

Interrogations and Disputed Confessions:
Forensic Assessment, Consultation, and Testimony

by

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Learning Objectives

1. Appreciate historical and current societal attitudes toward police interrogation and confessions
2. Identify the three legal questions in confession cases for which psychological testimony is likely to be relevant.
3. Identify and be able to use a model for conducting forensic psychological evaluations.
4. Identify a procedure for conducting forensic psychological evaluations relevant to Miranda issues.
5. Identify a procedure for conducting forensic psychological evaluations relevant to voluntary/coerced issues.
6. Identify a procedure for conducting forensic psychological evaluations relevant to reliability of confession statements.
7. Explore ways to communicate findings via written reports and testimony.

Interrogation

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Police Interrogation

In criminal cases, three types of confessions have been distinguished from each other (DeClue, 2005). *Self-initiated* confessions occur when a person initiates contact with a law enforcement officer or other person in authority and declares that he or she is guilty of a crime. *First-response* confessions occur when the police approach a person and initiate questioning, and the person's first response is "I did it." *Police-induced* confessions occur when the police approach a person and initiate questioning, the person's first response is something other than "I did it" (e.g., "I didn't do it"), the police engage in further conversation with the person, and the person subsequently says, "I did it." The further conversation between police and suspect is police interrogation.

Although the proper goal of police interrogation, like any police investigation, is to determine the truth, accusatory interrogation proceeds systematically with one goal: to obtain a confession from whomever has been selected as a suspect. Police are legally permitted to lie and otherwise deceive a suspect as they encourage the suspect to believe that the evidence of guilt is overwhelming and resistance is futile, that there is nothing to lose by confessing, and that there is something to gain by confessing.

The same process that induces guilty suspects to confess induces some innocent people to give false confessions (Gudjonsson, 2003). The Innocence Project (<http://www.innocenceproject.org/understand/False-Confessions.php>) reports that among people who have been exonerated by DNA evidence, more than 25% had falsely confessed. In most criminal cases there is no biological evidence suitable for DNA testing, so if we want to prevent future wrongful convictions we need to study known cases of false confessions and learn what went wrong.

The first step is to keep in mind that a confession in response to police pressure is not the same as a confession offered spontaneously. In *Hopt v. Territory of Utah*, 110 U.S. 574, 584-585 (1884), the U.S. Supreme Court held "A confession, if freely and voluntarily made, is evidence of the most satisfactory character. Such a confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt, and therefore it is admitted as proof of the crime to which it refers. . . . But the presumption upon which weight is given to such evidence, namely, that one who is innocent will not imperil his safety or prejudice his interests by an untrue statement, ceases when the confession appears to have been made [in response to] inducements, threats, or promises."

Hindsight analysis of known cases of false confessions, such as those in the Central Park jogger case, reveal that neither *Miranda* warnings nor a voluntariness test work to keep false confessions out of courtrooms. But there is a solution: “The legacy of the Central Park jogger case is that by extracting five demonstrably false confessions from five innocent young boys, police and prosecutors allowed a violent serial predator to continue robbing, raping, stabbing and, in one case, killing other women before he was finally apprehended and brought to justice. The pretrial reliability test that we propose ... will prevent judges from admitting false confessions into evidence, thus preventing juries from wrongfully convicting the innocent (Leo, Drizin, Neufeld, Hall, & Vatner, 2006, pp. 537-538).

What is that reliability test? The entire interrogation and confession should be electronically recorded and judges should weigh three factors in deciding whether or not to admit confession evidence at trial: “1) whether the confession contains nonpublic information that can be independently verified, would only be known by the true perpetrator or an accomplice, and cannot likely be guessed by chance; 2) whether the suspect’s confession led the police to new evidence about the crime; and 3) whether the suspect’s post-admission narrative ‘fits’ (or fails to fit) with the crime facts and existing objective evidence (Leo et al., 2006, p. 530).”

Interrogations by Military and Intelligence Agencies

In police interrogations, discussed above, the goal is typically to discover truth about a crime that has been committed. In contrast, the goal of interrogations by military and intelligence agencies is often to gain information that could help to prevent acts of war or terrorism, or that could help to win a battle. Military and intelligence agencies are not governed by the same rules as domestic police forces, and some people have advocated the use of physical and/or psychological torture to get prisoners to divulge information in spite of international agreements regarding human rights (for example, see http://www.unhchr.ch/html/menu3/b/h_cat39.htm), and in spite of the fact that publicly available evidence does not show that torture or “harsh interrogation” is more effective than non-stressful interrogation techniques (McCoy, 2006).

The federal government of the United States suffered a breakdown of civilization following the terrorist acts of September 11, 2001, and government agents employed interrogation techniques that had been outlawed for decades. Recently, the U.S. Army Field Manual (<http://www.army.mil/institution/armypublicaffairs/pdf/fm2-22-3.pdf>) has been revised to clearly exclude torture. At the time of this writing, the U.S. Congress has passed legislation including, “No individual in the custody or under the effective control of an element of the intelligence community or instrumentality thereof, regardless of nationality or physical location, shall be subject to any treatment or technique of interrogation not authorized by the United States Army Field Manual on Human Intelligence Collector Operations.” That legislation was vetoed by President George W. Bush, and further action is needed to bring the United States back into the civilized world.

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Suggested Readings

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No one knows how many people confess to crimes they did not commit. Thanks in part to DNA and other scientific evidence, it is certain that some people do. This is not a rare phenomenon. False confessions are second only to mistaken identity among the causes of wrongful convictions: Of the first 130 DNA exonerations, 35 (27%) involved false confessions (Innocence Project, 2006).

When a person confesses to a crime, the results are profound. A recent study of 125 cases of proven false confessions (Drizin & Leo, 2004) found that when the charges were not dropped prior to trial, 86% of suspects who falsely confessed were convicted. That was true even though there was no credible corroboration of the suspects' confession, and in many of the cases there was actually compelling evidence of the defendant's factual innocence. Drizin and Leo conclude that ***modern police interrogation practices, which now rely primarily on psychological techniques, can cause innocent suspects to confess.***

Policy Remedies

The implementation of three procedural safeguards could protect innocent defendants against the admission of false confession evidence into trial proceedings and the subsequent likelihood of wrongful conviction: 1) Courts should adopt mandatory electronic recording requirements in felony cases, 2) The admissibility of confession evidence should be allowed only when the accused subject's guilt is corroborated by independent evidence, and 3) All confessions should meet a reasonable standard of reliability before being admitted (DeClue, 2005a, 2005b; Ofshe & Leo, 1997).

The most important of these safeguards is electronic recording of the entire interrogation, including a post-admission narrative in which the suspect supplies details that corroborate the reliability of the confession. Expert law enforcement officers recognize that interrogators can inadvertently contaminate confessions by asking questions that contain crime scene data and investigative results (Napier & Adams, 2002). Unless the entire interrogation is audio- or video-recorded, it is impossible to know which details, if any, were imbedded in the interrogators' questions.

Mandatory electronic recording of some interrogations has been required in England and Wales for 20 years, and has been instituted in Alaska, Minnesota, and Illinois. In recent years Florida legislators have introduced a bill to require electronic recording of some interrogations, and I plan to seek Florida psychologists' support in backing such legislation in the future. Stay tuned.

Psychologists' Role in Confession Cases

Based on my review of the psychological and legal literature and on my experience, I find that in disputed confession cases psychologists are most likely to be asked to provide testimony relevant to the following legal issues:

- Did the State fail to prove, by a preponderance of the evidence, that the Defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights?
- Did the State fail to prove, by a preponderance of the evidence, that the Defendant's supposed confession was freely and voluntarily made under the totality of the circumstances?
- Should the Court suppress the Defendant's coerced statements to the police because they are so highly unreliable and virtually uncorroborated? (DeClue, 2005a).

(Note that these questions are in the form that would be presented to the judge. The questions posed to a testifying psychologist would be in a different form, but would be designed to produce testimony that would be relevant to the question ultimately considered by the judge.)

Elsewhere (DeClue, 2005a) I describe in detail how psychologists can gather relevant evidence and prepare reports and testimony to assist courts in deciding legal issues in cases involving disputed confessions. Here I would like to report that, as a field, the psychology of interrogations and confessions has sufficiently matured that the following recommendation is in order: ***In any case that includes a so-called confession by the defendant, an evaluator who conducts an assessment relevant to adjudicative competence (also termed competence to proceed or competence to stand trial) should collect, at a minimum, preliminary data regarding the mental state of the person at the time of the confession and the circumstances surrounding the confession*** (DeClue, in press). At least one forensic assessment instrument, the Fitness Interview Test – Revised (FIT-R; Roesch, Zapf, & Eaves, 2006) facilitates collection of relevant data. Some familiarity with confession issues and relevant assessment techniques (DeClue, 2005a, 2005b; Gudjonsson, 2003) is necessary to guide this screening process. Whenever preliminary screening suggests that (a) the confession statement may have been coerced or (b) the confession statement might be wholly or partially false, the consulting psychologist should recommend to the defense attorney that confession issues be fully explored, including consultation by an expert in the psychology of interrogations and confessions.

Some courts, including *Massey v. State*, 820 So.2d 1003 (Fla.App. 4 Dist. 2003), have determined that a defendant's claim that his confession was induced by police trickery is sufficient legal grounds to require an evidentiary hearing to determine whether the confession should be suppressed. And some appellate courts, including *Boyer v. State*, 825 So.2d 418, 419 (Fla.App. 1 Dist. 2002), have specifically held that trial courts must allow testimony by "an expert on interrogation techniques and false confession phenomena."

In some cases psychologists conducting competency evaluations may be the first to recognize that (a) a vulnerable person confessed or (b) police pressure and/or trickery may have contributed to the elicitation of a confession. In such cases, psychologists can recommend to the defense attorney that confession issues be fully explored, thereby initiating a process that can prevent an innocent person from being convicted.

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**Oral Miranda Warnings:
A Checklist and a Model Presentation
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Abstract

Although the U.S. Supreme Court requires that police advise suspects of their Constitutional rights prior to custodial interrogation, the Court has not delineated a specific format for presentation of those rights (Miranda, 1966). To use any subsequent statement, the state must show that the suspect waived his Miranda rights, and that the waiver was knowing, intelligent, and voluntary. Gradually, more police interrogators are electronically recording the entire interrogation, including the Miranda warning. That creates the opportunity for a police interrogator to elicit verbal responses from a suspect that show whether and to what extent the suspect understands the Miranda warnings and makes a knowing and intelligent waiver of them.

Did the suspect show that he or she understood the Miranda warnings? Did the suspect give a knowing and intelligent waiver? This article presents a new checklist designed to help answer those questions.

How can a police officer create a record that clearly shows whether a suspect understands and knowingly waives Miranda warnings? This article presents a new model oral Miranda warning that encourages suspects to show that they understand their rights. This presentation uses clear and unambiguous language that should be understandable at a second-grade level. The presentation is designed to elicit responses showing how well the suspect understands each right. The presentation addresses important issues often left off of written forms: clear statements that there is no penalty for exercising one's rights, and clear descriptions of exactly how to decline or terminate questioning should the subject so choose.

Running Head: Oral Miranda Warnings

Key Words:

Miranda rights

Miranda warnings

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Knowing and intelligent

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police confessions

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The U.S. Supreme Court decided over forty years ago that interrogation of a person in police custody can only occur if police advise the person of certain rights guaranteed by our Constitution and warn the suspect that the police are about to embark on an enterprise that, without the person's permission, would clearly violate those Constitutional rights (*Miranda v. Arizona, 1966*). *Miranda* requires that the contents of the warnings be stated in "clear and unambiguous language" (p. 468) lest the process devolve into "empty formalities."

Requirements for a valid waiver of Miranda rights are described in *Colorado v. Spring* (1987, p. 573):

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, *the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it*. Only if the "totality of the circumstances surrounding the interrogation" reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived. (Emphasis added.)

