Confession Case Law

This list is not exhaustive.

IN CUSTODY

J.D.B. v. North Carolina, 564 U.S. 261, 264 (2011):

- "It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave. Seeing no reason for police officers or courts to blind themselves to that commonsense reality, we hold that a child's age properly informs the *Miranda* custody analysis."

State v. Hoffner, 102 Ohio St.3d 358, 362 (2004)

- In order to determine whether a person is in custody, courts must first inquire in to the circumstances surrounding the questioning and second, determine whether a reasonable person would have felt that he or she was not at liberty to terminate the interview and leave.

In re C.B., 5th Dist. Ashland No. 15-COA-027, 2016-Ohio-4779, ¶ 59 (appeal to Ohio Supreme Court pending, Case No. 2016-1219)

- C.B. was 16 years old and the police officer told him he was only there (at school) to talk to him, he did not have to talk, and he was free to leave. The police officer was not in uniform. The trial court reasonably concluded a juvenile in C.B.'s situation would have felt he was not in custody and was free to terminate the interview.

In re J.S., 3d Dist. Marion No. 9-15-26, 2016-Ohio-255

- Juvenile suspect questioned by plainclothes officer and two fire investigators wearing khakis and fire marshal shirts. Questioning was in suspect's home with his father, brother, uncle, and two cousins present. Questioning lasted 20-30 minutes. J.S. was nervous, officers told him they needed to talk to him, and investigator's firearm and badge were visible. Court finds he was not in custody.

In re R.S., 3d Dist. Paulding No. 11-13-10, 2014-Ohio-3543

- R.S. was not in custody during interview. Though he was interviewed three times and the interviewer was in uniform, R.S. was 16, had experience with the criminal justices system, the door was not blocked, his father was present, he was

familiar with the interviewing officer, and he and his father voluntarily appeared at the probation officer.

In re K.W., 3d Dist. Marion No. 9-08-57, 2009-Ohio-3152

- K.W. was 10 years old, had no experience with criminal justice system, was questioned at Dept. of Children's Services by two interviewers, was given no warnings and was not informed he could end questioning and leave. "A reasonable person in K.W.'s position is not an average adult, but is rather a young ten year old boy with no prior contact with the justice system." A reasonable person in K.W.'s situation would not feel free to leave.

In re J.S., 12th Dist. Clermont No. CA2011-09-067, 2012-Ohio-3534

- J.S. was in custody when he made statement. There is no evidence that he voluntarily went to police station, he was only 13, and he was not told he had right to end interview at any time.

In re T.W., 3d Dist. Marion No. 0-10-63, 2012-Ohio-2361

- T.W. was in custody when he made statement. T.W. was 14 years old, there is no evidence he volunteered to go to Children's Services, when he arrived he was escorted away from his mother and step-father by two unfamiliar authoritarian figures (one in uniform with a firearm), door was closed with officer sitting near the door.

In re R.H., 2d Dist. Montgomery No. 22352, 2008-Ohio-773

- R.H. was in custody. He was isolated from his mother and transported alone to the police station by an armed detective of imposing height. He was placed in room alone with interviewer, with door closed and blinds drawn. Interviewer's gun and badge were visible during the interview. While R.H. was told he could terminate the interview and return home, his control over his presence was clearly limited; at age 11, he could not simply leave on his own. He was not provided drink or food or given a break.

INTERROGATION

State v. Knuckles, 65 Ohio St. 3d 494, 496 (1992)

- "Interrogation has been defined as including any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." (citations omitted).

- "It is not necessary to phrase the communication in the form of a question to constitute an interrogation."

State v. Tucker, 81 Ohio St. 3d 431, 436 (1998)

- "The *Innis* court determined that the *Miranda* rules are not so narrow as to apply to only 'those police interrogation practices that involve express questioning of a defendant.' *Rhode Island v. Innis*, 446, U.S. 291, 298 (1980). The *Innis* court read the term "interrogation" more broadly, to also include the more subtle 'techniques of persuasion' sometimes employed by police officers that do not rise to the level of express questioning, but which also can be extremely coercive in some situations."

