sagarin, *Principles of Interpersonal Influence, in PERSUASION: PSYCHOLOGICAL INSIGHTS AND PERSPECTIVES* 143 (T.C. Brock & M.C. Green eds., 2005); see also R.B. Cialdini et al., *Reciprocal Concessions Procedure for Inducing Compliance: The Door-in-the-Face Technique*, 31 *J. PERSONALITY & SOC. PSYCHOL.* 206, (1975).

testimony resulting in the conviction of the innocent.¹⁵ When this psychological research is applied to interrogation, the result can be that the officer already believes that the suspect committed the crime and is “not likely to take ‘no’ as an answer. The interrogator will use whatever means necessary to elicit a confession,” and not only will the suspect confess, but they will “form false memories of the crimes that they did not commit.”¹⁶ Various psychological theories have developed including the “source monitoring framework” which posits that typical individuals can differentiate memories from the imagination, but those without this ability may falsely confess when fantasy and reality become confused.¹⁷ The “encoding, retrieval, and evaluation discussed by the source monitoring framework can give rise to false beliefs and memories” and interrogation can “expose innocent suspects to information with which they had no previous knowledge.”¹⁸

From a legal perspective, a confession is defined as a “criminal suspect’s oral or written acknowledgement of guilt, often including details about the crime,” and a coerced confession as a “confession that is obtained by threats or force.”¹⁹ Police are trained to elicit confessions, and this function is considered an integral part of police enforcement.²⁰ A confession has long been held as the key in any case, as “the introduction of a confession makes the other aspects of a trial in court superfluous.”²¹ However, Ray Bull and Stavroula Soukara note that there are “rather few published studies of what actually takes place during police interviews with suspects.”²² The researchers note that there has been a change in interviewing techniques in Britain based on research in the early 1990s which showed that there was minimal training and poor interviewing skills

15. Juliana K. Leding, *False Memories and Persuasion Strategies*, 16 REV. GEN. PSYCHOL. 256, 256 (2012).

16. *Id.* at 265.

17. Linda A. Henkel & Kimberly J. Coffman, *Memory Distortions in Coerced False Confessions: A Source Monitoring Framework Analysis*, 18 APPLIED COGNITIVE PSYCHOL. 567, 570 (2004).

18. *Id.* at 567.

19. BLACK’S LAW DICTIONARY 338 (9th ed. 2009).

20. RONALD JOSEPH DELISLE & DON STUART, *LEARNING CANADIAN CRIMINAL PROCEDURE* 352 (6th ed. 2000).

21. Saul M. Kassir, *The Psychology of Confession Evidence*, 52 AM. PSYCHOL. 221, 221 (1997) [hereinafter Kassir, *Psychology of Confession Evidence*] (quoting C.T. MCCORMICK, *HANDBOOK OF THE LAW OF EVIDENCE* 316 (2d ed. 1972)).

22. Ray Bull & Stavroula Soukara, *Four Studies of What Really Happens in Police Interviews*, in *POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS* 81 (G. Daniel Lassiter & Christian A. Meissner eds., 2010).

among officers. British authorities implemented a new training method called PEACE, for “Planning and preparation, Engage and explain, Obtain an account, Closure, and Evaluation.”²³ The British model stressed “crucial aspects of interviewing” including overarching aims that “the role of interviewers is to obtain reliable and accurate information; interviewers should be open-minded; interviewers must act fairly; interviewers ask questions to establish the truth.”²⁴ However, one study noted by Bull and Soukara found that although the PEACE tactics were policy, police still used techniques such as revealing crucial evidence about the crime, leading questions, repetitive questioning, emphasizing contradictions, directly accusing the suspect, and challenging the suspect’s account in more than 50% of the cases studied. Techniques such as “gentle prods” or asking the suspect to speak through encouragement, recognizing changes in mood and changing questioning techniques, concern, and silence were used in less than 50% of the cases.²⁵

It has long been a principle of law that a confession is not admissible unless the prosecution shows that the statement was voluntary “in the sense that it has not been obtained by him either by fear of prejudice or hope of advantage exercised or held out by a person in authority.”²⁶ This healthy fear of confessions obtained by threats or hope of advantage comes from the notion that confessions made in the face of threats may be untrue or untrustworthy.²⁷ However, in the case of *Commissioners of Customs and Excise v. Harz*, the court recognized another problem:

It is true that many of the so-called inducements have been so vague that no reasonable man would have been influenced by them, but one must remember that not all accused are reasonable men or women: they may be very ignorant and terrified by the predicament in which they find themselves.²⁸

Courts have thus recognized the potential for false confessions even if the inducements or threats seem inconsequential to those looking at the

23. *Id.* at 82.

24. *Id.*

25. *Id.* at 85-86. The researchers also found that maximization, minimization, intimidation, telling the suspect that the truth would be revealed, and highlighting the negative consequences were never, or almost never, used.

26. DELISLE & STUART, *supra* note 20, at 356 (citing *Ibrahim v. R.*, [1914] A.C. 599 (P.C.) (appeal taken from H.K.)).

27. DELISLE & STUART, *supra* note 20, at 352.

28. *Id.* at 357 (quoting *Comm’rs of Customs & Excise v. Harz & Power*, [1967] 1 A.C. 760, 820).

situation from the outside.²⁹ Richard Leo and Steven Drizin have identified what they call “psychological coercion” by the police which are “coercive police methods that sequentially manipulate a suspect’s perception of the situation, expectations for the future, and motivation to shift from denial to admission,” and one of these methods is to “overbear a suspect’s will . . . and are thus regarded as inherently coercive in psychology and law.”³⁰

It is also true that interrogations are inherently stressful. Hollida Wakefield and Ralph Underwager cite an English study that examined the reactions of first-time offenders interrogated about sex crimes.³¹ The researchers found that the suspects had reactions including “trembling, shivering, sweating, hyperventilation, frequent urination, and verbal incoherence.”³² Added to these inherent stresses, the researchers found that those who make false confessions do so because of a combination of mental elements, personality, intelligence, and the environment of the interrogation.³³

The techniques used by police in the course of interrogations are the focal points for an analysis of false confessions. Police officers try to persuade a suspect to confess because denial of the crime is considered an undesirable outcome.³⁴ Moreover, the number of confessions an officer obtains is linked to his or her interviewing competence.³⁵ True confessions are an integral part of the legal system, facilitating plea negotiations and alleviating the pressure on the clogged legal system. Research shows that 40-76% of those interrogated confess.³⁶ However, the pressure put on officers to obtain confessions from suspects leads officers to resort to coercive interrogation tactics which have the potential to lead to false confessions.³⁷

29. DELISLE & STUART, *supra* note 20, at 357.

30. Richard A. Leo & Steven A. Drizin, *The Three Errors: Pathways to False Confession and Wrongful Conviction*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS, *supra* note 22, at 9, 17.

31. Hollida Wakefield & Ralph Underwager, *Coerced or Nonvoluntary Confessions*, 16 BEHAV. SCI. & L. 423, 426 (1998).

32. *Id.*

33. *Id.*

34. Stephen Moston, *From Denial to Admission in Police Questioning of Suspects*, in PSYCHOLOGY, LAW AND CRIMINAL JUSTICE: INTERNATIONAL DEVELOPMENTS IN RESEARCH AND PRACTICE 91, 93 (Graham Davies et al. eds., 1996).

35. *Id.*

36. Melissa Russano et al., *Investigating True and False Confessions Within a Novel Experimental Paradigm*, 16 PSYCHOL. SCIENCE 481, 481-82 (2005).

37. *Id.*

Stephen Moston states that most police interrogation techniques focus on how to overcome denials and elicit confessions from suspects.³⁸ Saul Kassin describes the modern police interrogation as a psychological process involving three components: 1) isolation as a means to increase the suspect's anxiety and desire to escape; 2) confrontation whereby the interrogator accuses the suspect of the crime using real or fictitious evidence to support the accusation; and 3) minimization, where the investigator conveys sympathy and provides a moral justification for the crime in order to lead the suspect to expect leniency upon confession.³⁹ The tactics of isolation, confrontation, and minimization are currently used in police interrogations to obtain confessions.⁴⁰ These researchers also discuss the technique of maximization where the interrogators convey to the accused a solid belief that he or she is guilty and that any attempt to deny guilt will fail.⁴¹ Other techniques include invading the suspect's personal space; keeping light switches, thermostats, and other control devices out of the suspect's reach; and using one-way mirrors to allow other officers to look for signs of fatigue, weakness, anxiety and withdrawal, as well as to read the suspect's body language.⁴²

Kassin and his co-authors argue that use of fictitious evidence has been implicated in a vast majority of documented police coerced confessions as does the use of deception and trickery.⁴³ "Investigator bias," whereby officers focus on one suspect because they are convinced he or she is guilty, also plays a significant role in false confessions.⁴⁴ The difficulties associated with reading body language and non-verbal cues also have the potential to lead to false confessions.⁴⁵ Many scholars argue that a

38. *Id.* at 93.