What does it take for the prosecution to show that a suspect understood his rights at the time that he waived them? In my experience, some prosecutors have expected that it is enough to wave a Miranda form with the suspect-cum-defendant's signature and have a police officer testify that the defendant signed the form. And some judges have said that was good enough. Psychologists can play an important role in gathering evidence regarding a defendant's *current* understanding of Miranda rights, along with current intelligence, achievement, and various personality test scores (DeClue, 2005a, b). But more and more interrogations are being recorded, allowing an opportunity for detectives to create a record that clearly shows whether and to what extent a suspect understands his or her Miranda rights.

Three current cases for which I am consulting illustrate this opportunity and show that police vary considerably in the extent to which they capitalize on it. In each case, the interrogation was video-recorded. (Each case involves different police in different jurisdictions.)

T is a 16-year-old male with average intelligence, Attention-Deficit Disorder, and a learning disability. Police suspected him of committing murder. A detective deliberately downplayed the importance of the rights, described the procedure as a formality, read the rights quickly, interspersed with comments that would be more likely to confuse than enlighten the boy, and then told T "you can just sign it right there." T was never asked to show his understanding of the rights, and the record did not provide much useful data about whether he understood his rights or not. See Appendix 1 for a transcript of the relevant portion from the video-recording.

L is a 17-year-old female with average intelligence and behavioral problems and no (other) significant psychiatric symptoms or history. Police suspected her of committing murder. A detective asked her to explain her understanding of each right as it was read to her. The detective asked T to rephrase the right in her own words, and then he clarified apparent misconceptions. See Appendix 2 for a transcript of the relevant portion from the video-recording.

C is a 43-year-old male with average intelligence. Police suspected him of capital sexual battery. The audio portion of the video-recording equipment was not working during the initial part of the interview, and it was during that time that the detective read Miranda rights to C. The police were aware of the problem with the audio equipment (it produced white noise) and fixed it after about 10 minutes. Just after the noise abated, the detective commented about the audio difficulty, announced that C had been read his rights, and moved on. This illustrates how little importance some police officers place on the opportunity to create a record that shows whether and to what extent a suspect's "waiver [was] made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it" (*Colorado v. Spring*, 1987, p. 573). Suspect C had signed a Miranda form and that was that. Although the video- and audio- recording equipment was now working properly, the detective made no effort to memorialize C's understanding regarding his rights; he proceeded with the interrogation. See Appendix 3 for a transcript of the relevant portion from the video-recording.

Checklist

For what should we look and listen as we analyze a recording of an orally presented Miranda warning? I prepared a preliminary checklist based on my review of legal decisions (DeClue, 2005a) and my experiences in current forensic cases. I submitted a proposed checklist to some colleagues and requested input (including suggested additions, corrections, deletions, style changes, etc.). Appendix 4 is a current working checklist that should be useful to psychologists and others who analyze recordings of orally presented Miranda warnings to assist judges in deciding whether a suspect's "waiver [was] made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it" (*Colorado v. Spring*, 1987, p. 573).

Model Warning

Miranda warnings devolve into empty formalities if the suspect does not understand them. An extreme example would be presenting the rights in German to a person who does not know how to read or write German. Less obvious is presenting the rights at a comprehension level beyond that of the suspect. Rogers, Harrison, Shuman, Sewell, and Hazelwood (2007) collected 560 different versions of the Miranda warnings and found that their reading levels varied from elementary-school to post-graduate levels (using Flesch-Kincaid reading comprehension; Flesch, 1950). The version of Miranda that was easiest to read was at the second grade, eighth month (2.8) level.

Rogers et al. (2007, p. 190) report, anecdotally, that “college students do not understand the term ‘right’ as a *protection*. Instead, the large majority of students construed ‘right’ as simply an *option*, but an option for which they will be severely penalized (i.e., their non-cooperation will be used in court as incriminating evidence).” They note (p. 186): “The Miranda decision articulates several mechanisms to protect the Constitutional privilege against self-incrimination including (a) the assertion of rights will stop further interrogation and (b) the exercising of rights cannot be used as incriminating evidence. The Supreme Court did not specify whether these protections needed to be expressed to custodial suspects. We found that they remain unexplained in almost all Miranda warnings (98.2%).”

In the recent case of T (mentioned above, and see Appendix 1), I was asked to assist the court in determining whether a teenager with average intelligence, a learning disability, and attention-deficit disorder gave a knowing, intelligent, and voluntary waiver of his Miranda rights. The interrogation, including the Miranda warnings and waiver, were electronically recorded, providing a good-quality audiovisual record of the proceedings, and there was a Miranda rights form with the youth’s signature on it. Nevertheless, there was a serious dispute about whether the boy understood his rights. The rights were presented orally, with interspersed comments that appeared to minimize the importance of the rights, distract the boy from recognizing exactly what rights he was waiving, suggest that his parents might somehow substitute for a lawyer, and convey that not signing the form would be an indication of refusal to cooperate with the police – with the implication that failure to cooperate would have negative consequences. After the rights were rapidly read to the boy, he was told to “sign here,” with no clear indication of what his signature meant: That he was read his rights? That he understood them? That he wished to waive his rights and talk to the police?

I testified during a hearing in which the judge was asked to suppress T’s interrogation and his responses therein. I described how the manner of presentation of the Miranda rights appeared likely to exploit the child’s weaknesses, as shown in his school records and as measured by relevant psychological tests (DeClue, 2005a, b). I explained that the comprehension level of the rights and waiver used was higher than the boy’s comprehension level on several relevant tests. That raised a serious question as to whether the boy could understand his rights at the time they were read to him. The boy’s lawyer reminded the Court that the state has a burden to show that the boy understood his rights, and I testified that, in my opinion, the boy’s responses during the recorded interview failed to show that the boy understood his rights. On cross examination the prosecutor tried to insist that I answer that the boy either did understand his rights or did not. Instead I explained that the manner in which his rights were presented failed to elicit responses from him that showed whether, and to what extent, he understood his rights, and whether he was truly waiving them. (Voluntariness of the waiver was not challenged in this case.)¹

¹ I invite the reader to use the checklist (Appendix 4) to analyze T’s interview (Appendix 1).

How could a Miranda warning be administered in a case like this, to provide a clear record of whether a suspect gives a knowing, intelligent, and voluntary waiver? Using principles identified by Rogers et al. (2007) I developed a model oral Miranda warning (see Appendix 5). This warning is presented in “clear and unambiguous language” as the text of *Miranda* appears to require. It uses simple language, understandable at a second-grade level.² It incorporates clear promises that exercising one’s Constitutional rights does not constitute a failure to cooperate, and that exercising one’s rights cannot be used against the suspect. It also includes clear directions on how to exercise the rights.

The model oral Miranda warning (Appendix 5) is intended to be presented orally, and the presentation should be electronically recorded (Innocence Project, 2007; Ofshe and Leo, 1997). A law-enforcement agency could adapt this oral warning to match the agency’s written form, or the agency could adapt its written form to match this oral warning.³

Summary

In custodial interrogations, police are required to advise suspects of their Constitutional rights, as described in *Miranda*. Unless a suspect waives his or her Miranda rights, nothing the suspect says can be used in court. The state carries the burden of showing that the suspect understood his or her rights and voluntarily waived them. As more police interrogations are electronically recorded (see, e.g., Weigl, 2007), police have increasing opportunities to create a clear record of whether and to what extent a suspect understands his or her rights *at the time the suspect is advised of his or her rights*.

When police have electronically recorded the entire interrogation, including the Miranda warning, the checklist presented as Appendix 4 should aid in analyzing whether and to what extent the suspect understood his or her rights. This is a rationally derived checklist consisting of items that are considered subjectively. This checklist should be a useful tool to enhance a comprehensive assessment, along with ability and achievement testing, clinical interview, school records, etc. Of course, it is the judge who makes the final decision about whether a particular suspect made a knowing and intelligent waiver of his Miranda rights.

It is increasingly recognized that it is unfair and inadequate for police to interrogate a suspect in secret, and only turn on electronic recording devices after the suspect has been persuaded to confess to a crime (DeClue, 2005a, b; Gudjonsson,

² This Miranda warning has a Flesch-Kincaid reading comprehension level of 2.6, slightly lower than that of the easiest of the 560 warnings studied by Rogers et al. (2007). Reading comprehension and listening comprehension are significantly correlated (Hoover & Gough, 1990; Jackson & McClelland, 1979; Savage, 2001).

³ Agencies are encouraged to check the comprehension level (e.g. Flesch-Kincaid) of whatever written form they use. If an agency decides to alter the wording of this oral warning, the effect on the comprehension level of the new oral warning should be checked. See Rogers et al. (2007) for additional recommendations.

2003; Kassin, 2005; Kassin & Gudjonsson, 2004). In the United States we are living in an interesting time: Police are increasingly recording entire interrogations, now showing techniques that were formerly conducted in secret. In many police departments, current cases constitute the first times that their detectives' work is being exposed to scrutiny by people from outside the department. Perhaps some police practices are cleaned up as the police know that their actions are being recorded, but to a large extent police are doing what they always did, and are just now in a position to get useful feedback.

My experience with T's case (Appendix 1), for example, is that the police genuinely believed – and, perhaps, still believe – that because T signed the form, that proves that he understood all of his Miranda rights and all of the consequences of waiving those rights. The prosecutor argued as much in the suppression hearing, giving every impression that he, too, considers a signature on a form to be proof that T understood his rights and the consequences of waiving them.

What more could a judge expect from a video-recorded interchange as police advise a suspect of his or her Miranda rights and ask the suspect to knowingly and intelligently waive those rights? Quite a bit, it turns out, though nothing complicated or time consuming. The checklist (Appendix 4) can help when analyzing an already recorded interrogation. The model oral warning (Appendix 5) can guide detectives as they advise a suspect of his or her rights during their next interrogation.

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Appendix 1: Excerpt from Transcript of the Interrogation of T

Detective: I am just going to explain this, this rights waiver form to you and your folks. We kinda talked about it before. But, um, you know I want you to know, now that I mean we read you your rights so people understand your rights and so you know anytime you are interviewed by the police for the most part and you come down to the station or interview room here, um, people sometimes get the impression that maybe they are in custody and they are not free to leave. So, it's a good time to give you your rights so you understand you know your rights are per Miranda. I'm going to go ahead and read them to you. If you have any questions, just let me know. It says before you are asked any questions, you must understand your rights, okay? You have the right to remain silent. However, anything you do say can and will be used against you in court, okay? You have the right to talk to a lawyer for advice before you are asked any questions and have him with you during questioning, okay? You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. That means if you cannot afford to hire one, that you get a public defender is what that means, okay, so one will be appointed to you. If you wish to answer questions or make a statement at this time without a lawyer being present, you have the right to refuse to answer any questions, okay, and to have this interview terminated at any time, okay? Do you understand those rights?

T: Yeah.

Detective: In a nutshell, it means that you understand anything you say can and will be used against you. At the same token, if we ask you something you do not like, you are not being forced to answer any questions, okay?

T: Okay.

Detective: The second part of this is just merely a waiver and the waiver says that I read you the form, that I have read you the statement of your rights, and I have shown you, and I have told you what your rights are, okay? I desire to answer questions and to make a statement without first consulting an attorney, which I think you have today, and without having a lawyer present at this time, okay? But you have your parents here because you are a juvenile and you know they have rights over you there. This decision is voluntary on your part and your parents', right, and no promises and threats of force

of any nature have been made against you to get you to come in here and talk, okay?

T: Okay.

Detective: So again it's voluntary, it's totally on your own free will and we are just going to sit and it will be basically five people in here talking and you can just sign it right there, just your signature that you understand your rights.

[T signs or does not sign the form at this point.]