State v. Guysinger, 4th Dist. No. 11CA3251, 2012-Ohio-4169

- Police officer's declaratory statement to suspect after gun was found that it was in his best interest to start thinking about the situation and how things were going was not an interrogation .
- "[I]nforming a defendant of the evidence against him could 'contribute to the intelligent exercise of [the defendant's] judgment regarding what course of conduct to follow." (citing *U.S. v. Payne*, 954 F.2d 199, 203 (4th Cir. 1992)).
- "Courts have held that confronting a defendant with inculpatory evidence does not necessarily amount to interrogation."

In re M.D., 12th Dist. No. CA2003-12-038, 2004-Ohio-5904

- "An interrogation, as conceptualized in *Miranda*, must reflect a measure of compulsion above and beyond that inherent in custody itself before it will be considered a 'custodial interrogation.'" (citations omitted).
- "General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process ordinarily does not constitute custodial interrogation. This is because such general questioning is only an attempt to elicit basic facts relative to the officer's investigation." (citations omitted).

State v. Evans, 144 Ohio App. 3d 539, 552 (2001)

- "It is clear that requiring individuals in custody to write in detail about crimes for which they have never been adjudicated in court is not just likely to, but quite probably will, result in incriminating responses. This is express questioning."

State v. Belpulsi¸ 1998 Ohio App. LEXIS 5089 (8th Dist. 1998)

- Defendant was interrogated even though police claimed they were just "processing" him. Police had suspect waive his rights, which they would have

had no reason to do if they did not intend to interrogate him. They initiated questioning if he understood the nature of the charges against him.

VOLUNTARINESS (GENERAL):

State v. Edwards (1976), 49 Ohio St.2d 31 (totality of the circumstances)

- "In deciding whether the defendant's confession in this case was involuntarily induced, the court should consider the totality of the circumstances, including the age, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement." *See also State v. Leonard*, 104 Ohio St. 3d 54 (2004); *In re Watson*, 47 Ohio St.3d 86 (1989).

Eddings v. Oklahoma, 455 U.S. 104, 115-16 (1982)

- "Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Particularly 'during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment' expected of adults." (citing *Bellotti v. Baird*, 443 U.S. 622, 635 (1979)).

Haley v. Ohio, 332 U.S. 596, 599-600 (1948)

- "That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his earlier teens. This is the period of great instability which the crisis of adolescence produces. A 15-year-old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal from midnight to 5 a.m. But we cannot believe that a lad of tender years is a match for the police in such a contest."

Corley v. United States, 556 U.S. 303, 129 S.Ct. 1558, 173 L.Ed.2d 443 (2009)

- "Custodial police interrogation, by its very nature, isolates and pressures the individual," *Dickerson v. United States*, 530 U.S. 428, 435, 120 S.Ct. 2326, 147 L.Ed.2d 405, and there is mounting empirical evidence that these pressures can induce a frighteningly high percentage of people to confess to crimes they never committed, see, e.g., Drizin & Leo, The Problem of False Confessions in the Post-DNA World, 82 N.C.L.Rev. 891, 906-907 (2004)."

Arizona v. Fulminante, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed. 2d 302 (1991)

- "A confession is like no other evidence. Indeed, the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him . . . The admissions of a defendant come from the actor himself, the

most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so." (Citations omitted).

- In evaluating the voluntariness of a confession, a court should look at the totality of the circumstances.

Miller v. Fenton, 474 U.S. 104, 106 S.Ct. 445, 88 L.Ed.2d 405 (1985)

- "This Court has long held that certain interrogation techniques, either in isolation or as applied to the unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned under the Due Process Clause of the Fourteenth Amendment . . .It applies equally when the interrogation techniques were improper only because, in the particular circumstances of the case, the confession is unlikely to have been the product of a free and rational will." (Citations omitted.)

Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1966)

- On the voluntariness of confessions: "Coercion that vitiates a confession under *Chambers v. Florida*, 309 U.S. 227, and related cases can be 'mental as well as physical'; 'the blood of the accused is not the only hallmark of an unconstitutional inquisition.' *Blackburn v. Alabama*, 361 U.S. 199, 206. Subtle pressures (*Leyra v. Denno*, 347 U.S. 556; *Haynes v. Washington*, 373 U.S. 503) may be as telling as coarse and vulagar ones. The question is whether the accused was deprived of his 'free choice to admit, to deny, or to refuse to answer.' *Lisenba v. California*, 314 U.S. 219, 241."

VOLUNTARINESS (SPECIFIC FACTORS, OHIO)

T.H. v. State, 10th Dist. No. 12AP-612, 2013-Ohio-609

- Statement was involuntary. T.H. was 16 years old, with 9th grade education, had been put in handcuffs and transported in police cruiser to police headquarters and did not have benefit of consulting with his mother or an attorney.

In re N.J.M., 12 Dist. Warren No. CA2010-03-026, 2010-Ohio-5526

- Statement was voluntary. There was no implied promise when juvenile was told that if he was honest, his chances of staying out of jail were "quite a bit better." The interview was not particularly lengthy, intense or frequent. The interviewer's tone was conversation and admonitions to tell the truth are not coercive.

- Though N.J.M was only 13 years old and had an IQ of 67, "a low IQ and/or diminished cognitive abilities do not necessarily equate to an involuntary statement, especially where appellant did not have much difficulty understanding [the interviewer's] questions and the statements appellant made were clear and responsive."

In re Simpson, 1996 Ohio App. LEXIS 6156

- Simpson's statement was involuntary. Police began intimidating him by picking him up at a friend's house and transporting him for questioning. He was confined to police station and not permitted to leave. He was detained in interrogation room for one hour before police began questioning. His mom requested to be with him during questioning but was not permitted. Statements made by officer during interrogation led Simpson to believe that if he did not confess, he would be prosecuted as an adult. Simpson denied crime as soon as his mother entered the room.

In the Matter of Anthony Harris, 5th Dist. No. 1999AP030013 (2000) (youth, threats and inducements, length of interview, lack of criminal experience)

- Harris, 12 years old, confessed to a murder. Chief Vaughn told Harris that there were two types of people who could commit the crime – a dishonest and mean person or someone who the crime just happened, and if they could, they would take it back. Vaughn did not give Harris the option of being a person that did not commit the crime. Vaughn told Harris that he thought he was a stand-up guy and that the victim did something in the woods to piss him off and he did something that was "out of character." Vaughn then told Harris that he would only help the good person. The appellate court found that "a twelve-year old boy would believe he had no choice but to be the decent person that for whatever reasons committed this crime."

- Vaughn also used a voice stress test as a mechanism to make Harris make admissions, telling him that he does not want to have to tell the prosecutor and Court that he gave Harris the test and Harris lied. Vaughn also told Harris that the results of the test would be admissible at his adjudicatory hearing, even though Vaughn knew they would not be. Vaughn also told Harris that if he has to perform the voice test, he will be past the point where he can help him.

- The Court also notes details of the crime that Vaughn offered to Harris which Harris then incorporated into his confession.

- "Based on appellant's age, lack of criminal experience, and length of the interview, in conjunction with the statements made by Chief Vaughn to get appellant to confess to this crime, we disagree with the juvenile court's conclusion that appellant's confession was voluntary, as it pertains to the portion of the interview conducted by Chief Vaughn."

- More on this case: http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3281

In re Moyer, 5th Dist. Licking No. 03CA116, 2004-Ohio-5882

- Statement was involuntary where juvenile had no attorney, parent or adult present to witness interrogation, he had mental and behavioral problems, special needs, could not read, and could not write well.