39. Saul M. Kassin, *False Confessions: Causes, Consequences, and Implications for Reform*, 17 CURRENT DIRECTIONS PSYCHOL. SCI. 249, 250 (2008) [hereinafter Kassin, *False Confessions: Causes, Consequences*].

40. See Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3 (2010) [hereinafter Kassin, *Police-Induced Confessions*]; see also Allison D. Redlich & Christian Meissner, *Techniques and Controversies in the Interrogation of Suspects: The Artful Practice Versus the Scientific Study*, in PSYCHOLOGICAL SCIENCE IN THE COURTROOM: CONTROVERSIES AND CONSENSUS 124, 127 (Jennifer L. Skeem et al. eds., 2009).

41. Kassin, *Police-Induced Confessions*, *supra* note 40, at 12.

42. Kassin, *Psychology of Confession Evidence*, *supra* note 21, at 222.

43. Kassin, *Police-Induced Confessions*, *supra* note 40, at 12; see also Wakefield & Underwager, *supra* note 31, at 424.

44. Redlich & Meissner, *supra* note 40, at 130.

45. Kassin, *Psychology of Confession Evidence*, *supra* note 21, at 222; see also Redlich & Meissner, *supra* note 40, at 130.

confession is a prosecutor's most powerful weapon of guilt⁴⁶ and that a confession is highly persuasive.⁴⁷ Wakefield and Underwager state that confessions have a compelling influence on jurors and that jurors are more likely to convict a suspect based on the suspect's confession than on any other factor, even if the jurors are aware that the confession was coerced.⁴⁸

It is very difficult to determine if these techniques result in a precise number of confessions that are entirely "true" or "false." Gudjonsson notes that the problem with this type of empirical analysis would depend on knowing how many of those interrogated were "genuinely guilty," a number that is inherently unknowable.⁴⁹ Some researchers have attempted to take the number of "true confessions" and "false denials" in a sample of cases, and dividing by the number of interrogations, but in actuality, this "base rate of guilt or innocence is rarely known and is likely to fluctuate according to the nature of the case being investigated."⁵⁰

FALSE CONFESSIONS GENERALLY

There is some disagreement about the rate of false confessions. In 1987, Hugo Bedau and Michael Radelet identified 350 instances of wrongful convictions in capital cases in America.⁵¹ In forty-nine of these cases, the issue was a false confession elicited by coercion.⁵² Wakefield and Underwager reviewed the literature and noted that:

[I]n a sample of 205 cases of wrongful convictions . . . coerced confessions accounted for 8.4%. In a study of 229 inmates in Icelandic prisons, 27 (12%) of the inmates claimed to have made a

46. Kassin, *Psychology of Confession Evidence*, *supra* note 21, at 221; *see also* Kassin, *Police-Induced Confessions*, *supra* note 40, at 9.

47. Wakefield & Underwager, *supra* note 31, at 423; *see also* Kassin, *False Confessions: Causes, Consequences*, *supra* note 39, at 249.

48. Wakefield & Underwager, *supra* note 31, at 423.

49. Gisli H. Gudjonsson, *The Psychology of False Confessions: A Review of the Current Evidence*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS, *supra* note 22, at 31, 34.

50. *Id.* at 34. Gudjonsson further notes that the "higher the base rate of guilt among those interrogated, the lower the risk of a false confession occurring. If the police interrogate only genuinely guilty suspects then there would be no false confessions! Indeed, one coauthor of an influential interrogation manual claimed at an international conference in 2004 that his or her technique did not result in false confessions, because "we don't interrogate innocent people." *Id.*

51. *See generally* Richard J. Ofshe, *Coerced Confessions: The Logic of Seemingly Irrational Action*, 6 CULTIC STUD. J. 1 (1989).

52. *Id.*

false confession in the past during police interviewing and the majority of the subjects (78%) were convicted of the offense to which they had allegedly made a false confession.⁵³

The Innocence Project in the United States estimates that “[i]n about 25% of DNA exoneration cases, innocent defendants made incriminating statements, delivered outright confessions or pled guilty.”⁵⁴ Richard Leo states that as of 2006 in the United States there are “over 170 DNA exonerations of convictions, approximately 20 to 25 percent of which resulted in whole or in part from police-induced false confessions.”⁵⁵ Studies of confessions in Canada have raised similar questions.⁵⁶

Some maintain that false confessions are the product of individuals who are mentally disordered or impaired.⁵⁷ Although this is true in some circumstances, this does not account for all incidents of false confessions.⁵⁸ The long history of false confessions in Canadian law was noted in the 2000 Supreme Court of Canada case of *R. v. Oickle*.⁵⁹ In *Oickle*, the

53. Wakefield & Underwager, *supra* note 31, at 425 (citation omitted).

54. *Understand the Causes: False Confessions/Admissions*, THE INNOCENCE PROJECT, <http://www.innocenceproject.org/understand/False-Confessions.php> (last visited Jan. 24, 2012).

55. Richard A. Leo et al., *Bringing Reliability Back in: False Confessions and Legal Safeguards in the Twenty-First Century*, 2006 WIS. L. REV. 479, 484 (2006).

56. See, e.g., Kent Roach, *Unreliable Evidence and Wrongful Convictions: The Case for Excluding Tainted Identification Evidence and Jailhouse and Coerced Confessions*, 52 CRIM. L.Q. 210 (2007).

57. *Id.*

58. See Allison D. Redlich, *False Confessions, False Guilty Pleas: Similarities and Differences*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS, *supra* note 22, at 49, 53. Redlich notes that youth and persons with mental impairment (including those with mental illness and developmental issues) are the two groups most cited as at risk. Redlich also notes that those with “immature development, impulsivity, obedience to and desire to please authority, inability to consider long-term consequences, and deficits in executive functioning are some of the factors that can be present in these populations and that can affect decision making and the likelihood of false confession in interrogation settings.” *Id.* See also I. Bruce Frumkin, *Evaluations of Competency to Waive Miranda Rights and Coerced or False Confessions: Common Pitfalls in Expert Testimony*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS *supra* note 22, at 191, 200 (noting that there is “no simple relationship between mental illness and suggestibility”); Christian A. Meissner et al., *The Importance of a Laboratory Science for Improving the Diagnostic Value of Confession Evidence*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS, *supra* note 22, at 111, 115 (citing the study by Drizin and Leo that found that only 10% of their sample of false confessors were deemed “mentally ill”); S. A. Drizin & R. A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891 (2004).

59. *R. v. Oickle*, [2000] 2 S.C.R. 3 (Can.); see also Roach, *supra* note 56.

Court acknowledged that there is documentation on “hundreds of cases where confessions have been proven false by DNA evidence, subsequent confessions by the true perpetrator, and other such independent sources of evidence.”⁶⁰ Given the role of false confessions in wrongful convictions, the court urged the study of why false confessions occur.⁶¹ There are many questions that one must ask in light of a confession, including:

Is an alleged confession authentic? Was the defendant of sound mind or could he have confessed to crimes he did not commit? Was his statement coerced or induced by trickery during an interrogation? Was the suspect’s constitutional privilege against self-incrimination violated? Can the testimony of possibly overzealous police officers be trusted?⁶²

However, it is important to note that “[c]oerced or nonvoluntary confessions must be distinguished from false confessions, since not all coerced or nonvoluntary confessions are false and not all false confessions are coerced.”⁶³ For the purposes of this paper, only confessions which are false and coerced (internalized) will be examined. It is an easy answer to say that someone who falsely confesses is mentally disordered, but the cases and the theory discussed in this paper examine individuals who are neither disordered nor suffering from a recognized psychological illness.⁶⁴

60. Oickle, [2000] 2 S.C.R. 3 (Can.), at para. 35.

61. *Id.* at para. 36.

62. WRIGHTSMAN & KASSIN, *supra* note 3, at 4.

63. Wakefield & Underwager, *supra* note 31, at 425.

64. *See* Reck v. Pate, 367 U.S. 433, 435-39 (1961). Those who are mentally disordered or impaired may have specific susceptibilities to coercion. For example, in *Reck*, the Court examined the situation of a 19-year-old “mentally retarded” man who was held in police custody for four days. The young man was subjected to seven-hour interrogations, public humiliation, and food deprivation, and was badgered until he vomited blood. Justice Douglas noted in his concurrence at 445 that “long-continued interrogation under conditions of stress can give the interrogator effective command over the prisoner,” and also cited the interrogation techniques including “(1) disorientation and disillusion; (2) synthetic conflict and tension; (3) crisis and conversion; (4) rationalization and indoctrination; (5) apologetics and exploitation.” The confessions of murder signed by Reck were deemed inadmissible.