Appendix 2: Excerpt from Transcript of the Interrogation of L

Detective G: There's a couple things that we want you to know. I understand that since you've been here you've been great. You've been talking to everybody and trying to tell your side of the story. Our job is to gather all of the facts, okay, and try to put this whole picture together. It's kind of like a big jigsaw puzzle. We try to put it together. We had to talk to a bunch of people and get a whole bunch of information and you're kind of the last person on the list to talk to, so we can get your side. But there's some things I want to go over first before we talk about any of that stuff. How old are you?

L: Seventeen.

Detective G: Okay, um, do you go to school?

L: No.

Detective G: ... How far did you go in school? ... What kind of grades did you get? ... Do you drive? ... Did you ever get a driver's license? ... Have you ever been in trouble with the police before? ... Have you ever been to court before? ... Do you think you understand the court system a little bit? ... I'm sure you've watched television and seen different things. When somebody gets arrested for a crime there's certain rights that they have. I'm gonna go over those rights with you because I want to make sure that you understand them. The first right that they talk about is: I understand that I have a right to remain silent. Do you understand that?

L: Mm-hm [yes].

Detective G: What does that mean?

L: I'm not s'pose to say anything.

Detective G: Is it you're not supposed to say anything or you don't have to say anything?

L: I don't have to say anything.

Detective G: Okay. So if you want to say something you could, but if you didn't want to, you also have that right.

L: Okay.

Detective G: I understand that anything I say can be used against me in a court of law. Do you understand that?

L: Mm-hm [yes].

Detective G: What does that mean?

L: That mean anything I say, that could be brought up again in court.

Detective G: Correct. I understand that I have a right to talk to an attorney and have him or her present with me while I'm being questioned. Do you understand that?

L: Mm-hm [yes].

Detective G: What does that mean to you?

L: That I could hire a lawyer and that, um, discussing it, he be right there.

Detective G: He could be with you, or she could be with you, when you're talking.

L: Mm-hm [yes].

Detective G: Okay. I understand that if I want an attorney and cannot afford one that an attorney will be appointed to represent me free of charge before any questioning. Do you understand that?

L: Mm-hm [yes].

Detective G: What does that mean?

L: Like a public defender.

Detective G: Okay, um, if you came in here today and you had no money to afford, to pay for an attorney, would you still have the right to have one before we talked?

L: Mm. I don't know. Yeah. I don't know.

Detective G: Okay. Let's go over that. It says [pointing to the page] if I want an attorney and cannot afford one that an attorney will

be appointed to represent me free of charge before any questioning.

L: Okay.

Detective G: Okay. So in other words if you came in here and you didn't have the money for an attorney but you wanted one, you could get one before you talked. Is that right or wrong?

L: Right.

Detective G: Okay. And feel free to correct me if I say something that's not correct. Okay. I understand that at any time I can decide to exercise these rights and not answer any questions or make any statements. Do you understand that?

L: Yeah.

Detective G: What does that mean?

L: If you ask me a question, that I don't have to answer it.

Detective G: Correct. If we talked for however long we talked and all of a sudden you decided, you know what, I don't want to talk anymore, do you have that right?

L: Mm-hm [yes].

Detective G: Yes you do. Okay. Understanding these rights explained to me I wish to make a statement at this time. Would you like to talk about what happened today?

[L answers yes or no at that point.]

Appendix 3: Excerpt from Transcript of the Interrogation of C

Detective A: All right, we'll go ahead and get started. ... C, raise your right hand. You swear the statement you're about to give is gonna be the truth, nothing but the truth?

C: Yes.

Detective A: Okay. (to Detective B) I got him to sign here. He signed his Miranda. So that's good. Can you witness this for me real quick?

Detective B: (to C) This is your signature right here?

C: Yes.

[Detective B signs the "witness" section of the Miranda form, and there is no further discussion regarding Miranda rights.]

Appendix 4: Oral Miranda Warning Checklist

Did the suspect show, in his or her own words, understanding of the following (If so, list page and line numbers from the transcript.):

- 1) I am/am not free to leave.
- 2) I do not have to talk to the police.
- 3) If I do talk to the police, anything I say can be used against me in court.
- 4) If I do not talk to the police, my choice not to do so cannot be used against me in court.
- 5) I can talk to an attorney.
- 6) If I cannot afford an attorney, an attorney will be provided for free.
- 7) I can talk to an attorney before I decide whether to talk to the police.
- 8) If I decide to talk to the police, I can talk to an attorney before talking to the police.
- 9) If I decide to talk to the police, I can talk to an attorney while I talk to the police.
- 10) If I decide to talk to the police, I do not have to answer every question. I can choose not to answer any question. If I choose not to answer a question, that cannot be used against me in court.
- 11) If I decide to talk to the police, I can decide at any time to stop talking to the police, and the decision to stop talking cannot be used against me in court.
- 12) If I say, "I do not want to talk to you anymore," the police will stop asking me questions and the interview is over.
- 13) If I say, "I want a lawyer," the police will stop asking me questions and the interview is over.

A) Did the police make any statements before, during, or after advising the suspect of Miranda warnings that directly contradict any of the above? (If so, list page and line numbers from the transcript.)

B) Did the police make any statements before, during, or after advising the suspect of Miranda warnings that (perhaps implicitly) may contradict any of the above? (If so, list page and line numbers from the transcript.)

Appendix 5: Model Oral Miranda Warning

We would like to talk to you today. We would like to ask you some questions. You do not have to talk to us. You do not have to be here today. You do not have to stay here. You can leave if you want. You can leave any time you want. If you do not talk to us, that cannot be used against you in court. If you do talk to us, anything you say can be used against you in court.

Now, I'm going to read you your rights. These are important rights. The U.S. Supreme Court says that these apply to every suspect in a criminal case. Right now you are a suspect in a criminal case, and that's why I'm going to read you your rights.

It is important that you understand your rights. I know you're probably feeling nervous right now. I'm going to read these to you slowly and carefully. I'm going to ask you to tell me in your own words what each right means. So I'll read each right to you. And then I would like you to show me whether you understand or not. Tell me in your own words what the right is. Ready?

You have the right to remain silent. Tell me in your own words what that means. ... And being silent is your right. You don't have to talk to us. And if you don't talk to us we can't hold that against you. We can't use it against you in any way. You can say no right now, and that's it. We'll stop. We will not hold it against you that you chose not to talk to us. If you do choose to talk to us, at any time you can say the magic words. "Stop, I don't want to talk anymore." And that's it. We'll stop. And we won't hold that against you.

Anything you say can and will be used against you in court. Tell me in your own words what that means. ... So if you do talk to us, anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before you are asked any questions. Tell me in your own words what that means. ... So you could say, "Stop, I want to talk to a lawyer." Those are magic words, too. And if you say those magic words, "Stop, I want to talk to a lawyer," we will stop. We won't ask you any more questions. We won't say or do anything to try to get you to talk more. And the fact that you told us to stop cannot be used against you. You can say that before we ever start. If you do, we won't ask you any questions. You can say that right now, and we will stop right now. Or if you do agree to start answering questions, it is up to you when we stop. All you have to do is say those magic words. "Stop, I want to talk to a lawyer."

Also, you have the right to have a lawyer present with you during questioning. Tell me in your own words what that means. ... So, if you want to have a lawyer present right now while we talk, that's fine. Or if you want to talk to a lawyer first, and then also have a lawyer present while we talk, that's fine, too. And if you choose to talk to a lawyer or to have a lawyer present while we talk, that's fine. That's a fine way for you to cooperate with us in the investigation. There is nothing uncooperative about talking with a lawyer. There is nothing uncooperative about having a lawyer present while you talk to us. If you'd like to have a lawyer present, we won't hold that against you in any way.

You have the right to the advice and presence of a lawyer even if you cannot afford to hire one. Tell me in your own words what that means. ... So if you do not have the money to pay for a lawyer, you can still say, "Stop, I want a lawyer." And we stop. And you get a lawyer for free. And you can talk to the lawyer and decide whether you want to talk to us. And if you do decide to talk to us, you can have a lawyer present, even if you don't have the money to pay for a lawyer.

If you talk to me, you do not have to answer every question. Tell me in your own words what that means. ... So if I ask you something that you don't want to answer, all you have to say is, "I don't want to answer that." Or "I don't want to talk about that." And we won't hold it against you.

You have the right to stop this interview at any time. Tell me in your own words what that means. ... Like I said, just say the magic words. "Stop, I don't want to talk anymore." Or "Stop, I want a lawyer." And we'll stop. And we won't hold it against you.

Now, do you understand all of those rights? Do you have any questions? ... Like I said, you don't have to talk to us. And we won't hold it against you if you don't talk to us. Do you want to talk to us now? [If yes] If you understand each of these rights, please put your initials next to each right. But listen, if you put your initials there, that means that we went over these rights, *and you're saying that you understand the right*. So, here's the first one. You have the right to remain silent. *If you understand that*, please put your initials here, next to that one. [Continue for each of the rights.]

And now I'm asking you, having these rights in mind, do you want to talk to us? ... Do you have any more questions? Okay, then, if you want to talk to us, then sign here. Your signature here

means that you understand the rights, and you are choosing to talk to us. ... Okay, now remember, you can talk to us as long as you want. But any time you want to stop, all you have to do is say the magic words.

Okay, here we go.

Ph.D.
Neuropsychology

FORENSIC NEUROPSYCHOLOGICAL EVALUATION

PATIENT NAME:
DATE OF BIRTH:
DATES SEEN:

Mr _____ s a _____-year-old single, _____ male who was seen alone at the _____ for a Forensic Neuropsychological Evaluation in response to a court order appointing Defense Psychologist dated _____ 2007, Honorable _____ Judge of the Circuit Court. The patient was aware of the nature of this evaluation. He understood that he was waiving his rights to confidentiality, and that I have been authorized to provide an evaluation, not treatment. He was also made aware that I would be reviewing relevant medical records.

RECORDS REVIEWED

The following records were reviewed:

- Report, _____ Police Department,
- Officer Statement,
- Autopsy Report of _____ Office of District Medical Examiner,
- Sworn statement of _____

HISTORY

The patient stated that he was arrested in _____ of 2006 and charged with 2nd degree murder of his two month old daughter, _____. According to the patient he awoke in the early morning. Evidently, the infant's mother, _____, was asleep. He could not remember exactly what time but stated it was dark. Evidently he went to feed the infant who was in a crib and had a bottle and the baby in his arms. He stated that went into the bathroom, went to the bathroom, and went to get some toilet paper to blow his nose, turned around, and the baby accidentally hit the front part of her head on part of the door frame. He stated that blood was coming from her nose and she cried for a brief moment. He stated that he held her and comforted her for approximately 30 minutes, changed her

diaper, and put her into her crib. He went to sleep and awoke at approximately 8am and checked on her and she was fine. He stated that he then went to the elementary school (I could not understand him) where worked because she needed some of her worked to be at school, which was about 10 to 15 minutes away by car. Evidently, the patient stated that awoke and discovered the infant not breathing. He stated that he returned home around this time and called 911 while was attempting CPR on the infant. EMS, the fire department, and the police came and the infant was taken to Regional Hospital. went in the ambulance with their child and the patient drove himself and his son to the hospital. When he arrived at the hospital, he was told that he baby was deceased and he recalls the hospital personnel saying that she had a "brain aneurysm." The patient called his mother and his mother, father, as well as grandmothers, two aunts, an uncle and couple of cousins were soon at the hospital. He stated that he was at the hospital for hours and that he was told they could not find out the cause and would call him with the report of her death. The next day, he stated, the

Police Department called him and instructed to come to the ___ County Jail for autopsy results. This occurred during the nighttime and he was unsure what time it was. He stated that he had been drinking Hennessy that day and had finished most of a large bottle. He also stated that he had been smoking "trees" – a cigarette with cocaine and marijuana mixed together to "ease the pain" of what had happened to his daughter and to be able to cope with getting the autopsy report. He went to the jail with his mother and and was separated to individual rooms. He stated that he thought getting an autopsy report on his daughter but was instead questioned by police for approximately 1.5 to 2 hours. He stated that he signed a paper but didn't read what was on it because he is a poor reader and stated that he was extremely nervous and scared. After his statement, the patient was jailed on a \$300,000 bond. He stated that was not incarcerated and that he had to give up his son, whom he has not seen since being jailed.