In re M.E., 11th Dist. Geauga No. 2010-G-2996, 2011-Ohio-4021

- 16-year-old's statement was involuntary where sexual abuse investigator told him that regardless of what they talked about, he would not be arrested. Court found it was an improper promise of leniency.
- "'When the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct, we can perceive nothing improper in such police activity. On the other hand, if [the defendant] might reasonably expect benefits in the nature of more lenient treatment at the hands of the police, prosecution or court in consideration of making the statement, even a truthful one, such motivation is deemed to render the statement involuntary and inadmissible.'" (citing *State v. Arrington*, 14 Ohio App.3d 111, 115 (1984)).

In re D.F., 10th Dist. Franklin No. 14AP-683, 2015-Ohio-2922

- 13 year-old's statement was involuntary. It was unclear that he understood his constitutional rights, he was unaccompanied by a parent or adult, interrogating officer used deceptively misleading statements combined with inducements to cooperate (threatened 28 years of incarceration, falsely told D.F. that his friends implicated him)

State v. Western, 2nd Dist. Montgomery No. 26058, 2015-Ohio-627 (misstatements, false promises, admonitions to tell the truth)

- "Generally, a correct statement of the law does not rise to the level of coercion necessary to render a confession involuntary." State v. Robinson, 9th Dist. Summit No. 16766, 1995 Ohio App. LEXIS 145, 1995 WL 9424 (Jan. 11, 1995).

Accordingly, a police officer's correct statements about potential punishment do not rise to the level of coercive conduct. 1995 Ohio App. LEXIS 145, [WL] at *4. However, a police officer's misstatement of the law may render a confession involuntary. Robinson 1995 Ohio App. LEXIS 145, [WL] at *4.

- "[F]alse promises made by police to a criminal suspect that he can obtain lenient treatment in exchange for waiving his Fifth Amendment privilege so undermines [sic] the suspect's capacity for self-determination that his election to waive the right and incriminate himself in criminal conduct is fatally impaired. His resulting waiver and statement are thus involuntary for Fifth Amendment purposes. * * * The simple result is that officers must avoid such promises, which are not proper tools of investigation." State v. Petitjean, 140 Ohio App.3d 517, 534, 748 N.E.2d 133 (2d Dist.2000). See also State v. Jackson, 2d Dist. Greene No. 02 CA 1, 2002-Ohio-4680, ¶ 40.

- In contrast to misstatements and false promises of leniency, admonitions to tell the truth are not unduly coercive. State v. Cooey, 46 Ohio St.3d 20, 28, 544 N.E.2d 895 (1989); State v. Knight, 2d Dist. Clark No. 2004 CA 35, 2008-Ohio-4926. A police officer's assertion to the suspect that he or she is lying or that the suspect would not have another chance to tell his or her side of the story does not automatically render a confession involuntary. Knight at ¶ 111. "Similarly, assurances that a defendant's cooperation will be considered or that a confession will be helpful do not invalidate a confession." State v. Stringham, 2d Dist. Miami No. 2002-CA-9, 2003-Ohio-1100, ¶ 16. Even a "mere suggestion that cooperation may result in more lenient treatment is neither misleading nor unduly coercive, as people 'convicted of criminal offenses generally are dealt with more leniently when they have cooperated with the authorities.'" Id., quoting State v. Farley, 2d Dist. Miami No. 2002-CA-2, 2002-Ohio-6192; *State v. Strickland*, 2d Dist. Montgomery No. 25545, 2013-Ohio-2768, ¶ 19.

State v. Copley, 170 Ohio. App. 3d 217, 2006-Ohio-6478 (implied promises)

- Stating that everyone deserves a second chance and that counseling is the way to get that second chance rises to the level of an implied promise of leniency. However, under the totality of the circumstances, the defendant's statement was not involuntary.