THE TYPOLOGY OF COERCED-INTERNALIZED CONFESSIONS

Kassin and Wrightsman established a typology of confessions in 1985, in order to distinguish amongst different types of confessions.⁶⁵ They isolated three distinct types of confessions: voluntary, coerced compliant, and coerced-internalized.⁶⁶ Although theorists have speculated that individuals voluntarily falsely confess for reasons ranging from a desire for fame to a psychological condition making it difficult to tell reality from fantasy to a desire to aid the actual perpetrator, coerced-internalized confessions are those in which the individual actually *believes* he or she committed the crime, and this type is one of the most difficult types to comprehend.⁶⁷ Kassin describes coerced-internalized false confessions as the “most interesting, psychologically speaking.”⁶⁸ He describes confessions in which:

[A]n innocent person—anxious, tired, confused, and subjected to highly suggestive methods of interrogation—actually comes to believe that he or she committed the crime. This type of false confession is particularly frightening because the suspect’s memory of his or her own actions may be altered, rendering the original contents potentially irretrievable.⁶⁹

These confessions are produced by a more gentle “but relentlessly persuasive form of interviewing.”⁷⁰ Coerced-internalized confessions must be distinguished from coerced-compliant confessions, where the individual does not believe the suggestions of interrogators, but only confesses to escape an “intolerable situation,” such as one which involves physical violence and aggressive interviewing techniques.⁷¹ Coerced-internalized confessions can outwardly appear “voluntary” and are not coerced by police in a traditional sense.⁷²

65. Saul M. Kassin & Lawrence S. Wrightsman, *Confession Evidence*, in *THE PSYCHOLOGY OF EVIDENCE AND TRIAL PROCEDURE* 67, 76 (Saul M. Kassin & Lawrence S. Wrightsman eds., 1985).

66. *Id.*

67. GUDJONSSON, *supra* note 12, at 194-95.

68. Kassin, *Psychology of Confession Evidence*, *supra* note 21, at 226.

69. *Id.*; see also GUDJONSSON, *supra* note 12 (discussing several tests to examine the ability to “shift” memory, and identifying factors that would make an individual more susceptible to falsely confessing).

70. WRIGHTSMAN & KASSIN, *supra* note 3, at 92.

71. G.H. Gudjonsson & Brek LeBegue, *Psychological and Psychiatric Aspects of a Coerced-Internalized False Confession*, 29 *J. FORENSIC SCI. SOC’Y* 261, 262 (1989).

72. GUDJONSSON, *supra* note 12, at 194.

Christopher Sherrin expands on this typology of internalized false confessions, saying:

A suspect comes to believe in his or her own guilt, despite having no memory of committing the crime. For this to happen, it is believed that the suspect must lack confidence in his or her memory of an event or time period. An interrogator can take advantage of this weakness, sometimes unwittingly, through highly suggestive questioning and proffered explanations for the suspect's alleged lack of memory. The suspect is unable to detect errors and deflect the suggestions; and begins to adopt them until he or she finally comes to accept guilt. The suspect usually retains an element of doubt, believing only that he or she may have committed the crime, but that is enough to lead to the acknowledgement of responsibility and to a confession.⁷³

In this typology, the suspects come to believe they have committed the crimes of which they are accused, even if they have no actual memories of the crimes.⁷⁴ Gudjonsson originally called this “memory distrust syndrome,” or MDS: a “condition where people develop profound distrust of their memory recollections, as a result of which they are particularly susceptible to relying on external cues and suggestions.”⁷⁵ These individuals do not have clear memories of *not* committing the crimes of which they were accused, and may have no recollection of the time when the offenses were committed, making it easier to believe that they must have committed them.⁷⁶ In coerced-internalized confessions, the pressure is applied by police and internalized to the extent that individuals change their beliefs about their innocence⁷⁷ and actively accept the interrogators' accounts of events.⁷⁸

Richard Ofshe studied texts on interrogation techniques and concluded that many methods require a suspect to be “persuaded” to confess.⁷⁹ He identifies several keys to persuasion, including (1) convincing the suspect of the hopelessness of the situation and the certainty of their conviction through “invention of evidence” and “gross distortion” of key facts; (2)

73. Christopher Sherrin, *False Confessions and Admissions in Canadian Law*, 30 QUEEN'S L.J. 601, 621 (2005) (citations omitted).

74. GUDJONSSON, *supra* note 12, at 196.

75. *Id.*

76. *Id.* at 196-97.

77. *Id.* at 197.

78. Gudjonsson & LeBegue, *supra* note 71, at 262.

79. See Ofshe, *supra* note 38, at 1.

manipulating the individual's emotional state including feelings of "guilt and distress"; and (3) pressuring the accused to consider the advantage of an immediate confession and the potential for less severe punishment if the suspect shows sufficient remorse.⁸⁰ Ofshe adds that the interrogators often used precise methods to induce a false confession including:

- Stressing the incontrovertible evidence that proved the suspect's guilt;
- Providing a reason for their lack of memory (stress, alcohol blackout, etc.);
- Repeatedly stating the interrogator's certainty as to the suspect's guilt;
- Isolating the accused from all other social supports;
- Creating very emotional and taxing interrogations;
- Suggesting that there is scientific proof of guilt;
- Reminding the accused that there are red flags in their history that would diminish their confidence in remembering the crime;
- Developing (with the accused) an explanation of why the individual does not remember the crime;
- Demanding that the accused accept the explanation for lack of memory; and
- Re-stating the severity of punishment that will result if the accused does not immediately confess.⁸¹

Gudjonsson notes that not all of these elements will be present in every case, but the tactics are those which can facilitate a false confession by causing suspects to lose confidence in their memories, become confused, and be unable to rationally identify the facts of the situation.⁸²

Ofshe also notes that those who seem to be victims of coerced-internalized confessions tend to be suggestible, trusting of authority, and lacking self-confidence.⁸³ Gudjonsson adds that lack of confidence in one's memory is key—particularly an inability to differentiate between an actual memory and something that has been suggested by interrogators.⁸⁴ Gudjonsson also differentiates between a "false belief" and a "false memory" in that coerced-internalized false confessors may convince themselves that they committed a crime without

80. *Id.* at 2-3.

81. *Id.* at 5-6.

82. GUDJONSSON, *supra* note 12, at 199-200.

83. *Id.*

84. *Id.* at 200.

ever having clear memories of the action.⁸⁵ He notes that these types of confessions are marked by phrases such as “I must have,” “I think I did,” and “I probably committed this crime.”⁸⁶

These typologies have been supported by research. Kassin and Kiechel ran a laboratory study in 1996 to see whether subjects presented with false incriminating evidence in a high stress situation are more likely to sign a confession, internalize guilt for the event, or create details in memory consistent with their confession.⁸⁷ Seventy-nine undergraduates were told they were participating in an experiment on spatial awareness at a computer.⁸⁸ Each participant was told not to hit the “ALT” key on the keyboard, or the program would cease and the data would be lost.⁸⁹ At some point in the experiment, the subject’s computer crashed and a distressed experimenter accused the student of pressing the “ALT” key. The experimenter then persuaded the participant to sign a confession saying they had pressed the key, though none of the subjects had done so.⁹⁰ Later, another researcher pretended to have overheard the conversation and asked what happened.⁹¹ The students’ responses were recorded and their internalized guilt coded for study.⁹² Then they were asked to go back to the lab to show how they had hit the key, to see how many would “confabulate,” or create memories of hitting the prohibited key.⁹³ 69% of the students signed the confession, 28% had evidence of internalization, and 9% confabulated details to support these false beliefs.⁹⁴ The researchers concluded that this research was relevant to criminal confessions.⁹⁵ The presentation of false incriminating evidence can lead some to confess, internalize blame, and confabulate details not only for remote past events, but for events that have just happened.⁹⁶ The authors concluded that it was noteworthy that these effects were shown by

85. *Id.*

86. *Id.*

87. Saul M. Kassin & Katherine L. Kiechel, *The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation*, 7 AM. PSYCHOL. SOC’Y 125, 126 (1996).

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at 127.