The patient stated that he currently feels "alone" and sad. He denied any current suicidal ideation or intent but stated that it has crossed his mind without any intent. Evidently, he was on the 3rd floor in jail on suicide watch at some point for 1 month. He stated that he feels guilty about what happened to his daughter. His sleep and appetite are ok. His concentration and attention are fine.

PAST PSYCHIATRIC HISTORY: He has never been treated psychiatrically. He has never been to or been hospitalized. He denied any past or current suicidal or homicidal ideation or attempts. He has a significant history of substance use. He began using alcohol at age 19 and has used alcohol since that time mostly during the weekends, drinking two to three cups of Hennessy. He stated that he has smoked three "trees" per day since the age of 19 years old. He used ecstasy and "pills" during the weekends when he was 19 years old. He has no abuse history of prescription drugs, heroin, methamphetamines, or inhalants. He denied ever having a blackout or DUI. There is no history of major depression, mania, hypomania, or psychosis. He denied ever being cruel to animals or vandalizing the property of others.

PAST MEDICAL HISTORY

He denied any past medical problems or chronic illnesses. He denied allergies. There is no history of hypertension, diabetes, or cardiac disease or events. He has never sustained a TBI, CVA, seizure, or other neurological event. He uses nicotine intermittently. He is not on any medications.

FAMILY MEDICAL HISTORY

The patient has a maternal uncle who was psychiatrically hospitalized for reasons unknown to the patient. Otherwise, known family medical history is non-contributory.

DEVELOPMENTAL/PERSONAL HISTORY

The patient was born in _____, on _____. To his knowledge, he was born at full term with normal delivery; his mother was not abusing drugs or alcohol. According to the patient's mother, the patient's father was a crack cocaine abuser. He denied any serious childhood illnesses or physical or sexual abuse. He stated that he has two brothers _____ Both the patient and his youngest brother were told they were "slow learners" and the patient was told at some point that he had dyslexia by his grandmother and teachers. Evidently, his grandfather had a verbal learning disability. According to the patient, he was enrolled only in exceptional student education (ESE) classes for learning disabled children. The patient stated that from the beginning of elementary school, he was unable sit still. His attention has always been poor. He stated that, to this day, he "can't read because it takes me forever" and he has problems writing. He has always had difficulty with mathematics as well. The patient attended elementary school in _____ then middle school at _____, and stopped attending school during the 9th grade. He stated that he left school because, "it wasn't for me." He went into the Job Corp in Kentucky studying culinary arts for 1 year then returned to _____ at age 18 and was employed with his stepfather in construction. He worked full time for five months. At age 19 years old, he began abusing drugs with a friend who was selling marijuana and cocaine. At that time he was unemployed and living with his mother. At age 20 he worked again in construction for 5 to 6 months and moved in with _____ she gave birth to _____ during that time. He stated that they lived at the _____ apartment complex together and she was going to school and was employed as a nanny. They were both abusing drugs according to the patient. He worked at the _____ for 1 to 2 months, _____ restaurant as a cook for 6 months, and a stucco company for 5 to 6 months. He stated that he would "get tired" of the jobs but enjoyed his job as a cook at _____ but did not get along with manager. His son, _____ is healthy.

PROCEDURES

Test of Memory Malinger (TOMM)

Rey 15-Item Test

Wechsler Adult Intelligence Scale – 3rd Edition

Wechsler Memory Scale – 3rd Edition

Woodcock Johnson III Tests of Achievement

California Verbal Learning Test-II
Boston Diagnostic Aphasia Examination - Comprehension

Behavioral Observations

Mr. _____ was seen at the _____ He appeared his chronological age. The patient's mood was "down", but he denied any suicidal or homicidal ideation or intent. There was no evidence of psychotic symptomatology, significant agitation, or anxiety during the exam.

EXAMINATION RESULTS**Motivation/Effort**

The patient demonstrated good effort on all tests during the examination and test results appeared to be a valid indication of his current neurocognitive functioning. Measures of effort and symptom validity were within normal limits (CVLT forced choice = 16/16; Rey 15 item test = 15/15). On the Test of Memory Malingering (TOMM), a 50-item recognition test which is sensitive to poor effort and malingering (especially of memory deficits), the patient performed within expected limits (T1 = 49/50, T2 = 50/50; Retention Trial = 50/50).

Intellectual Functioning

Intellectually, the patient is functioning in the borderline range on the WAIS-III:

Full Scale IQ Score	77 (6 th percentile)
Verbal IQ Score	78 (7 th percentile)
Performance IQ Score	79 (8 th percentile)

<u>Verbal Subtest:</u>	<u>Standard Score:</u>	<u>Performance Subtest:</u>	<u>Score:</u>
Vocabulary	6	Picture Completion	5
Similarities	7	Digit Symbol-Coding	7
Arithmetic	6	Block Design	5
Digit Span	6	Matrix Reasoning	10
Information	7	Picture Arrangement	7
Comprehension	6	Symbol Search	7
Letter Number Seq.	7		

General Intellectual Ability

The patient was administered 13 subtests of the *Wechsler Adult Intelligence Scale—Third Edition* (WAIS-III) from which his IQ and Index scores were derived. The Full Scale IQ is the aggregate of the Verbal and Performance scores and is usually considered to be the most representative measure of global intellectual functioning. The patient's general cognitive ability is in the *Borderline* range of intellectual functioning, as measured by the Wechsler Adult Intelligence Scale -Third Edition (WAIS-III). His overall thinking and reasoning abilities exceed those of approximately 6% of adults his age (FSIQ = 77; 95%

Confidence Interval = 73-82). He may experience difficulty in keeping up with his peers in a wide variety of situations that require age-appropriate thinking and reasoning abilities.

Verbal and Performance Abilities

The Verbal score is a measure of acquired knowledge, verbal reasoning, and comprehension of verbal information. His verbal reasoning abilities, as measured by the Verbal IQ, are in the *Borderline* range and above those of approximately 7% of his peers (VIQ = 78, 95% Confidence Interval = 74-84). His scores on the subtests requiring verbal reasoning are all in the *Below Average* range. It should be noted, moreover, that all of his verbal abilities are below those of most of his peers.

The Verbal Comprehension Index (VCI) is similar to the Verbal IQ in that it provides a measure of verbal acquired knowledge and verbal reasoning. In the patient's case, his Verbal Comprehension Index score is generally comparable to his Verbal IQ score. On the Verbal Comprehension Index, the patient's performance is somewhat less well developed than that of his peers. His ability to understand and respond to verbally presented material is better than that of only 12% of others his age (VCI = 82, 95% Confidence Interval = 77-88).

The Performance score on the WAIS-III provides an indication of an individual's nonverbal reasoning, spatial processing skills, attentiveness to detail and visual-motor integration. His nonverbal reasoning abilities, as measured by the Performance IQ, are in the *Borderline* range and better than those of approximately 8% of his peers (PIQ = 79, 95% Confidence Interval = 73-87). The Perceptual Organization Index (POI) is actually a purer measure of nonverbal reasoning than is the Performance IQ. The POI measures fluid reasoning, spatial processing, attentiveness to detail, and visual-motor integration. The patient's nonverbal reasoning abilities are slightly less developed than those of his peers. His performance on the Perceptual Organization Index exceeds that of 9% of his age-mates (POI = 80, 95% Confidence Interval = 74-89).

His ability to think with words is comparable to his ability to reason without the use of words. Both the patient's verbal reasoning and nonverbal reasoning abilities are also in the *Borderline* range.

Attention/Concentration

Immediate Memory Span: The patient exhibited inconsistent performance on measures of immediate memory. He was able to repeat up to 5 digits forward on the WAISIII Digit Span, which is impaired and approximately at the 7th percentile. His digit span score was mildly impaired and at the 9th percentile when compared to his age matched peers. On the initial presentation of a 16-item word list-learning task (CVLTII), he was able to learn 6 of 16 words (45th percentile) which was within expectations. He was able to learn 6 words after the presentation of another, interference list (45th percentile), which is within normal limits.

Processing Speed: The Processing Speed Index (PSI) from the WAIS-III provides a measure of an individual's ability to process simple or routine visual information quickly and efficiently and to quickly perform tasks based on that information. The patient's skill in processing visual material without making errors is below that of his peers. His performance on the Processing Speed Index was better than only 14% of his age-mates (PSI = 84; 95% Confidence Interval = 77-95). A relative weakness in processing speed may make the task of comprehending novel information more time-consuming and difficult for the patient. The patient's abilities on the subtests that compose the Processing Speed Index are all in the *Below Average* range.

Working Memory: The Working Memory Index (WMI) provides information regarding an individual's ability to attend to verbally presented information, to process information in memory, and then to formulate a response. Compared to his peers, the patient may experience difficulty in holding information to perform a specific task. Difficulties with working memory may make the processing of complex information more time-consuming for the patient, drain his mental energies more quickly, and perhaps result in more frequent errors on a variety of learning tasks, in comparison to other adults his age. On the Working Memory Index, he performed better than 7% of his peers (WMI = 78, 95% Confidence Interval = 73-86). The performance on the subtests requiring working memory is in the *mildly impaired* range. He was able to repeat a maximum of 3 digits backwards, which is impaired compared to his peers.

Learning / Memory

On the WMS-III, Mr. _____'s index scores were:

- Auditory Immediate 83 (13th percentile, Low Average)
- Auditory Delayed 92 (30th percentile, Low Average)
- Auditory Recognition 120 (91st percentile, High Average Range)
- Visual Immediate 121 (92nd percentile, Superior Range)
- Visual Delayed 118 (83rd percentile, High Average Range)
- Immediate Memory 102 (55th percentile, Average Range)
- General Memory 109 (73rd percentile, Average Range)
- Working Memory 74 (4th percentile, Mildly to Moderately Impaired)

Acquisition of New Information: Learning refers to a person's ability to encode and store novel information while *memory* refers to the persistence of learned material that can be retrieved after a brief (immediate) or long (delayed) interval. The patient's ability recall new information after a brief interval is in the *Average* classification range. The patient's performance on the Visual Immediate Index, however, is relatively better than his performance on the Auditory Immediate Index. This pattern occurred for 1% of individuals in the normative group. Because of this discrepancy, the Auditory Immediate Index (Aud Imm Index=83, Confidence Interval=77-91) and the Visual Immediate Index (Vis Imm Index=121, Confidence Interval=107-127) separately provide a better estimate of his immediate memory capabilities than does the overall Immediate Memory Index.

Additionally, the patient exhibited variability in his performance on the subtests of both the Auditory Immediate and Visual Immediate indexes. On the WMS-III, the rate at which an individual learns new information is determined by the difference between the amount of information learned after a single presentation of the material and the amount of information learned after multiple learning trials. The Single-Trial Learning and Learning Slope process composites provide information regarding the extent to which repetition of information improves auditory memory functioning. Compared to the performance of individuals of similar age, the patient's initial acquisition of auditory information after a single presentation is in the *Extremely Low* range. His score exceeds that of only 1% of individuals in his age group. Total list learning on the CVLT-II was in the average range (38th percentile) compared to age matched peers. He was able to learn 11 words after 5 trials, which is in the average range (31st percentile). His learning over the five trials was consistent. His ability to acquire story material was mildly to moderately impaired and at the 2nd percentile.