State v. Wilson, (1996), 117 Ohio App. 3d 290 (promise of leniency)

- Officer told suspect that he would only be charged with misdemeanor if he confessed, otherwise he would be charged with aggravated robbery. Confession was involuntary.

State v. Perez, 124 Ohio St.3d. 122 (2009) (threats)

- Threats to arrest a family member may render a confession involuntary, but not if, in fact, there was probable cause to make such an arrest

State v. Patterson, (1993) 95 Ohio App. 3d 255 (length of interrogation)

- Interrogation was not coercive even though it extended over several hours because suspect exhibited no signs of fatigue and he gave indication of being accustomed to late night hours.

State v. Wiles, 59 Ohio St.3d 71 (1991) (police deception)

- Police misled defendant to believe that someone had implicated him in the crime. Deception is a factor that bears on voluntariness but, standing alone, it is not dispositive of the issue. (Citations omitted).

State v. Steele, 138 Ohio St.3d 1, 6 (2013) (scope of what police may do)

- Further, it is true that police may draw from a wide variety of interrogation tactics and may even use certain kinds of deception to elicit a confession. See State v. Wiles, 59 Ohio St.3d 71, 81, 571 N.E.2d 97 (1991); Oregon v. Elstad, 470 U.S. 298, 317, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985). However, there is no authority for the contention that police officers may use physical force, unlawful threats of harm, or a materially false or fraudulent writing with malice, bad faith, wantonness, or recklessness as part of a legitimate interrogation of a suspect. Accordingly, we hold that a police officer may be prosecuted for the offense of intimidation when the police officer's actions during an interrogation satisfy the elements provided in R.C. 2921.03.

RELIABILITY:

Crane v. Kentucky, 476 U.S. 683, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986)

- Syllabus: ". . . (1) the circumstances surrounding the taking of a confession are relevant not only to the legal question of its voluntariness but also to the ultimate factual issue of the defendant's guilt or innocence, (2) the exclusion of testimony relating to the physical and psychological environment in which the accused's confession was obtained violated his constitutional right, rooted either in the Fourteenth Amendment's due process clause or in the Sixth Amendment's compulsory process or confrontation clauses, to a fair opportunity to present a complete defense . . ." [Crane was 16, prohibited from calling his mother, badgered, and detained in a windowless room for a protracted period of time].

Aleman v. Village of Hanover Park, 662 F.3d 897 (7th Cir. 2011), cert. denied, 133 S.Ct. 26, 183 L.Ed.2d 676 (2012) (deception)

- Defendant told that medical experts ruled out any other explanation for the baby's death. He had no rational basis, given his ignorance of medical science, to deny that he had to have been the cause. A trick that is as likely to induce a false as a true confession renders a confession inadmissible because of its unreliability even if its voluntariness is conceded.

VOLUNTARINESS FACTORS (NON-OHIO CASES)

Ashcraft v. Tennessee, 322 U.S. 143 (1944): length of interrogation

Clewis v. Texas, 386 U.S. 707 (1967): limited education and experience with the law

Frazier v. Cupp, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969) (deception)

- Use of lies or tricks by the police do not automatically make a confession involuntary. Instead, it is simply weighed in the totality of the circumstances.

Aleman v. Village of Hanover Park, 662 F.3d 897 (7th Cir. 2011), cert. denied, 133 S.Ct. 26, 183 L.Ed.2d 676 (2012) (deception)

- Defendant told that medical experts ruled out any other explanation for the baby's death. He had no rational basis, given his ignorance of medical science, to deny that he had to have been the cause. A trick that is as likely to induce a false as a true confession renders a confession inadmissible because of its unreliability even if its voluntariness is conceded.

People of New York v. Adrian Thomas, 2014 WL 641516 (N.Y. 2014) (deception)

- Thomas was told that if he did not tell the truth, his wife would be arrested and removed from his ailing child's bedside and that the doctors needed to know what happened in order to help his child (in reality, the child had already been pronounced brain dead). He was also told that whatever happened was an accident, that he could be helped if he disclosed all, and that he could go home after confessing. His confession was ruled involuntary.