95. *Id.*

96. *Id.*

intelligent college students who were “self-assured, and under minimal stress compared with crime suspects held in custody, often in isolation.”⁹⁷

CASE EXAMPLES

There have been many documented cases of coerced-internalized false confessions. One such case involved a man in Norway who believed he had killed his cousin, though forensic evidence later excluded him as a suspect.⁹⁸ Another man in Iceland confessed that he stole a purse from his drinking companion, but the purse was later found behind a couch.⁹⁹ Romeo Phillion, a Canadian, confessed to the murder of an Ottawa firefighter named Leopold Roy after being arrested on an unrelated charge.¹⁰⁰ After finding that Phillion’s confession was unreliable, the Court of Appeal quashed the conviction and ordered a new trial.¹⁰¹ The court also mentioned that interrogation techniques used on Phillion during the interrogation and polygraph test were akin to brainwashing.¹⁰² Similarly, in the Canadian case of *R. v. Terry*, the court had the following to say about the questioning of the defendant:

I am satisfied that the line of questioning and the technique used by the polygraph operator overstepped that line that I say is the limit in which reasonable questioning should go. I am hesitant to say that it went as far as brainwashing, but it was extremely skilled and was bordering on that limit, which, in my opinion, takes it beyond the appropriate limit for questioning.¹⁰³

Most who have falsely confessed through coerced-internalized processes do retract their statements after they are convinced that they did

97. *Id.* See also Robert Horselenberg et al., *Individual Differences and False Confessions: A Conceptual Replication of Kassin and Kiechel*, 9 PSYCHOL., CRIME & L. 1 (2003) (replicating the findings of Kassin and Kiechel, finding that 82% of their participants were willing to sign a confession, and internalization and confabulation was found in 42% and 58% of the subjects respectively).

98. Sherrin, *supra* note 59, at 621-22.

99. *Id.* at 622.

100. *R. v. Phillion*, [2009] O.J. No. 849 at para. 5 (Can. Ont. C.A.); see also Sherrin, *supra* note 59, at 602.

101. Phillion, *supra* note 87, at para. 243.

102. *Id.* For a general discussion of brainwashing, see Frances E. Chapman, *Intangible Captivity: The Potential for a New Canadian Criminal Defense for Brainwashing and its Implications for The Battered Woman*, 28 BERKELEY J. GENDER, L. & JUST. (forthcoming) (2013).

103. [1986] C.L.B. 2343 (Man. Prov. Ct.) at para. 23.

not commit the crime.¹⁰⁴ How long this may take depends on the case—it may be a protracted period—but there is disagreement on the duration of the memories.¹⁰⁵ Gisli Gudjonsson and Brek LeBegue noted a case study in which servicemen who had given coerced-internalized confessions had also internalized false memories, which “co-existed” with the “true” memories of the crime, “rather than permanently contaminating or distorting them.”¹⁰⁶ They note that although this individual accepted the scenarios presented to him, he did not hold the same conviction for those false memories as he did for his original statement.¹⁰⁷ After two days, the subject became less confused and became convinced of his innocence.¹⁰⁸ The authors conclude that the original memory is likely not forever lost or distorted, and some “coerced-internalized false confessors do not continue to believe indefinitely that they committed a crime which in fact they did not commit.”¹⁰⁹

Kassin reports on an accused named Thomas Sawyer who confessed to the rape and murder of his neighbor.¹¹⁰ After a sixteen-hour interrogation in which the police asked Sawyer to imagine how he might have killed the girl in an alcoholic blackout, Sawyer confessed.¹¹¹ Kassin notes that “[a]t first, Sawyer vehemently denied the charge. Then after several hours, he became confused about his memory. Finally, he capitulated: ‘I guess all the evidence is in, I guess I must have done it.’”¹¹²

The famous case *Miranda v. Arizona* goes even further in judging the implanted intent in a victim of severe police interrogation methods.¹¹³ The Court notes that “custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals.”¹¹⁴ It then cites an unreported case, stating that:

The most recent conspicuous example occurred in New York, in 1964, when a Negro of limited intelligence confessed to two brutal murders and a rape which he had not committed. When this was

104. See, e.g., GUDJONSSON, *supra* note 12, at 198.

105. *Id.*

106. Gudjonsson & LeBegue, *supra* note 71, at 268.

107. *Id.*

108. *Id.*

109. *Id.*

110. Kassin, *Psychology of Confession Evidence*, *supra* note 21, at 226.

111. *Id.*

112. *Id.*

113. 384 U.S. 436 (1966).

114. *Id.* at 455.

discovered, the prosecutor was reported as saying: ‘Call it what you want—brain-washing, hypnosis, fright. They made him give an untrue confession.’¹¹⁵

Perhaps the clearest case of a coerced-internalized confession occurred in *Reilly v. Connecticut*.¹¹⁶ After coming home one night to discover the body of his mother, the 18-year-old Reilly was interrogated by police with the use of a polygraph, and eventually confessed to her murder.¹¹⁷ The record of the interrogation shows Reilly:

[P]rogressively agreeing with more and more of the police theory of the crime until he finally offers a full confession. For instance, part way [sic] through the interrogation he accepts the police theory as to motive: that his mother had constantly badgered him throughout his life and that he was angered when she started badgering him on the night of the murder. Reilly was eventually exonerated when previously undisclosed evidence established that he had no opportunity to commit the crime.¹¹⁸

It seems from accounts of this case that Reilly actually believed that he had killed his mother¹¹⁹ after he was told that he had failed an “infallible lie-detector test.”¹²⁰ Richard Delgado notes that the concern in this case was not just that the accused had falsely confessed, but most shocking was the “suspect’s subjective belief that he was, in fact, guilty.”¹²¹ The police seem to have convinced the accused that he had killed his mother, but had no memory of the crime.¹²² Reilly said, “Well it really looks like I did it,” and signed a false confession.¹²³ As one psychiatrist noted, the confession was the “product of the young man’s low self-esteem and suggestibility resulting from induced guilt and exhaustion. The psychiatrist compared the methods used in procuring his confession to prisoner of war thought

115. *Id.* at 455 n.24.

116. *Reilly v. State*, 355 A.2d 324 (Conn. Super. Ct. 1976).

117. Kassir, *Psychology of Confession Evidence*, *supra* note 21, at 226.

118. Sherrin, *supra* note 59, at 615 n.62. Sherrin later cites the work of Steven A. Drizin and Richard A. Leo in which they list 125 cases of false confessions from 1971-2003.

119. See DONALD CONNERY, *GUILTY UNTIL PROVEN INNOCENT* 82 (1977).

120. Kassir, *Psychology of Confession Evidence*, *supra* note 21, at 226.

121. Richard Delgado, *Ascription of Criminal States of Mind: Toward a Defense Theory for the Coercively Persuaded (“Brainwashed”) Defendant*, in *JUSTIFICATION AND EXCUSE IN THE CRIMINAL LAW, A COLLECTION OF ESSAYS* 467, 475 (Michael Louis Corrado ed. 1994).

122. *Id.*

123. Gudjonsson & LeBegue, *supra* note 71, at 262.

reform.”¹²⁴ The parallels between this implanted belief and brainwashing are readily apparent. Kassir notes that “[t]ranscripts of the interrogation sessions revealed that Reilly underwent a remarkable transformation from denial to confusion, self-doubt, conversion . . . and the signing of a full written confession.”¹²⁵

The Connecticut court eventually re-opened the case, ordered a new hearing, and dropped all charges after independent evidence proved that Reilly could not have committed the murder.¹²⁶ Kassir notes that all of these examples share two factors:

- (a) a suspect who is ‘vulnerable’—that is, one whose memory is malleable by virtue of his or her youth, interpersonal trust, naiveté, suggestibility, lack of intelligence, stress, fatigue, alcohol, or drug use and
- (b) the presentation of false evidence such as a rigged polygraph or forensic tests (e.g., bloodstains, semen, hair, fingerprints)¹²⁷

The 1988 Washington state case of Paul Ingram is often cited as one of the most shocking cases of coerced-internalized confessions.¹²⁸ Ingram, a deeply religious deputy sheriff, county Republican Committee chair, and father of six children, was accused of participating in Satanic rituals including the rape of his daughters and the murder of approximately twenty-five babies.¹²⁹ Ingram had no history of mental illness.¹³⁰ Kassir notes that “[a]fter 23 interrogations, which extended for five months, Ingram was detained, hypnotized, provided with graphic crime details, told by a police psychologist that sex offenders typically repress their offenses, and urged by the minister of his church to confess.”¹³¹ Although Ingram first said that he had no memory of any of these accused crimes, he came to visualize (using a type of relaxation technique) scenes of group sexual assaults and cult activities, and believe that he had committed these crimes

124. Delgado, *supra* note 121, at 475.

125. Kassir, *Psychology of Confession Evidence*, *supra* note 21, at 226.

126. Delgado, *supra* note 121, at 475-76.

127. Kassir, *Psychology of Confession Evidence*, *supra* note 21, at 227 (noting the study where students were accused of sabotaging experiments, discussed *supra*).