Retention: Word-list recall following a brief delay and presentation of a second interference list was in the average range (10 words; 31st percentile). With cues the patient recalled 13 words. The patient recalled 12 words following a 20-minute delay, which places him in the average range compared to his age matched peer (50th percentile). When provided with cues at long-delayed recall, the patient recalled 12 words. Recall of story material after a 30 minute delay was in the mildly to moderately impaired ranges (5th percentile)

Recognition: Retrieval problems suggest that although the individual has learned the information, he has a reduced capacity to access that information without external prompts or structure. The patient's performance on the Auditory Recognition Delayed Index (Aud Rec Del Index=120, Confidence Interval=104-126) and the Auditory Delayed Index (Aud Del Index=92, Confidence Interval=84-102) indicates significant retrieval difficulties. That is, his recognition of auditory information is much greater than his retrieval of auditory information through recall. Word-list recognition on the CVLTII was within normal limits. He was able to adequately discriminate between list and non-list items.

Language

Expository speech was fluent, grammatical, prosodic, and devoid of paraphasic errors. The patient answered questions appropriately and was able to follow instructions for all procedures used during the examination. There were no gross signs of aphasia or dysarthric speech. His score on the Verbal Comprehension Index (VCI) of the WAIS-III was at the 12th percentile, which is mildly impaired. His performance on a verbal comprehension measure was in the average range (73rd percentile) compared to age, education, and gender matched norms.

Achievement - Woodcock Johnson III

CLUSTER	Age Equivalent	SS(68% Band)	Grade Equivalent
ORAL LANGUAGE	11-10	87 (85-89)	6.5
ORAL EXPRESSION	10-4	81 (78-83)	4.7
LISTENING COMP	13-4	90 (87-93)	8.9
BROAD READING	7-8	59 (57-61)	2.3
BASIC READING SKILLS	8-5	66 (64-68)	3.1
READING COMP	10-8	83 (81-85)	5.4

TEST	Age Equivalent	Grade Equivalent
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READING

Letter-Word Identification	8-6	3.3
Reading Fluency	<6-0	
Passage Comprehension	9-4	4.0
Word Attack	8-3	2.7
Reading Vocabulary	12-5	7.0

ORAL LANGUAGE

Story Recall	9-5	4.0
Understanding Directions	10-1	4.8
Picture Vocabulary	10-7	4.9
Oral Comprehension	16-7	12.5

WRITTEN LANGUAGE

Spelling	8-5	3.3
Writing Samples	8-4	2.6

On the WJ-III, the patient demonstrated below expected performance on most indices of language functioning. He demonstrated a relative weakness in his reading ability and has acquired the reading ability of a 7 to 8 year old. On average, his demonstrated general language abilities are that of a 10 year old.

SUMMARY

Mr. _____ is a _____ year old _____ male with 8 years of formal education who was arrested in October of 2006 and charged with 2nd degree murder of his two month old daughter, _____. A neuropsychological evaluation of the patient was requested to assess the patient's cognitive and intellectual functions.

The patient's general cognitive ability is in the borderline range of intellectual functioning, as measured by the Wechsler Adult Intelligence Scale -Third Edition (WAIS-III). He may experience difficulty in keeping up with his peers in a wide variety of situations that require age-appropriate thinking and reasoning.

The patient demonstrated significant deficits in working memory and new verbal learning. As mentioned above, the patient may experience difficulty in holding information to perform a specific task. Difficulties with working memory may make the processing of complex information more time-consuming for the patient, drain his mental energies more quickly, and perhaps result in more frequent errors on a variety of learning tasks, in comparison to other adults his age. A comparison of memory performance when information is presented visually and orally can reveal modality-specific strengths and weaknesses. The patient demonstrated a relative strength in his ability to retrieve visually presented information. This strength is reflected in his immediate and delayed memory performance but is not evident for working memory. The patient's relative visual strength may indicate a long-standing developmental difference or possibly a decrease in auditory memory functioning. When information is presented orally, he may experience relatively more difficulty in learning. He also presented with retrieval memory problems which suggest that although the individual has learned the information, he has a reduced capacity to access that information without external prompts or structure.

Achievement testing of the patient's developed language abilities revealed significant deficits in his ability to read and to express oral language. In summary, the patient demonstrated evidence of several learning disorders, including reading, written expression, and expressive language. He also presented with impaired attention and concentration, as well as diminished memory functioning with story recall. The patient has had these deficits since childhood, was enrolled in exceptional student education (ESE) classes for learning disabled children, and may have family history of subnormal intellectual functioning and learning disabilities.

With that being said, I believe that _____ has the following diagnosis:

Axis I	Reading Disorder Disorder of Written Expression Expressive Language Disorder Attention Deficit Hyperactivity Disorder, Mixed Type (ADHD)
Axis II	Diagnosis Deferred
Axis III	Diagnosis Deferred

These opinions are given with a reasonable degree of medical certainty.

Ph.D.
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Re: State of Florida v. Kanye South

Case Number: 00-XX-000000-X (XXX)

REPORT OF PSYCHOLOGICAL ASSESSMENT

Name: Kanye South

Date of Birth: 00/00/00

Date of Assessment: 00/00/00

Date of Report: 00/00/00

IDENTIFYING INFORMATION AND REASON FOR REFERRAL

Kanye South is an 18-year-old male (16 at time of the alleged offense) who was arrested and charged with murder. This evaluation was requested by his attorney, D. B., to assist with his defense. Mr. B asked that I address issues relevant to waiver of rights, voluntariness of confession, and reliability of confession.

METHOD

Reynolds Intellectual Assessment Scales (RIAS)

Woodcock-Johnson Tests of Achievement-Revised (WJ-III)

Effort test

Gudjonsson Suggestibility Scale – 1 (GSS-1)

Gudjonsson Compliance Questionnaire (GCS)

Instruments for Assessing Understanding and Appreciation of Miranda Rights (IAUAMR)

Psychological Interview

Interview – confession issues

Review of available records, including 00/00/00 Taped Sworn Statement of Kanye South (recording and transcript thereof), Probable Cause Affidavit, and depositions of detectives

NOTICE

This evaluation took place in a private area at County Jail. I explained to Kanye that I would be conducting a psychological evaluation at the request of his attorney, that I would be preparing a report that would go to his attorney, and that his attorney might eventually make the results of this evaluation available to the judge and the prosecutor.

He showed understanding of that and agreed to participate in the evaluation under those conditions.

INTERVIEW

Kanye was oriented to person, place, and time, and was in good contact with reality. His speech was clear and coherent. His mood was calm and appropriate to the situation.

PSYCHOLOGICAL TESTING

Response Style

Effort

This evaluation of Kanye included assessment of response style by administration of a forced-choice test. Kanye achieved a perfect score on the test, answer every item correctly. His test scores show that he was giving a good effort (attempting to provide correct answers) in the course of this evaluation.

Ability

The RIAS is a standardized, objective test of intelligence and memory. His results show average intelligence, with low-average verbal intelligence; and average memory, with low-average verbal memory.

Reading, Writing, and Listening

The Woodcock-Johnson Tests of Achievement-III (WJ-III) is used to assess skills in areas such as reading, writing, and arithmetic. In Florida public schools it is the most widely used instrument of its type. Although it is not meaningful to compare an adult's IQ scores to those of a child (such as saying a 30-year-old man has the IQ of a 12-year-old child), it is meaningful to compare an adult's WJ-III scores to those of a child (such as saying he reads at a 10-year-old level). Kanye's WJ-III scores follow:

Achievement Tests	AE¹	GE	SS
Letter-Word Identification	13-1	7.5	86
Reading Fluency	12-9	7.4	83
Story Recall	11-5	6.2	91
Understanding Directions	15-10	11.9	95
Passage Comprehension	13-10	8.9	92
Story Recall—Delayed	7-4	2.1	82

¹ Age norms were used; that is, Kanye's test performance was compared to that of others his age. AE is the age equivalent, expressed as 'year-month.' GE is the grade equivalent, expressed as 'year.month.' SS are standard scores with a mean (average) of 100; they are roughly comparable to IQ scores.

Word Attack	>21	>18.0	110
Oral Comprehension	11-5	6.0	86
Reading Vocabulary	10-10	5.5	81

Clusters

Oral Language	14-9	10.2	93
Listening Comprehension	13-2	7.6	87
Broad Reading	12-7	7.5	84
Basic Reading Skills	16-0	12.9	96
Reading Comprehension	11-5	6.5	85

The above test scores appear to provide an accurate appraisal of Kanye's current achievement. Although he was 18 years old at the time of this assessment, most of his academic skills are comparable to those of an 11- to 15-year-old child; that of a sixth- to eighth-grade student. His best scores were on simple tests, Word Attack and Listening Comprehension. Word Attack measures a person's ability to guess how non-words (such as "nan" or "tox") would be pronounced. Understanding Directions measures a person's ability to point to pictures of bunnies, birds, etc., in sequence.

His lowest score was Story Recall-Delayed, which measures aspects of language development and meaningful memory using previously presented stories. On immediate recall, Kanye was able to repeat what he had just heard at a level comparable to that of an 11-year-old child. Story Recall-Delayed tests ability to report the same information 30 minutes later. Compared to other people attempting the same task, Kanye's performance was comparable to that of a 7-year-old child (a second grader).

Instruments for Assessing Understanding and Appreciation of Miranda Rights

Comprehension of Miranda Rights (CMR)

"Development of the CMR began with several objectives: a) To measure understanding of the four primary Miranda warnings by way of paraphrased response; b) to develop a standard and reliable method for administering the procedure and obtaining responses; c) to provide examinees with every possible opportunity to reveal what they understood the warnings to mean; d) to develop an objective scoring system; and e) to develop criterion definitions for scoring of responses that would represent the consensus of opinion of a panel of attorneys and psychologists concerning the essential meaning of each of the Miranda warnings."²

Kanye earned a score of 6 (of a possible 8) on the CMR. He showed some ability to explain (paraphrase) the Miranda rights in a meaningful way.

² Grisso, T. (1998). *Instruments for Assessing Understanding & Appreciation of Miranda Rights* (manual). Sarasota, FL: Professional Resource Press, p. 9.

Comprehension of Miranda Rights Recognition (CMR-R)

“The purpose of the CMR-R is to assess an examinee’s understanding of each Miranda warning by his or her ability to recognize whether or not the particular pre-constructed sentence has the same meaning as the Miranda warning statement. It consists of presentation of the Miranda warning statements with corresponding statements that the examinee must identify as the ‘same’ as or ‘different’ from the Miranda warning statements. All presentations of warnings and items are both oral and in writing on stimulus pages in the test easel.”³

Kanye earned a CMR-R score of 11 out of 12. He showed the ability to distinguish between two sentences that sounded somewhat similar but have significantly distinct meanings.

Comprehension of Miranda Vocabulary (CMV)

The CMV measure “is an objective method for assessing an individual’s understanding of six critical words that appear in standard Miranda warnings.”⁴

Kanye showed that he understands the meaning of the words “interrogation” and “entitled.” He showed partial understanding of the words “consult,” “appoint,” and “right.” His score was 7 out of 12 on the CMV.

Function of Rights in Interrogation (FRI)

The FRI was developed to assess subjects’ “appreciation of the significance of Miranda rights in the context of interrogation. ... [A] grasp of the significance of this right requires at least an understanding of the role of the lawyer as an advocate and a sense of the types of questions which police might ask. The FRI is designed to assess this functional grasp of the warnings as differentiated from an understanding of single words and of Miranda phrases.”⁵

Kanye earned a raw score of 22 out of 30 on the FRI. He showed some current ability to understand how the Miranda rights apply in some realistic scenarios.

Interpretation of Test Scores and Application to Waiver

It is important to recognize that these instruments assess a person’s current abilities; they do not directly address what Kanye understood or did not understand at the time the police notified him of his rights.

³ Grisso, 1998, p. 31.

⁴ Grisso, 1998, p. 35.

⁵ Grisso, 1998, p. 45.