State v. Swanigan, 279 Kan. 18, 106 P.3d 39 (2005) (deception)

- Statement was involuntary where defendant was falsely told that his fingerprints were found at the store and that his lack of cooperation would make his situation worse and defendant had a low IQ.

Chambers v. Florida, 309 U.S. 227, 238-39, 60 S.Ct. 472, 84 L.Ed. 716 (1940) (psychological coercion)

- Coercion bearing on the voluntariness of a confession can be psychological as well as physical

Greenwald v. Wisconsin, 390 U.S. 519, 88 S.Ct. 152, 20 L.Ed.2d 77 (1968) (deprivation of sleep, food)

- Upon consideration of the totality of the circumstances – defendant was deprived of food, sleep, medication, and requested counsel – statement was involuntary

Doody v. Schriro, 596 F.3d 620 (9th Cir. 2010), cert. granted, judgment vacated, 131 S.Ct. 456 (on separate issue) (length of interrogation, lack of sleep, youth, inexperience with criminal justice system)

- "We can readily discern from the audiotapes an extraordinarily lengthy interrogation of a sleep-deprived and unresponsive juvenile under relentless questioning for nearly 13 hours by a tag team of detectives, without the presence of an attorney, and without the protections of proper Miranda warnings. The intensive and lengthy questioning was compounded by Doody's lack of prior involvement in the criminal justice system, his lack of familiarity with the concept of Miranda warnings, and the staging of his questioning in a straight-back chair, without even a table to lean on."

ADMISSIBILITY OF EXPERTS (OHIO):

State v. Loza, (1994) 71 Ohio St.3d 61

- Trial court did not abuse discretion in excluding testimony of clinical psychologist Dr. Roger Fisher where his testimony in the guilt phase of the trial would address the **voluntariness** of the confession, unlike in *Crane v. Kentucky*, where the issue was the reliability and credibility of the confession.

State v. Wente, 8th Dist. Cuyahoga No. 81850, 2003-Ohio-3661.

- "A defendant retains the ability to challenge the credibility of his confession even after a judge has found it voluntary and admissible."

State v. Stringham, 2nd Dist. Miami No. 2002-CA-9, 2003-Ohio-1100

- On appeal, Stringham argued that the trial court erred in excluding expert testimony about false confessions by Dr. Douglas Mossman. Dr. "Mossman was prepared to testify about psychological reasons why a person might make a false confession and psychological traits, diagnoses, or characteristics that make certain people susceptible to giving a false confession." Dr. Mossman would

have testified concerning the extent to which his examination of Stringham revealed such traits. His testimony would have addressed the reliability and credibility, rather than the voluntariness, of Stringham's statements.

- Relying on *Crane* and distinguishing the case from *State v. Loza*, (1994) 71 Ohio St.3d 61 (which affirmed the exclusion of expert testimony on the issue of **voluntariness** during the guilt phase), the court of appeals reversed, holding that Mossman's testimony went to the credibility and reliability of the statement, rather than the voluntariness. Further, the Court found that *Crane* applied to both physical *and psychological* coercion in interrogations.

State v. Abner, 2nd Dist. Montgomery No. 20661, 2006-Ohio-4510

- Abner proffered the testimony of psychologist Michael Williams. Williams would have testified about psychological reasons why suspects sometimes give false confessions. Trial court excluded the testimony.

- In Stringham, the Court recognized that expert testimony bearing on the believability or credibility of a confession was generally admissible, however the testimony must be reliable.

- Court of appeals agrees with trial court that Dr. Williams' testimony was not reliable because (1) he did not testify to the extent to which the theory that certain character traits make a person susceptible to false confession had been actually tested, (2) he did not go into what the specific traits are or how Defendant's specific traits are consistent with the current literature or studies, (3) it is difficult to determine the rate of error.