128. See, e.g., Thomas H. Maugh II, *Glendale Case Raises Issue of Reliability of Confessions*, L.A. TIMES, April 2, 1998, at A1.

129. Richard J. Ofshe, *Inadvertent Hypnosis During Interrogation: False Confession Due to Dissociative State; Mis-Identified Multiple Personality and the Satanic Cult Hypothesis*, 40 INT’L J. CLINICAL & EXPERIMENTAL HYPNOSIS 125, 132-33 (1992).

130. *Id.*

131. Kassir, *Psychology of Confession Evidence*, *supra* note 21, at 226-27.

and many additional charges.¹³² Ingram was part of a fundamentalist Christian denomination that believed that Satan was working on Earth, and was very heavily influenced by his church.¹³³ Ingram's two daughters, Ericka, 22, and Julie, 17, made accusations against their father after a church-sponsored retreat that encouraged women to reveal abuse perpetrated against them.¹³⁴ The allegations made by the girls kept evolving until they had accused their father of sexually assaulting them nearly every night, accused their brothers of sexual assault, and then reported that they were sexually assaulted by all of the men who attended the Saturday night poker parties at their home.¹³⁵ Suspicions arose as the daughters were unable to describe the details of the 450 cult meetings they had attended, but they could describe the sexual assault and torture they had endured in graphic detail.¹³⁶ No evidence was found to corroborate their accusations.¹³⁷

Ingram was subjected to at least twenty-three interrogations over five months.¹³⁸ Police asked Ingram if his daughters were "honorable and did not lie. They followed with the assertion that sex-offenders often *repress* memories of their crimes. Finally, they promised that his memory would return once he admitted to the accusations."¹³⁹ Ingram finally agreed that his daughters would not lie, and thus he must have raped them, been part of a cult, and committed various crimes but had no memory.¹⁴⁰ The final part of the interrogation, in which Ingram "confesses" to the crimes, is recorded and Ingram describes his thought process:

Ingram: I really *believe* that the allegations did occur and that I did violate them and abuse them and probably for a long period of time. *I've repressed* it. Uh, probably very successfully from myself and, and now I'm trying to bring it all out. Uh, I, I know from what they're saying that the, the incidences had to occur, that *I had to have done those things*.

Detective: And why do you say you have to have done those things?

132. Ofshe, *supra* note 129, at 133-35.

133. *Id.* at 133.

134. *Id.* at 133, 135.

135. *Id.* at 135.

136. *Id.* at 137-38.

137. *Id.* at 138-39.

138. *Id.* at 139.

139. *Id.* at 140 (emphasis in original).

140. *Id.*

Ingram: Well, number one my girls know me. Uh, they wouldn't lie about something like this¹⁴¹

Ingram received twenty years in prison for crimes for which there was absolutely no physical evidence.¹⁴² Ingram was given the option to plead guilty to six counts of third-degree rape or be charged with a host of other charges.¹⁴³ Ofshe notes that Ingram's "alleged participation in the cult's alleged 25 (now 250) murders no longer seemed to matter."¹⁴⁴ Kassin states that Ofshe testified at the re-trial that Ingram was "brainwashed" into thinking that he had committed these crimes through "recalled" memories.¹⁴⁵ Ingram served the bulk of his sentence before he was released in 2003.¹⁴⁶ Ofshe concludes that it is impossible to know if anything alleged in this case actually happened, but he identified Ingram as someone who was subjected to coerced-internalized false confessions.¹⁴⁷

BILLY WAYNE COPE

A particularly recent example, and case study for this paper, is the South Carolina case of Billy Wayne Cope. On November 29, 2001, Cope's 12 year-old daughter, Amanda, was found murdered in her bedroom.¹⁴⁸ There was no sign of forced entry to the house.¹⁴⁹ Autopsy results showed that Amanda was beaten, strangled, sexually assaulted and sodomized.¹⁵⁰ However, from the time of Cope's call to 911, some questioned Cope's reactions to his daughter's death.¹⁵¹ In his call to authorities, Cope began the conversation with, "Yeah, my daughter's dead, she's cold as a cucumber."¹⁵² When asked if he could attempt CPR he responded, "No, ma'am. She's dead. She's ice cold."¹⁵³ Cope told authorities, when they

141. *Id.* at 141 (emphasis in original).

142. *Id.* at 153; Kassin, *Psychology of Confession Evidence*, *supra* note 21, at 227.

143. *Id.*

144. *Id.*

145. Kassin, *Psychology of Confession Evidence*, *supra* note 21, at 227.

146. See B.A. Robinson, *The "Paul Ingram" Ritual Abuse Case, in Olympia, WA*, RELIGIUSTOLERANCE.ORG (Apr. 29, 2003), http://www.religioustolerance.org/ra_ingra.htm.

147. Ofshe, *supra* note 129, at 152.

148. Keith Morrison, *The Mystery in Rock Hill*, MSNBC (July 9, 2010, 4:51 PM), http://www.msnbc.msn.com/id/38060491/ns/dateline_nbc-crime_reports/; *State v. Cope*, 684 S.E.2d 177, 179 (S.C. Ct. App. 2009).

149. Morrison, *supra* note 148.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

arrived, that Amanda must have been strangled by a strip of fabric from her favorite green blanket.¹⁵⁴

Cope was first interviewed by police on November 29, and consented to submitting bodily samples even though he maintained his innocence in relation to the crime.¹⁵⁵ Transcripts show that Cope told police, “I’m tellin’ you the truth, sir, I will not change my story because I’m tellin’ you the truth. As God is my witness, I did not harm my child in any way.”¹⁵⁶ The police responded, “[y]ou’ll burn in hell for lying, you will, for killing your daughter[.]”¹⁵⁷ The transcripts show that Cope denied killing his daughter more than 650 times and begged for a polygraph that would prove his innocence.¹⁵⁸

After submitting to the polygraph, Cope was told by the examiner that he had “failed” the exam.¹⁵⁹ Cope then gave his first of several “confessions” to the crime, including that he had choked Amanda with a blanket, sodomized and sexually assaulted her with a broom, and then went back to bed.¹⁶⁰ Cope was asked in a *Dateline* interview why he would confess after failing the polygraph examination.¹⁶¹ Cope said “I wasn’t sure I did it. But, I knew that . . . nothing else logically seemed possible the way they were talking. I trusted—I’ve always trusted the officials.”¹⁶² Dr. Charles Honts testified at trial that, contrary to what Cope had been told, Cope had a “strong truthful outcome,” in direct contradiction of what, at the time of the polygraph, had been scored as a “strong deceptive outcome.”¹⁶³ Cope had “passed” the polygraph.

During Cope’s second confession, he changed his story and said that his prior statements were incorrect—that he had a dream about an ex-girlfriend and had beaten her and raped her with a broom, and only realized afterwards that he had killed his own child as he acted out his dream.¹⁶⁴ At this time, Cope agreed to go to his house with police to

154. *Id.*

155. *State v. Cope*, 684 S.E.2d 177, 180 (S.C. Ct. App. 2009).

156. Morrison, *supra* note 148.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Cope*, 684 S.E.2d at 180-81.

161. Morrison, *supra* note 148.

162. *Id.*

163. Transcript of Record at 80, *State v. Cope*, 16th Jud. Cir. Ct., S.C. (2004) (No. H023255), available at <http://www.billywaynecope.com/uploads/CharlesHonts.pdf>.

164. *Cope*, 684 S.E.2d at 181.

re-enact the crime on videotape.¹⁶⁵ The tape shows Cope graphically demonstrating how he sexually assaulted and murdered his daughter.¹⁶⁶ Cope was asked during the *Dateline* interview why he would demonstrate these actions on videotape.¹⁶⁷ Cope responded, “I was tryin’ to confuse ‘em . . . [b]ecause I knew I didn’t do it, and I figure—with my ignorance of the law—I didn’t think a confession carried the weight unless they could prove it.”¹⁶⁸ Shortly after this re-enactment, Cope confessed for a third time to the rape and murder of Amanda and admitted that he had been molesting her for some time.¹⁶⁹ Cope declined his right to counsel.¹⁷⁰ At trial, experts testified that Cope had, in fact, passed the polygraph examination, that there was no evidence that a broom was used in the assault, and that there were no signs of any long-term sexual abuse.¹⁷¹ B.J. Barrowclough, the public defender appointed to assist Cope, was not allowed to see Cope when he went to interview him during these interrogations.¹⁷² Only after the re-enactment and the four confessions was Barrowclough permitted to see his client.¹⁷³

Cope’s defense team believed that the case against Cope was over when DNA evidence collected from Amanda matched the DNA of a local convicted sex offender, James Sanders.¹⁷⁴ Police took a swab of a bite mark on Amanda and matched the saliva with Sanders’s, and the semen found on Amanda’s pants matched Sanders’s DNA.¹⁷⁵ No other semen was found on or around the child.¹⁷⁶ Kassin has noted that Sanders was a convicted sex offender who was “new to the neighborhood, and who had broken into other homes, raping and killing other girls in the same way.”¹⁷⁷ Kassin says:

One would surmise from this DNA exoneration that Billy Wayne Cope would have been released from jail, freed, and compensated. Yet just hours after the DNA results were received, the police told

165. *Id.*

166. See Kassin, *Internalized False Confessions*, *supra* note 2, at 175-76.

167. Morrison, *supra* note 148.

168. *Id.*

169. See *Cope*, 684 S.E.2d at 181.

170. See *id.*

171. See *id.*

172. Morrison, *supra* note 148.

173. *Id.*

174. See Kassin, *Internalized False Confessions*, *supra* note 2, at 170.

175. See Morrison, *supra* note 148.

176. *Cope*, 684 S.E.2d at 180.