Suggestibility

See Appendix A for a discussion of suggestibility and of the Gudjonsson Suggestibility Scale (GSS).

Kanye's scores on the GSS-2 are shown in the following table. Average scores and standard deviations are from adults in the general population.⁶

	Kanye's score	Average score	Standard deviation
Immediate recall	7	21.3	7.1
Delayed recall	0	19.5	7.5
Yield 1	4	4.6	3.0
Yield 2	14	5.6	3.8
Shift	12	2.9	2.5
Total Suggestibility	16	7.5	4.6

In responding to questions on the GSS-2, Kanye recalled remarkably fewer details of the story than the average person recalls (see scores on immediate and delayed recall). He yielded to misleading questions initially, but after the application of subtle pressure he yielded to misleading questions much more than the average person does (see scores on Yield 1 and Yield 2). Also, in response to subtle pressure, he shifted his answers much more than the average person does.

Compliance

See Appendix A for a discussion of compliance and of the Gudjonsson Compliance Scale (GCS).

Kanye's scores on the GCS are shown in the following table. Average scores and standard deviations are from adults in the general population.⁷

Kanye's score	Average Score	Standard Deviation
17	9.0	3.5

Kanye's self-ratings on the items comprising the GCS suggest that he is more likely than the average person to comply with interpersonal pressure from authority figures.

Summary Regarding Kanye's Personal Characteristics

Kanye shows average intelligence, with low-average verbal intelligence; and average memory, with low-average verbal memory.

⁶ Gudjonsson, 1997, p. 21.

⁷ Gudjonsson, 1997, p. 28.

Although he was 18 years old at the time of this assessment, most of his academic skills are comparable to those of an 11- to 15-year-old child; that of a sixth- to eighth-grade student. Kanye's performance was comparable to that of a 7-year-old child (a second grader) on a test measuring recall of orally presented material after a 30-minute delay.

When given subtle pressure to change his responses to misleading questions, Kanye was much more suggestible than the average person.

Kanye's self-ratings on the items comprising the GCS suggest that he is much more likely than the average person to comply with interpersonal pressure from authority figures.

Kanye's current scores on the IAUAMR do not show significant impairment. He shows adequate *current* understanding and appreciation of Miranda rights. (This provides additional support to my opinion that he is not exaggerating or feigning difficulties in other areas. A defendant who was attempting to look bad would be tempted to try to feign current lack of ability to understand Miranda rights.)

On the GSS-1, Kanye shows considerably less ability to recall details of a story than the average person does. He yielded to misleading questions much more so than the average person does. Thus, on the GSS-1 Kanye shows particular vulnerability to accept an interrogator's version of events – and the interrogator's framework for understanding those events. In particular, this makes Kanye vulnerable to police statements that his demeanor proved that he was lying, and that they had conclusive proof of his guilt. A suspect (including both innocent and guilty suspects) is most likely to confess when he accepts the interrogator's claim that the evidence of his guilt is overwhelming and resistance is futile.⁸

ISSUES RELEVANT TO WAIVER OF RIGHTS

During the interrogation, Detective M asked Kanye, "Have you ever had your rights read to you before ..?" and Kanye answered, "No."⁹ After Detective M reads the rights, he asks Kanye if he understands, and Detective L asks, "Do you understand each of those rights as he explained them to you?" Kanye shook his head no.¹⁰

Detective M reads the rights again and asks Kanye if he understands. He says yes, but he never shows understanding (e.g., by explaining the rights in his own words).

⁸ Gudjonsson, 2003; Ofshe & Leo, 1997; DeClue, G. 2005. *Interrogations and Disputed Confessions: A Manual for Practice*, Sarasota, FL: Professional Resource Press.

⁹ Page 2, line 1.

¹⁰ Page 2, line 12.

Kanye also shows difficulty understanding the concepts involved in 10/20/Life:

Time	Page	Line	By	Quote
20:34:00	30	1	Q2	<p>This is you, sitting there, for murder! Do you know what 10-20-life is? Use a gun you're done. How old are you, 16? Ten years is what, 26? Twenty years is 36. You know what life is? ... Look at me! It goes by according to your crime. How does 26 sound? How does 36 sound? How does NEVER sound! Which one of those do you think your mom would choose? The 10, the 20, or the life? ... Do you understand what I'm saying to you?</p> <ul style="list-style-type: none"> • <i>Kanye shakes his head no.</i> * <p>365 days in one year, multiply that by 10.</p> <ul style="list-style-type: none"> • <i>Kanye shakes his head no.</i> * <p>Can't do it?</p> <ul style="list-style-type: none"> • <i>Kanye shakes his head no.</i> * <p>Lot of numbers.</p>
20:35:30	30	20	Q2	<p>You need to have a solid explanation for that math. 10, 20, life. Explain that to me. [Kanye: Explain what?] You know, you're amazing to me, okay, absolutely amazing to me, okay. You can't even do the math on that, okay. ... You have no idea how much trouble you're in right now, do you?</p>

As the interrogation continues, detectives make numerous statements telling Kanye to do what they say, that he must answer their questions, that the police are there to help him and that his answers will be used to help him and will "set you free," that not answering police questions gets people in trouble for "withholding information," and that his only opportunity is to make a statement is "now or never" (which means that he does not have the right to be represented by an attorney before or during questioning, or to consult with an attorney to help him decide whether to answer police officers' questions).

When Kanye asked whether he has to talk to the police, he was told, "This is the place to do it, man."

Police officers told Kanye that it is 100% certain that he is guilty, and that if he does not answer their questions they will "spin" the facts to show that he is "a cold, calculating murderer, absolutely, absolutely, absolutely," even though they say that they do not believe that is true.

In my opinion, Kanye never showed that he understood his Miranda rights, and he did not knowingly waive his rights.

In my opinion, police officers coerced Kanye to continue talking to them. Suspects have a right to exercise their Miranda rights at any time, and Kanye did not voluntarily continue to waive his rights.

See Appendix B for examples of data relevant to waiver of Miranda rights.

ISSUES RELEVANT TO VOLUNTARINESS OF CONFESSION

Police officers accuse Kanye of robbery, murder, and related acts. He asserted his innocence, repeatedly. I counted 158 such assertions. See Appendix C.

The police develop several themes throughout the course of this lengthy interrogation. One is the human lie-detector theme. The police claim human lie-detector ability, that they can read Kanye's mind (or body language, etc.) and tell whether he is lying or not. See Table D for examples.

Another theme is that the police have overwhelming evidence that proves that Kanye is guilty, and that he will be found guilty no matter what. See Appendix E for examples.

Another theme is that telling the police officers a version of events that minimizes Kanye's involvement or responsibility will help him. Not doing so will lead to conviction for a serious crime, and to severe penalties. If Kanye confesses to the police a version of events that minimizes his responsibility, the police will tell the prosecutor and the judge that Kanye had minimal involvement in the case. If he does not confess to the police at all, then the police will "spin" the story in a way that paints Kanye as a "stone cold killer." Although the police do not believe that Kanye had a central part in the crimes, they will "spin" it that he did, blaming him for the most serious crimes possible, distorting the facts to make him look worse than they believe the evidence shows, unless he confesses to the crimes. Meanwhile, unless Kanye confesses to the crimes, his mother will think he is a stone cold killer. With this theme, it is not just that the police tell Kanye that other suspects will rat him out. The police tell Kanye that they will deliberately distort the facts of the case to make sure that he is seen as a stone-cold killer and spends the rest of his life in prison. But if he will just confess in a way that minimizes his responsibility, they strongly suggest and imply that he will get a short prison sentence. They present a one-time-only opportunity for him to have a happy family, or to spend the rest of his life in a "shit hole" prison with nothing but "fighting and fucking" with other men. See Appendix F for some examples.

In my opinion, the combination of tactics used by the police was overwhelmingly coercive, and Kanye's confession was not made voluntarily.

ISSUES RELEVANT TO RELIABILITY OF CONFESSION

With modern technology and professional police forces, it is possible to conduct interrogations in such a way that a false confession is unlikely, and would be easily recognized as such. Simple, straightforward safeguards protect against the danger of convicting an innocent person, which would leave the true perpetrator at liberty to commit further crimes.

One key feature of the interrogation of Kanye South is that, apparently, the entire interrogation was video-recorded. This creates the opportunity to check to see whether the confession statement includes details that were never made public and were not provided to the suspect by the police during the course of the interrogation.

Many details of the crime were provided to Kanye by the police during this interrogation, including the identity of the victim, the location of the crime, clues/tools/weapons found at the crime scene, etc. Detectives showed Kanye crime-scene photos, which is widely recognized as increasing the risk of a false confession.¹¹ It is my understanding that Kanye did not lead the police to murder weapons, stolen goods, etc.

In this case, there may be some dispute as to whether Kanye's confession statement shows any guilty knowledge. Of course, if Kanye's confession was illegally obtained because of violations of Miranda and/or police coercion, then the reliability of the confession would be moot.

Gregory DeClue, Ph.D., ABPP

¹¹ Napier, N. R. & Adams, S. H. (2002). Criminal confessions: Overcoming the challenges. *FBI Law Enforcement Bulletin*, 71(11), 9-15.

APPENDIX A: Suggestibility and Compliance

Suggestibility

Interrogative suggestibility is defined as “the extent to which, within a closed social interaction, people come to accept messages communicated during formal questioning, as a result of which their behavioral response is affected.”¹² The most distinguishing features of interrogative suggestibility are

- 1) It involves a questioning procedure that typically takes place within a closed social interaction.
- 2) The questions asked are mainly concerned with past experiences, events, and recollections.
- 3) Interrogative suggestibility contains a component of uncertainty, which is related to the ability of the person to process information cognitively.
- 4) Questioning in a police context commonly involves considerable stress with important consequences for the witness, victim, and suspect.¹³

In considering a person’s vulnerability to the pressure of interrogation, two personality constructs that have been considered to be directly relevant are *interrogative suggestibility* and *compliance*.

Neither the concept of interrogative suggestibility nor tools to measure it are new. Experiments to measure interrogative suggestibility via misleading questions were performed in America¹⁴ and Europe¹⁵ 100 years ago.¹⁶ Today the theoretical model with the most research support is that of Gudjonsson and Clark¹⁷ and the most empirically validated instruments for measuring interrogative suggestibility are the Gudjonsson Suggestibility Scales (GSSs; GSS-1 and GSS-2).¹⁸

The Gudjonsson-Clark model describes two distinct types of suggestibility: one emphasizes the impact of leading or suggestive questioning on testimony, and the other relates to the extent to which interrogators are able to get interviewees to ‘shift’ (change) unwanted but perhaps accurate answers by challenge and negative feedback. “An interrogator, who communicates negative feedback to a suspect, witness, or victim, may through an interrogative pressure shift unwanted, but perhaps true, responses in

¹² Gudjonsson, G. H. & Clark, N. K. (1986). Suggestibility in police interrogation: A social psychological model. *Social Behavior*, 1, 83-104, p. 84. Cited in Gudjonsson, G. (1997). *The Gudjonsson Suggestibility Scales Manual*. Hove, East Sussex, England: Psychology Press.

¹³ Gudjonsson, 1997, p. 1.

¹⁴ Cattell, J. M. (1895). Measurements of the accuracy of recollection. *Science*, 2, 761-766.

¹⁵ Binet, A. (1900). *La suggestibilite*. Paris: Doin. See also Binet, A. (1905). La science du temoignage. *Annee Psychologique*, 11, 128-136. Both cited in G. H. Gudjonsson (2003). *The psychology of interrogations and confessions: A handbook*. West Sussex, England: Wiley.

¹⁶ Gudjonsson, 2003, p. 344.

¹⁷ Gudjonsson, G. H. & Clark, N. K. (1986). Suggestibility in police interrogation: A social psychological model. *Social Behavior*, 1, 83-104, p. 84. See also Gudjonsson, 2003.