State v. Tapke, 1st Dist. Hamilton No. C-060494, 2007-Ohio-5124

- The trial court permitted defense expert Dr. Richard Ofshe to testify regarding police interrogation, psychological coercion and the Reid technique. It was not an abuse of discretion for the trial court to prohibit Ofshe from testifying whether he thought Tapke's statement was false.

State v. Williams, 12th Dist. Butler No. CA2007-04-087, 2008-Ohio-3729

- Prior to trial, Williams moved to permit the testimony of Dr. Solomon Fulero, an expert psychologist. The trial court held a hearing pursuant to Evid.R. 702 and *Daubert*, and permitted Dr. Fulero to testify regarding his knowledge of psychological law enforcement interrogation techniques and the impact they may have on inducing false confessions. Dr. Fulero was not permitted to testify

regarding the number of wrongful convictions or circumstances related to other cases of wrongful prosecutions.

State v. Wooden, 9th Dist. Summit No. 23992, 2008-Ohio-3626

- Prior to trial, Wooden moved to suppress the incriminating statements he made to police, arguing they were involuntary due to improper police interrogation tactics. His motion to suppress was denied. In a pretrial hearing, the trial court also refused to allow Wooden to present the testimony of Dr. Richard Leo, who would testify about his research in false confessions, certain police interrogation techniques that induce confessions, and several studies on false confessions. The trial court found the testimony was not scientifically reliable and did not relate to matters beyond the knowledge of lay people.

- The Court of Appeals affirmed: Dr. Leo could not determine the rate of false confession and could not formulate a theory or methodology that could be tested, subjected to peer review, or permit an error rate to be determined. Further, the Court held "[i]t was not beyond the knowledge of lay jurors that coercive police interrogation tactics might be more likely to induce a confession from a criminal suspect, nor was the fact that suspects do sometimes falsely confess to a crime."

State v. Moxley, Montgomery County Court of Common Pleas, 2013 CR 02008 (court order is included in materials)

- Trial court overrules the State's motion in limine regarding proposed defense expert witness. Professor Steve Drizin is permitted to testify explaining the phenomenon of false confessions, which would help the jury weigh the reliability of the Defendant's statements. However, Professor Drizin would not be permitted to point to specific incidents or facts related to Defendant's interrogation or statements and confession, or testify to the ultimate issue of the truth or falsity of the defendant's statements.

OHIO RECORDING LAW:

State v. Barker, Slip Opinion No. 2016-Ohio-2708

- "As applied to juveniles, the R.C. 2933.81(B) presumption violates dues process. To satisfy due process with respect to a challenged confession, the state must prove by a preponderance of the evidence that the confession was voluntary. The due-process test for voluntariness takes into consideration the totality of the circumstances. . . . The totality-of-the-circumstances test takes on even greater importance when applied to a juvenile." (citations omitted).

- "The statutory presumption of voluntariness created by R.C. 2933.81(B) does not affect the analysis of whether a suspect knowingly, intelligently, and voluntarily waived his Miranda rights prior to making a statement to the police. As applied to juveniles, that presumption is unconstitutional."

State v. Western, 2nd Dist. Montgomery No. 26058, 2015-Ohio-627 (discussing R.C. 2933.81)

- Western did not challenge the constitutionality of R.C. 2933.81 in the trial court, and he has not raised the issue in this court. We have some questions about shifting the burden to a defendant. *See, e.g., Lego v. Twomey*, 404 U.S. 477, 489, 92 S.Ct. 619, 30 L.Ed.2d 618 (1972) ("[T]he prosecution must prove at least by a preponderance of the evidence that the confession was voluntary. Of course, the States are free, pursuant to their own law, to adopt a higher standard."). Nevertheless, we need not address the question since we find, as discussed below, that the State has met its burden of proving that Western's statements were voluntarily given.