177. See Kassin, *Internalized False Confessions*, *supra* note 2, at 176.

Cope's wife in an egregious lie that the semen was her husband's, wired her, and sent her to jail to try to get her husband to confess again, which he did not (she died of surgery complications shortly thereafter, believing that the semen was her husband's). When the DNA was later matched to James Sanders, a serial offender, the prosecutor—armed with a police-induced confession that now did not match the facts of the crime, and lacking any evidence whatsoever of a link between the two men—charged Cope with conspiracy, arguing that he had pimped his daughter out to Sanders.¹⁷⁸

Cope was charged with conspiracy to commit criminal sexual conduct with Sanders and was convicted under the theory that Cope had given his daughter to be sexually assaulted by Sanders, although there was no evidence that the two men knew each other.¹⁷⁹ The prosecution argued that Cope must have let Sanders into the home because there was no evidence of forced entry.¹⁸⁰ According to one of the lawyers on the defense team, Jim Morton, Sanders allegedly asked, "Why are you trying me with this man Cope? I don't even know a Cope."¹⁸¹

Even though experts said that Amanda was choked from the front with a right hand on her neck, Cope had demonstrated in his re-enactment that he had strangled her with two hands from behind.¹⁸² The police did not take fingerprints in the house, and a purse seen in crime scene photos was not examined to see if anything had been taken.¹⁸³ When police forgot to bring a key to the house when Cope was to re-enact the crime, one officer easily broke into the back door quickly without a key.¹⁸⁴ No scientific evidence linked Cope with the crime, and no evidence of Cope's guilt existed except for the confessions; despite this, and even though the semen of a convicted sex offender who lived only two blocks from the Cope home was found on the child, a jury convicted Cope after only five hours of deliberations.¹⁸⁵

178. *Id.*

179. *Id.*

180. Morrison, *supra* note 148.

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

Dr. Saul Kassin testified at trial about the research on false and coerced confessions.¹⁸⁶ In particular, Kassin noted that the interrogation techniques used by the police to obtain false confessions in this case included:

(1) false evidence—the officers telling Cope he failed the polygraph; (2) positive confrontation—the officers claiming they knew Cope did it; (3) the officers’ refusals to accept Cope’s denials of guilt even though he agreed to a polygraph and waived an attorney; (4) minimization—the officers suggesting the crime was accidental; and (5) interrogation while Cope was traumatized and tired.¹⁸⁷

Kassin notes that one must “overcome a great deal of common sense and intuition because most people don’t believe that people confess to crimes they didn’t commit.”¹⁸⁸ Dr. Kassin was unable to overcome this doubt in the jurors’ minds.¹⁸⁹

Kassin testified about his research in relation to the case.¹⁹⁰ He stated that false coerced-internalized confessions generally follow a pattern, and noted that:

[Y]ou have a person who is vulnerable to manipulation, presents them with apparently unimpeachable objective evidence, that person now has to try to reconcile on the one hand, I have no memory, with on the other hand but they tell me and I believe it that there is objective evidence that I did this. So they now have to reconcile this evidence with their lack of memory. At which point they entertain the idea that they committed [sic] this act and not had a consciousness, that they had disassociated or amnesic for it, had repressed it from memory, and did this act. Often in these cases they then go through a process of imagination whether they try to imagine how they would have committed this act for which they have no direct memory. That imaginal process ultimately results in their making a false confession which always sounds exactly the same, I guess I did. I must have done it. I must have

186. State v. Cope, 684 S.E.2d 177, 184-85 (S.C. Ct. App. 2009).

187. *Id.* at 185.

188. Morrison, *supra* note 148.

189. *See Cope*, 684 S.E.2d at 181.

190. Transcript of Record at 172-73, State v. Cope, 16th Jud. Cir. Ct., S.C. (2004) (No. H023255), available at http://www.billywaynecope.com/uploads/Saul_Kassin.pdf.

done it and blocked it out. You get those kinds of statements in very tentatively fragmentary language.¹⁹¹

Kassin notes that this pattern is found in many false confessions.¹⁹² The common “ingredient” is the addition of false evidence that “puts them over the edge” which “disorients their view of reality and they beg[in] to question their own memory.”¹⁹³ Yet, the Court of Appeals of South Carolina found that there were no errors in the trial, including the exclusion of specific details of other cases involving false confessions, or in any other element of the trial.¹⁹⁴ The court affirmed the trial court’s evidentiary rulings, denied Cope’s motion to have his trial severed from Sanders’, and affirmed Cope’s conviction.¹⁹⁵

Kassin has subsequently written on this case and noted that when Cope originally called police when he found his daughter murdered, the police “treated him more like a suspect than a grief-stricken father,” and that police believed Cope exhibited “too little emotion.”¹⁹⁶ Kassin notes that Cope asserted his innocence for more than twenty-four hours, endured more than seventeen hours of questioning over four days,¹⁹⁷ waived his right to counsel, volunteered to be interviewed, and offered to take a polygraph five times.¹⁹⁸ Kassin notes that his repeated denials were “adamant, they’re complete, they’re—they’re vigorous, they’re insistent, they persist through four hours of interrogation and accusation.”¹⁹⁹ Cope was held in jail overnight without food or water, separated from family and friends and legal counsel, and took a polygraph from an examiner who wrongly reported that he had failed.²⁰⁰ Cope was devastated by this result, as he truly believed that the polygraph would prove his innocence.²⁰¹ After this news, Cope broke down and started confessing that he had strangled and molested his daughter.²⁰² Kassin has concluded that the confessions

191. *Id.*

192. *Id.* at 172.

193. *Id.* at 173.

194. *Cope*, 684 S.E.2d at 185-86.

195. *Id.* at 185-88.

196. Kassin, *Internalized False Confessions*, *supra* note 2, at 169.

197. Morrison, *supra* note 148.

198. Kassin, *Internalized False Confessions*, *supra* note 2, at 169.

199. Morrison, *supra* note 148.

200. Kassin, *Internalized False Confessions*, *supra* note 2, at 169.

201. *Id.*

202. *Id.*

2013]

Coerced Internalized False Confessions

125

were taken under extremely stressful conditions and that “Cope’s statements were filled with contradictions and factual errors.”²⁰³

BILLY WAYNE COPE - IN HIS OWN WORDS

The overriding issue in false confessions is that rational human beings find it impossible to conceive that one would confess to a crime one did not commit, especially a brutal and horrific crime against one’s own child. Critics say that false confessions are only for the mentally challenged and uneducated; however, Cope graduated from York Technical College with associate degrees in electronics engineering and computer engineering,²⁰⁴ and he had no documented history of mental disorder.²⁰⁵ To analyze how this possibly could have happened, it is important to look at Cope’s thought process and his own testimony from the trial transcripts.

The interview that was conducted before Cope made his confession lasted approximately four hours, from 11 p.m. until 3 a.m.²⁰⁶ Cope testified at trial that he maintained his innocence, but police told him all of the information in the confession:

It was there piece by piece. They give these things to me, and I started to formulate thoughts. Well this person, whoever could have done this was, I mean, I didn’t do it. I knew that. I knew for a fact I did not do it. I knew for a fact that I was in the bed asleep just like I said²⁰⁷

Cope went on to say where he got the information, describing a conversation with police officers who said:

[D]o you know, Mr. Cope, that your daughter was sexually assaulted. Did you know, Mr. Cope, that your daughter, what—would you be surprised if I told you that your daughter was brutally beaten. I didn’t know those things. I was still in shock just from this morning waking up and finding her . . . [a]nd I

203. *Id.* at 170.