¹⁸ Gudjonsson, 2003.

favor of untrue or distorted ones.”¹⁹ The model recognizes three components as necessary for the suggestibility process: *uncertainty*, *interpersonal trust*, and *expectations*. People enter into the interrogation process with individual differences in each of these components, which affect their vulnerability to the process, and interrogators take steps to increase uncertainty, enhance interpersonal trust, and alter expectations.

People with low intelligence or memory problems are generally more uncertain about the answer to interrogators’ questions and are therefore more prone to change their answers in response to negative feedback. If an interrogator succeeds in getting a suspect to doubt his memories, that enhances the likelihood that the suspect will change his answers to the interrogator’s questions.

Suspects who generally have greater interpersonal trust are more prone to believe that the interrogators’ intentions are genuine and that there is no trickery involved in the questioning. Interrogators who promote trust and use subtle leading questions are more likely to succeed in getting an uncertain suspect to change his responses.

Uncertainty and interpersonal trust are necessary but not sufficient to get people to yield to suggestions, because a person could just say “I don’t know” in response to the interrogator’s questions. People are less likely to do so, and therefore more likely to accept the interrogator’s cues to change their answers, if they believe that:

1. they must provide a definite answer,
2. they should know the answer to the question, and
3. they are expected to know the answer and be able to give it.

The theory postulates that most people would be susceptible to suggestions if the necessary conditions of uncertainty, interpersonal trust, and heightened expectations are present. The extent to which interviewees yield to suggestion is a function of their cognitive appraisal of the interrogative situation and the coping strategies they are able to adopt. A coping strategy that helps interviewees resist suggestions involves being able to look objectively and critically at the situation and not commit oneself to an answer unless one is absolutely sure of the facts. A coping strategy that is amenable to suggestion involves an unrealistic appraisal of the situation and the reluctance to admit the fallibility of one’s memory when uncertain.²⁰

Can individual differences in interrogative suggestibility be measured reliably? Yes they can, using the Gudjonsson Suggestibility Scales, which “were developed for two different purposes. First, the scales were intended to be used for research in order to further our understanding of interrogative suggestibility and its mediating variables and mechanisms. Second, the scales were intended for forensic and clinical applications. The primary application was to establish an instrument that could identify people who were particularly susceptible to erroneous testimony during questioning. In other words, the

¹⁹ Gudjonsson, 2003, p. 347.

²⁰ Gudjonsson, 2003, p. 350.

emphasis was on the measurement of individual differences.”²¹ GSS 1 and GSS 2 have very similar norms and can be used interchangeably. The tests have impressive reliability, measured in terms of internal consistency, alternate-form, test-retest, and inter-rater reliability.²²

In administering the GSS, the examiner reads a narrative paragraph to the subject and asks the subject to report all that he can recall, immediately and after a delay of about 50 minutes. Then the subject is asked 20 questions, 15 of which are subtly misleading. The subject is then told that he made a number of errors (whether he really did or not) and it is therefore necessary to ask all the questions once more. Responses are objectively scored in several ways, including *Yield 1*, *Shift*, *Yield 2*, and *Total Suggestibility*. Yield 1 refers to the number of suggestions (leading questions) to which the subject yields prior to negative feedback. Shift refers to the number of times there has been a distinct change in the subject's answers following negative feedback. Yield 2 refers to the number of suggestions to which the subject yields after negative feedback. Total Suggestibility is the sum of Yield 1 and Shift; it gives an indication of the subject's overall level of suggestibility.

Compliance

The Gudjonsson Compliance Scale (GCS)²³ has been developed to measure the personality trait of compliance. The GCS is intended to complement Gudjonsson's work on interrogative suggestibility by focusing on two different types of behavior: 1) complying with police requests and instructions that they would rather not do, for instrumental gain, such as termination of a police interview, release from custody, escaping from a conflict and confrontation or eagerness to please another person, and 2) submitting to pressure from others to commit offenses²⁴ (*i.e.*, they can be coerced into committing a crime).” The GCS is a 20-item self-report questionnaire with two factors: 1) uneasiness or fear of people in authority and avoidance of conflict and confrontation, and 2) eagerness to please. Subjects rate their behavior in terms of how they *generally* react to interpersonal pressure and demands from others.

Compliance, as measured by the GCS, is conceptualized as a personality trait rather than a situation-bound behavior pattern. Subjects are asked to rate their behavior in terms of how they generally react to interpersonal pressure and demands from others. Test-retest reliability is adequate.²⁵ Compliance, as measured by the GCS, appears to be positively correlated with social desirability, state anxiety, trait anxiety, and dysfunctional coping, and negatively correlated with angry verbal and physical reactions to provocation.²⁶ “High compliance is associated with an attempt by the individual to reject the reality of the stressful event and withdraw effort from challenging the stressor and

²¹ Gudjonsson, 2003, p. 362.

²² (Gudjonsson, 2003, pp. 364-366)

²³ Gudjonsson, G. H. (1989). Compliance in an interrogation situation: A new scale. *Personality and individual differences*, 10, 535-540. See also Gudjonsson, 1997, 2003.

²⁴ Gudjonsson, 1997, 2003.

²⁵ Gudjonsson, 2003, p. 372.

²⁶ See Gudjonsson, 2003, pp. 372-373, for a review of several studies.

achieving [his or her] own goal. This suggests that compliant individuals avoid a proper appraisal of the stressful event, pretend that everything is fine, and withdraw effort from achieving their own goals or doing what they really want."²⁷

²⁷ Gudjonsson, 2003, p. 373.

APPENDIX B: Oral Miranda Warning Checklist

Did the suspect show, in his or her own words, understanding of the following? (If so, list page and line numbers from the transcript.)

- 1) I am/am not free to leave.
No.
- 2) I do not have to talk to the police.
No.
- 3) If I do talk to the police, anything I say can be used against me in court.
No.
- 4) If I do not talk to the police, my choice not to do so cannot be used against me in court.
No.
- 5) I can talk to an attorney.
No.
- 6) If I cannot afford an attorney, an attorney will be provided for free.
No.
- 7) I can talk to an attorney before I decide whether to talk to the police.
No.
- 8) If I decide to talk to the police, I can talk to an attorney before talking to the police.
No.
- 9) If I decide to talk to the police, I can talk to an attorney while I talk to the police.
No.

10) If I decide to talk to the police, I do not have to answer every question. I can choose not to answer any question. If I choose not to answer a question, that cannot be used against me in court.

No.

11) If I decide to talk to the police, I can decide at any time to stop talking to the police, and the decision to stop talking cannot be used against me in court.

No.

12) If I say, "I do not want to talk to you anymore," the police will stop asking me questions and the interview is over.

No.

13) If I say, "I want a lawyer," the police will stop asking me questions and the interview is over.

No.

A) Did the police make any statements before, during, or after the formal reading of Miranda warnings that directly contradict any of the above? (If so, list page and line numbers from the transcript.)

Time	Page	Line	By	Quote	Contradicts
19:33:04	8	15	Q1	Kanye, you don't want to do this. ... But if you don't give yourself a chance by talking to us and telling us what happened, then – we'll have to assume the worst and go with that.	4
19:56:15	22	9	Q1	Like I said, this is your only opportunity to set the record straight.	7, 8, 9, 11
20:28:22	27	19	Q2	I asked you a question and I don't expect, I demand an answer, okay?! So I want an answer now!	2, 10, 11
20:29:09	27	25	Q2	Sit up, put your hands down, and answer me.	2, 10, 11
20:29:26	27	28	Q2	When you're asked a question what's the proper thing to do? Respond back? Yes? Is that what you were taught? Huh? Then do what you were taught ...	2, 10, 11
20:37:15	30	31	Q2	Look at me! Think about this! I want an answer! I'm not just sitting –	2, 10, 11

				<p>Look at me! I'm not just sitting here asking things and saying things to hear myself talk. I'm not, okay. I want an answer!</p> <p>[Kanye: I don't know.]</p> <p>The hell you don't know! ... Give me an explanation for that mask! ... You certainly had no right to kill him.</p> <p>[Kanye: I ain't kill him]</p> <p>Yeah you did! Kanye, we're not stupid, okay! Sit up! You're holding the murder bag. Give me a reasonable explanation for the mask. ... How could your DNA be in that mask?</p>	
20:40:10	32	4	Q2	<p>Kanye, you have to be able to explain that to me! [in context, this comes across as saying that he has to explain it to her, not that he has to be able to do so.]</p>	2, 10, 11
21:05:00	36	23	Q2	<p>But you were there, Kanye, and when that comes back then you have no explanation, none. Okay, look at me. I want you to understand this. I want you to look at me while I'm talking to you, okay. Then you have no explanation. This is your time right now, okay. I want you to look me in the eye ... Kanye, this is your chance.</p>	2, 8, 9, 11
21:08:09	38	11	Q2	<p>How'd your mask with your DNA get there? Huh? That's what you need to explain to me.</p>	2, 10, 11
21:10:41	39	6	Q2	<p>Look at me. It would be way different if that wasn't there. Okay, you could just sit here and go on and on and on, okay. Look at me! Do not look down at that floor again! Okay, there's no more time for searching for answers or how am I gonna say this or how am I gonna spin this or how am I gonna do it. This is time to talk, because when I lift my finger guess what's still right there, the ski mask with your DNA. How did your ski mask with your DNA get there? Well give me some kind of explana-</p>	2, 10, 11

				tion as to how that could happen.	
	39	4	Q2	Look at me.	
	40	1	Q2	Don't answer me yet.	
	40	13	Q2	Look at me.	
21:18:28	43	13	Q1	This is serious stuff. You need to be straight up about what happened. If you're telling me you didn't shoot this guy, then tell me what exactly happened that night! Tell me exactly what happened! [tapping photo] Kanye, tell me what happened! You were there! What happened!	2, 10, 11
21:19	44	16	Q1	You're making a stupid mistake here today by not telling me exactly what happened for your side of the story. ... I want you to tell me what really happened. That's over, that is over, this is it! it's now or never. Now or never.	7, 8, 9
21:35:30	52	21	Q1	You've got to start now. ... You've got to tell me the truth.	2, 7, 9, 10, 11
21:36:00	53	6	Q1	You need to tell me what you've got.	2
21:37:02	53	17	Q1	You need to tell me the truth, what is going on.	2
21:38:26	54	23	Q1	I'm trying to help your credibility now. ... But you've got to tell me what you know. ... It's right now! [smacks table with hand]	2, 3, 7, 8, 9, 11
21:56:06	68	21	Q2	You need to answer me.	2, 10, 11
21:56:10	68	23	Q2	You need to answer out loud so I can hear you.	2
22:22:00	83	9	Q1	The truth will set you free.	3
22:22:03	83	10	Q1	You believe in God, truth will set you free.	3
22:25:39	84	13	Q1	That's called withholding information. If you don't tell me when I ask and it comes out later after I have to drag it out of you, that's called withholding information. You're hiding something. The only people that hide things are people that are guilty.	2, 4, 10
22:26:32	85	5	Q1	You're guilty of something if you're not telling me that truth.	2, 4
22:31:00	87	7	Q3	Let me tell you something. We don't just pick you up and bring you in	3, 5, 7, 8, 9

				here because we THINK you did it. ... It's not like we THINK you did it. We KNOW you did it. And these cases only go one way. They only go guilty. The only way that something can change like that is, the only way it can go better for you is if you give us some, some information that maybe helps yourself.	
22:40:41	90	14	Q3	And if you were my kid I'd be saying ... help yourself. ... If my kid was sitting there I'd say if you don't talk you're fucking done for. If you talk maybe you can help yourself.	3
22:47:17	93	21	Q1	I'm here to listen to you now and only now.	5, 7, 8, 9
23:01:34	96	28	Q1	Kanye: Do I have to talk to you? Q1: This is the place to do it, man. ... You want to be on the record. That's what's gonna help you.	2, 3, 7, 8, 9

B) Did the police make any statements before, during, or after the formal reading of Miranda warnings that (perhaps implicitly) may contradict any of the above? (If so, list page and line numbers from the transcript.)