204. Transcript of Record at 2343, *State v. Cope*, 16th Jud. Cir. Ct., S.C. (2004) (No. H023255), *available at* <http://www.billywaynecope.com/uploads/Cope-Testimony.pdf>.

205. *Id.* at 901, *available at* http://www.billywaynecope.com/uploads/Mike_Baker_Testimony.pdf.

206. *See id.* at 2407, *available at* <http://www.billywaynecope.com/uploads/Cope-Testimony.pdf>; *see also id.* at 242, *available at* http://www.billywaynecope.com/uploads/Saul_Kassin.pdf.

207. *Id.* at 2408, *available at* <http://www.billywaynecope.com/uploads/Cope-Testimony.pdf>

couldn't understand why they kept on and kept on and kept on and kept on and I kept on defending myself constantly. And finally toward the end of it, I mean, all through it actually I kept saying, look, fine, let's take a polygraph test

Defense attorney: In fact, one time they asked you, Mr. Cope, if the test results from the hospital come back and show that your semen was on Amanda's body what would your response be?

Cope: My response was it won't. It will not. There is no way it can.²⁰⁸

Cope was given a polygraph test the next morning, though he had very little sleep during his night in jail.²⁰⁹ In fact, Cope testified that at one point he "actually dozed off" during the polygraph.²¹⁰

The real shift in Cope's confessions happened when the polygraph operator told Cope that he had failed the test. Although Cope initially responded that there was no way that he could have failed the test, this apparently started his thought process toward a confession.²¹¹ Cope told police that he had taken off the green wrap that was around Amanda's neck, but police questioned this evidence; Cope testified that the polygraph examiner said:

[P]olygraph[s] don't lie. . . . And I started to doubt, I started to doubt myself. I started how, how could that happen. I knew better. I thought. I thought I knew better. I thought I knew different and I knew that I didn't do nothing to Amanda. But then he kept saying, he said Mr. Cope, you did and even pictures don't lie. He said they got pictures and they are being developed and it's going to come back and it's going to show that green wrap is still on her neck.²¹²

It was at this moment that things seemed to change for Cope. He testified that he doubted everything he had said at this particular moment and he:

208. *Id.* at 2408-09.

209. *Id.* at 2414.

210. *Id.* at 2420.

211. *Id.* at 2425.

212. *Id.* at 2423.

2013]

Coerced Internalized False Confessions

127

[S]tarted to formulate all these images in my head and he said, you realize Mr. Cope your daughter was molested, your daughter was beaten, your daughter was, she was murdered.

. . .
I started to doubt myself. I felt weak. I felt maybe I did. Maybe I did. Maybe this is, I couldn't say for sure. I really did not know.

. . .
[H]e kept insinuating, no that's not what happened, Mr. Cope. That is not what happened. And I started to doubt everything that, that I had been telling him.

. . .
I felt vulnerable. I listened to what he said. I trusted the machine. It said I was a liar. I trusted my own mind. I trusted my, my, my memory. But I had no memory of that ever happening.²¹³

Cope had what he called "images" of what must have happened; he said on the stand that his first confession was "prefabricated," but that it was based upon the "images" in his head.²¹⁴ After the polygraph, Cope called himself a "monster" and said he thought he had committed the crime.²¹⁵

I truly did. I thought I had done it . . . I was relieved I had gotten it out and now my daughter's death could be avenged . . . I was relieved. I was, I was glad to get that off—the images out of my head. I was able to say what had been formulating all night long in my head.²¹⁶

However, the next morning Cope recognized the implications of his confession. He asked to speak to the officers again and said, "I made a mistake. I had started to think, I didn't have nobody sitting there beating on me, no. I didn't have him sitting there constantly talking to me. I was sitting there myself. That can't be right. That can't be right."²¹⁷ Cope did not have the opportunity to talk to many people over the next three days as he sat in jail.²¹⁸ He testified that he was not allowed phone calls or

213. *Id.* at 2424-25.

214. *Id.* at 2428.

215. *Id.*

216. *Id.* at 2428-29.

217. *Id.* at 2436.

218. *Id.* at 2438.

visitors.²¹⁹ During this time alone, Cope realized he had “made a mistake.”²²⁰ So he decided to give a “second story” because he was scared and “was looking for a way out.”²²¹ Thinking it would allow him to stay out of jail, Cope told the officers that he had had a dream about his ex-girlfriend and that he had committed the murder while sleepwalking.²²² However, Cope decided that he would “appeal one last time and say I didn’t do it. And so I, I said, I did not do it. And he said and his exact words was, [sic] we don’t believe you. Don’t come here with that stuff. We don’t want to hear no more about that.”²²³ When no one would listen to his final plea of innocence, Cope took the officers back to the house and demonstrated how he committed the crime.²²⁴

Cope described being “scared” of the police officers,²²⁵ and said he felt responsible for Amanda being murdered in his own house while he was asleep.²²⁶ Cope said that he decided he would:

[G]ive up. I say, you know, in my own mind I didn’t say out loud but in my own mind the death penalty sounds good, sounds good. I’m tired of the pressure. I’m tired of the, the junk that’s been going on, so the death penalty sounds real good to me right then. Because I didn’t, I got tired of the pressure. I got tired of being told what I did.²²⁷

Cope signed the confession without reading it.²²⁸

The trial court refused to hear evidence on similar crimes in the Rock Hill area that Cope’s team alleged were perpetrated by Sanders, showing that Sanders could have been the sole perpetrator.²²⁹ The Court of Appeals refused to allow this information, saying that although there were many similarities with other crimes in the area, there was no reversible error.²³⁰ The justices said that none of Sanders’s known victims were killed, nor

219. *Id.*

220. *Id.*

221. *Id.* at 2439.

222. *Id.* at 2441-42.

223. *Id.* at 2444.

224. *Id.* at 2444-45.

225. *Id.* at 2454-55.

226. *Id.* at 2450.

227. *Id.* at 2455.

228. *Id.* at 2684.

229. *State v. Cope*, 684 S.E.2d 177, 181-82 (S.C. Ct. App. 2009).

230. *Id.* at 182-83.

were they penetrated with a foreign object.²³¹ The Court of Appeals affirmed Cope's conviction, as well as his life sentence plus thirty years.²³² Steve Drizin of the Centre of Wrongful Convictions said jurors would have understood that Cope's confessions were false if they could have heard more information on the similar crimes perpetrated by Sanders.²³³ Drizin said in media interviews that "[a]n innocent man had his life ruined."²³⁴

Keith Morrison of *Dateline* interviewed several of the jurors from Cope's trial, including Bill Lefler and Samantha Thomas, and asked them the importance of the confessions to their decision.²³⁵ Lefler said that these confessions were:

Bill Lefler: Extremely important.

Keith Morrison: How could a man confess to killing his own daughter if he didn't actually do it?

Bill Lefler: That was my thought, yes sir. I mean, as a parent, had I not done it, you couldn'ta beat that confession outta me.

Samantha Thomas: I can understand maybe one time in, you know, a moment of grief, thinkin' that it might have been his fault because he didn't stop it. But confessing four times, each time sayin' that he did it, there's—there's no way to get away from that.²³⁶

In early 2012, the South Carolina Supreme Court agreed to hear Cope's appeal, and oral arguments were heard on November 13, 2012, but at the time of publication there was no decision on whether the court would reverse any findings or order a new trial.²³⁷ It is crucial to examine this case in detail to determine what can be done to prevent this outcome in the future. The Cope case is a paradigmatic example of what techniques can lead to a wrongful confession.

231. *Id.*

232. *Id.* at 188.

233. Andrew Dys, *Dad of Slain Girl Wants New Trial*, THE HERALD (Rock Hill, S.C.), April 14, 2006, at 1B, available at 2006 WLNR 6300375.

234. *Id.*

235. Morrison, *supra* note 148.

236. *Id.*

237. Andrew Dys, *S.C. Supreme Court Hears Appeal of Rock Hill Father Convicted of Killing, Raping Daughter*, THE HERALD (Rock Hill, S.C.), Nov. 13, 2012, at A1, available at 2012 WLNR 24168841.

HOW THE POLICE CAN SAFEGUARD AGAINST FALSE CONFESSIONS

Studies report that some suspects, including the mentally challenged, the young, those who are highly suggestible or easily confused, those who lack confidence in memory, and those who have low levels of self-esteem, are more susceptible to making a false confession when interrogated by police.²³⁸ However, many of the suggestions for safeguards revolve around the protection of these individuals who may be at risk, but this susceptibility may be unknown until they are subjected to this stressful situation. Nonetheless, the United Kingdom's standards for interrogations include special standards for interviews with "vulnerable people."²³⁹ These standards are meant to protect suspects with limited legal competencies or physical, mental, and social vulnerabilities,²⁴⁰ but it has been noted that in North America most "contemporary interrogation tactics are neither developmentally appropriate nor altered for persons with vulnerabilities."²⁴¹ Perhaps altered techniques could be extended to all who are facing interrogation, and the same standards barring police officers from using psychologically manipulative interrogation techniques on vulnerable populations should apply to all suspects.²⁴²

Kassin and his co-authors recommend several potential safeguards against false confessions.²⁴³ These include conversion of the interrogation process from confrontational to investigative; addressing specific risk factors including length of the interrogation; making it mandatory that an attorney or interested adult be present during the interview; and training officers and other personnel to interview effectively.²⁴⁴ These aims could be achieved through the adoption of the British PEACE method in North America, including developing techniques to get a full account of the

238. See, e.g., Moston, *supra* note 34, at 92; see also Kassin, *False Confessions: Causes, Consequences*, *supra* note 39, at 251; Kassin, *Police-Induced Confessions*, *supra* note 40, at 22.

239. See Kassin, *Police-Induced Confessions*, *supra* note 40, at 22; see also Lawrence S. Wrightsman, *The Supreme Court on Miranda Rights and Interrogations: The Past, the Present, and the Future*, in POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS, *supra* note 22, at 161, 169. Wrightsman recommends that an "appropriate adult be present when the police are interrogating a vulnerable suspect. *Vulnerable* would include juveniles as well as suspects known to have mental illness or mental retardation," but notes that it is "unfortunate that the United States Supreme Court has not been responsive to such concerns." *Id.*

240. Kassin, *Police-Induced Confessions*, *supra* note 40, at 22.

241. See Redlich, *supra* note 58, at 53.

242. Kassin, *Police-Induced Confessions*, *supra* note 40, at 13.

243. *Id.* at 27-31.

244. *Id.*

incident from the suspect before revealing key evidence.²⁴⁵ Many authors argue that recording all interrogations could reduce the amount of false confessions that occur.²⁴⁶ In addition, Leo and Drizin suggest that police need better training in interrogation, including specific training on the psychology of false confessions and why some techniques can be coercive.²⁴⁷ They also suggest that police and judges should be trained to know that promises and threats that are explicit or implicit “can and sometimes do lead to false confessions from the innocent, especially from vulnerable suspects.”²⁴⁸

PROBLEMATIC INTERROGATION IN THE BILLY WAYNE COPE TRIAL

Kassin testified to several elements that should have been avoided in the interrogation of Billy Wayne Cope. He objected to the presentation of false evidence in the police’s statement that Cope failed the polygraph.²⁴⁹ Kassin noted that the police officers asked Cope whether he had faith in the polygraph, which made Cope “vulnerable to manipulation” when told that he had failed.²⁵⁰ Kassin also noted that the interrogation stretched over four days and more than seventeen hours, and that the statement given “internally contradicts itself to a point of absolutely implausible [sic].”²⁵¹ Kassin testified that it is likely that Cope was fatigued, and cited research indicating that approximately eighty percent of false confessions happen after six hours of interrogation.²⁵²

Kassin further testified that the facts did not match the re-enactment and that the mental states described by Cope are “simply not possible.”²⁵³ Kassin observed that it is a hallmark of the coerced-internalized confession for the person being interrogated to finally say, “I must have done it.”²⁵⁴ He noted that this is not a “statement based in memory. It’s not I did it.

245. Bull & Soukara, *supra* note 22, at 90. Bull & Soukara say that the research they reviewed suggests that “police organizations around the world actively consider adopting the PEACE approach and associated training programs.” *Id.*

246. See, e.g., Wakefield & Underwager, *supra* note 31, at 434; Kassin, *Police-Induced Confessions*, *supra* note 40, at 27.

247. See, e.g., Leo & Drizin, *supra* note 30, at 26.

248. See, e.g., Leo & Drizin, *supra* note 30, at 27.

249. Transcript of Record at 197, *State v. Cope*, 16th Jud. Cir. Ct., S.C. (2004), (No. H023255), available at http://www.billywaynecope.com/uploads/Saul_Kassin.pdf.

250. *Id.*

251. *Id.* at 196.

252. *Id.* at 228.

253. *Id.* at 198.

254. *Id.* at 199.

Oh, yeah, now I remember I did it. It's I guess I must have done it. That is to say, I don't know for sure but I infer it must have happened."²⁵⁵ Kassir pointed out that Cope, isolated in a holding cell, likely felt trapped and was looking for a way out of this situation, meaning that he "felt the need to change the situation he was in and do something different."²⁵⁶

Coerced confessions are often full of detail and visual images, but this could be from information unknowingly given to the suspect.²⁵⁷ Kassir also stated that there was minimization in this case because there is some evidence that the police told Cope the death could have been accidental, planting the seeds of a false confession.²⁵⁸ Many things could have been done differently in this case, and the outcome should be of concern for all.

CONCLUSION

Kassir testified at the trial of Billy Wayne Cope that those who give a coerced-internalized false confession are "persuaded almost as a form of brain washing . . . essentially what happens is people . . . are in some ways vulnerable to manipulation and the way this happens is very predictable."²⁵⁹ Kassir noted that there are many individuals who may be vulnerable, including those who have a mental dysfunction, children, and those who are highly suggestible.²⁶⁰ But this category could also include someone who is in a "bad situation that doesn't stop."²⁶¹ Looking at cases of false coerced-internalized confessions, it is easy to see that some individuals are more susceptible to falsely confessing to something that they could not have done.²⁶² Thomas Nolan argues that:

Common experience and scientific research support the contention that people are subject to powerful influences, and some more than others . . . victims of indoctrination are simply robbed of their ability to fully exercise their free will because of environmental factors over which they have no control . . . [some] argue that at least some people, particularly the very young, can be controlled,

255. *Id.*

256. *Id.* at 200.

257. *Id.* at 234-35.

258. *Id.* at 241.

259. *Id.* at 208.

260. *Id.*

261. *Id.*

262. *Id.* at 213.

bullied, indeed ‘brainwashed’ to the point that they are no longer able to recognize the inherent wrongfulness of certain conduct.²⁶³

The same reasoning that is applied to the coerced-internalized suspect, in that “it is possible to deprive a person of her ability to reason, control impulses, and understand and process information” even if the person is not disordered.²⁶⁴ Coerced-internalized false confessions might give insight to other defenses and avenues for mitigation within Canadian and U.S. law. Wrongful confessions are happening in North America today, and unless active methods are introduced to change police interrogation methods, this type of situation will arise in the future. A 2008 study noted that “growing evidence points to an alarming rate of occurrence, with false confessions now recognized as one of the leading sources of erroneous convictions of innocent individuals.”²⁶⁵

Some might say that making allowances for those who would be coerced into falsely confessing or to committing various crimes is fraught with possible problems. Nolan cautions against studying this type of coercion, as it could “be a two-edged sword; the same characteristics that ostensibly allowed a person to become the victim of nefarious indoctrination might also make her a potentially dangerous individual in the future because of her particular vulnerability to manipulative forces.”²⁶⁶ Yet, within our system, we do not punish those who simply have less capacity for resisting outward forces. Nolan concludes by saying that “[g]iven the lengths to which our criminal justice system will go to prevent the execution of all but the most morally reprehensible criminals, there must be a presumption in favor of any and all available mitigating evidence that has any measure of reputable scientific support.”²⁶⁷ There seems to be a prejudice against those who falsely confess; these individuals are seen as somehow inherently blameworthy because of their susceptibilities.

Perhaps it is time to re-examine these individuals to ensure that others do not fall into the trap of coerced-internalized confessions, and to complete the police investigative work without having tunnel vision on a particular individual who may have confessed. Trying to anticipate what is

263. Thomas D. Nolan III, *The Indoctrination Defense: From the Korean War to Lee Boyd Malvo*, 11 VA. J. SOC. POL’Y & L. 435, 460 (2004).

264. *Id.*

265. Jessica R. Klaver et al., *Effects of Personality, Interrogation Techniques and Plausibility in an Experimental False Confession Paradigm*, 13 LEGAL & CRIM. PSYCHOL. 71 (2010).

266. *Id.* at 464 n.154. Nolan notes that this “proposal would not save Patty Hearst from incarceration, but it might save 18-year-old Lee Boyd Malvo from the electric chair.” *Id.*

267. *Id.* at 464.

expected, e.g., grief, anger, or trauma, is to misread individuals who simply react in individualized ways. Determining what makes an individual “look” guilty may be to condemn the innocent; this misunderstood type of confession is in need of additional research. What is clear is that to have a judge or jury deem one guilty after a careful analysis of the evidence is the hallmark of our system; to condemn *oneself* as a vicious criminal without evidence or memory of the crime is a far more sinister affair.