Time	Page	Line	By	Quote	Inconsistent with
19:33:04	8	15	Q1	Kanye, you don't want to do this. ... But if you don't give yourself a chance by talking to us and telling us what happened, then – we'll have to assume the worst and go with that.	2
19:33:04	8	22	Q2	This is your opportunity to talk to us, okay?	7, 8, 9
19:50:43	18	25	Q1	We can't keep doing this. ... This is your opportunity.	7, 8, 9
20:40:44	32	20	Q2	Look at me! Don't go halfway there, okay. ... Okay so that's gonna explain how your DNA's in there, okay. ... That explains half of it. Who did you give it to or ...	2, 10, 11
20:41:45	33	9	Q2	Answer me.	2, 10, 11

20:45:37	34	21	Q2	<p>Kanye, look at me. Your mask is there. Your DNA is in that mask. And it's laying right near where E's body was found ... rotting. ... Stop picking at your face. ... Look at me. ... Stop lying to yourself. ... Do you want to see pictures of him? [Kanye: Of who?] The dead guy, of E. Do you want to see pictures of him lying in that blood? [Kanye shakes his head no.] Yeah, I think you need to. I think you need to. [Note that Kanye has indicated that he</p>	2, 10, 11
20:49:33	36	1	Q2	<p>[pointing to photograph] And your ski mask with your DNA put you right there. It puts you right there, Kanye. Look at me! Don't you dare look away from what you did! Don't you dare! There's your big ass initiation into the Kings. SIT UP! You did that! Yeah you did. ... and there's your mask that got torn off your face.</p>	2, 10, 11
21:07:30	37	8	Q2	<p>Look at me. And we know you were there. Yes you were. That's how that mask got there and that's how that DNA in that mask got there and then that DNA that comes back on his hands is gonna be there. ... As it was, we got a murder charge and you holding it and that's the only thing you got out of this whole thing. ... When all that comes back, Kanye, then it's our spin. And it's just that you're a cold calculating murderer, absolutely, absolutely, absolutely. Sit up and look at me. Don't look at the floor. You want to play in the real big boy world then sit up and take it like a real big boy, okay. But the thing is, is when all this comes back and we get to put our spin on it and like I said you planned it, unfortunately it went</p>	2, 10, 11

				wrong and then you shot him and you killed him. For no other reason other than you're a bad ass tough guy. That's our spin. That's how it will go. ... Look at me! [snaps fingers] I'm serious. Stop looking at the floor, okay. Ten, twenty, life. It's that simple.	
21:09:35	38	15	Q2	Put your head down. Sit up. How do you explain it? ... How do you explain your mask and your DNA? I mean, look Kanye, look at this picture right here [points to photo] with his blood and his vomit. And what's that? Oh, that's right, that's the ski mask. ... There's your ski mask, there's dead E. How do you explain your ski mask being right there? Huh?	2, 10, 11
21:10:00	39	1	Q2	Explain it to me. Explain it to me. Look at me. How did it get right there next to the dead guy?	2, 10, 11
21:20:21	44	29	Q1	... I've got overwhelming on you. I've got so much it's, it's ridiculous. I'm giving you an opportunity to help yourself and you're being stupid. Yeah, you are. You're being real foolish right now. You're being real stupid.	3
21:24:46	47	3	Q1	What do you know about this? If you expect me to believe you, what do you know about this?	2
21:34:19	51	26	Q1	But the people like you, they realize that a couple of days later but unfortunately I can't help them at that point. I can't, I can't. I wish I could but I can't. Don't do this to yourself. You have the story, everybody's got their side of the story. I need to hear yours.	3, 7, 8, 9
21:44:08	62	1	Q2	Put your hands down and quit playing with your face.	2
21:45:10	63	2	Q2	Kanye, look at me.	2
21:46:40	63	19	Q2	Look at me.	2
21:47:09	63	25	Q2	Sit up.	2
21:53:00	67	2	Q2	Put your shirt up. Turn around ...	2

21:53:30	67	3	Q2	Regardless of what anybody says about stay quiet, it'll go away, it'll fall off – Sit up. It doesn't.	2
21:57:28	70	8	Q2	Look up.	2
22:18:45	82	2	Q1	Kanye, like I said, once I leave, it's over.	7, 8, 9
22:32	87	36	Q3	It's never even a question of guilt or innocence. It's never a question. ... The only way that people have been able to mitigate their sentences or stuff is a lot of times by coming forward and ... there's a lesser charge or a lesser sentence. ... He got life in jail. ... They did the same thing that we're accusing you of doing and they got four years in jail. ... And that's what we did for her. And I'm assuming that will happen to you. ... Another case ... they got about five or six years each. The girls got four years, and then this other girl got four years. They guy that told me fuck you, he got life. He was the same age you are. ... That means if you live to be ninety years old you'd be in jail for over seventy years. Or something might happen where you can be home in five or ten years. ... But you have this one opportunity to talk to V and J about what happened. ... They're gonna say fuck you, that's what they're gonna say then, because they don't need you then. This is your one chance to tell what happened. ... You got to make that decision to decide what you want to do.	3
22:45:21	93	1	Q1	You're the person he's talking about in those stories. ... You have the best opportunity, and you're getting ready to blow it. ... And you'll go away for the rest of your life.	3, 7, 8, 9

Appendix C: Kanye's Statements of Innocence

Time	Page	Line	Quote
	7	28	No
19:35:42	10	16	I don't know nothing about the robbery.
19:37:34	12	11	I don't know what happened.
19:42:40	14	3	I'm not lying.
19:43:16	14	19	I don't know what happened.
19:43:38	14	27	[shakes head No regarding questions of whether his DNA will be at the crime scene, in the ski mask, a gun he was holding
19:44:12	15	5	I wasn't there.
19:45:30	16	13	I wasn't there.
19:46:50	17	15	I wasn't there.
19:47:15	17	22	But I wasn't even there.
19:50:43	18	28	But I wasn't even involved.
19:51:10	19	7	I wasn't even there.
19:52:10	19	24	I don't know. I wasn't involved.
19:53:16	20	6	I wasn't even there.
19:56:32	22	14	I don't know what happened.
19:57:08	22	23	But I wasn't – [Police cut Kanye off, continuing with their threat to spin the evidence in a way that makes him look worse than they believe he actually is, and challenging him that the jury will believe a police officer rather than him.
19:57:16	22	27	But how are they gonna blame me for something I didn't do?
19:57:27	23	1	Well how are they gonna blame me for something that I didn't do?
19:59:40	23	20	But they blamed me for something I didn't do.
19:59:52	23	25	I'm not lying.
20:01:01	24	3	I'm telling the truth.
20:01:06	24	6	But I didn't do nothing.
20:01:08	24	8	No I didn't.
20:01:10	24	10	How can I plan something I didn't even do?
20:02:01	24	19	What truths?
20:02:07	24	32	I wasn't there.
20:05:20	25	12	I am [being honest].
20:07:25	25	20	How can I tell you something that I didn't even see?
20:31:30	29	3	I wasn't there.
20:31:34	29	5	I wasn't there.
20:32:40	29	16	I wasn't there.
20:32:43	29	18	I wasn't there.
20:36:32	30	26	I didn't even do nothing.
20:42:32	33	20	I don't know. I wasn't there.

20:42:36	33	22	I don't know.
20:42:38	33	24	I don't know who went.
20:42:44	33	26	I don't know.
20:44:00	34	20	I didn't kill nobody.
20:49:11	35	22	I wasn't even there.
20:49:28	35	24	I wasn't even there.
20:49:33	36	3	I didn't do that.
20:50:40	36	9	I wasn't there. How's it gonna be torn off my face?
21:04:26	36	16	I wasn't there.
21:04:39	36	21	That wouldn't be my DNA. I wasn't even there.
21:05:30	37	1	I wasn't even there.
21:05:40	37	5	No.
21:05:42	37	7	I wasn't there.
21:07:54	38	2	But it wasn't me.
21:08:02	38	8	'Cause it wasn't me.
21:09:35	38	23	That's not mine.
21:09:46	38	27	I wasn't even there.
21:10:01	38	4	I don't know.
21:10:40	39	11	I just wasn't there.
21:10:48	39	16	I wasn't there.
21:10:52	39	18	I don't know.
21:11:00	39	20	I don't know. I was not there.
21:11:04	39	22	I don't know.
21:12:10	40	1	[shakes head no]
21:12:28	40	8	No [shakes head no]
21:12:37	40	10	[Kanye complies with command not to answer (orally) but he continues to shake his head no.]
21:13:20	40	18	I was not there.
21:13:34	40	38	[Kanye shakes his head no.]
21:14:29	41	15	I don't know.
21:14:57	41	22	[Kanye shakes his head no.]
21:15:03	41	25	But I wasn't even there.
21:15	36	5	I would have told you.
21:17:18	42	29	But that's not me.
21:17:22	42	31	That's not me.
21:17:56	43	7	I don't know why. And I wasn't even there.
21:18:26	43	16	I didn't.
21:18:28	43	18	I wasn't there.
21:18:30	43	20	I wasn't there.
21:18:33	43	22	I wasn't there.
21:18:38	43	24	If I was there I would have told you.
21:18:41	43	26	No, I wasn't there.
21:20:03	44	23	I'm telling the truth.
21:20:06	44	27	No, I was not there.
21:21:31	45	5	I don't know. I wasn't there.

21:21:35	45	6	[Kanye shakes his head no.]
21:22:05	45	11	I wasn't.
21:22:12	45	14	I wasn't.
21:23:05	46	3	Well how they gonna blame something on me that I did not do?
21:23:23	46	8	It was not me.
21:23:26	46	10	And I know it was not me.
21:23:28	46	12	And I wasn't even there.
21:23:34	46	14	No I wasn't.
21:24:30	46	26	I'm telling you the truth. I was not even there.
21:24:33	46	27	[shakes head no]
21:24:38	46	29	I didn't plan nothing. I wasn't there.
21:24:58	47	5	That I didn't even know they were gonna rob him.
21:25:00	47	7	I don't know.
21:25:02	47	9	They didn't tell me nothing.
21:25:06	47	11	I don't know.
21:25:08	47	13	They didn't tell me nothing.
21:25:18	47	16	I don't know what they were supposed to do.
21:25:23	47	18	[Kanye shakes his head no.]
21:25:27	47	21	I don't know. I wasn't there.
21:25:30	47	23	They didn't tell me nothing.
21:25:34	48	1	I don't know.
21:25:37	48	3	I didn't know. I didn't even know about that.
21:25:40	48	5	'Cause I didn't know they, they had killed him.
21:25:43	48	7	I didn't know he had died.
21:25:56	48	9	I don't know.
21:26:22	48	12	How can I tell you if I don't know?
21:26:48	48	24	I didn't know.
21:26:57	48	24	I didn't know about this until now.
21:27:07	49	4	I was not there.
21:27:44	49	6	It doesn't feel right when they blaming something on me for something that I did not do.
21:27:48	49	12	I don't know.
21:27:53	49	14	I don't know. [shakes head no]
21:28:00	49	16	I didn't know no plan.
21:28:04	49	18	Smokey didn't tell me nothing. ...
21:29:00	50	10	I'm not even responsible for it.
21:29:46	50	21	It's something I did not even do.
21:30:11	50	25	I wasn't even trying [he was interrupted before he could finish.]
21:32:38	51	8	I'm not gonna say something that I didn't even see. I wasn't even there.
	51	16	I'm telling you the truth.
	51	17	I'm telling you the truth.
21:34:39	51	31	I wasn't there.

21:34:42	51	33	I don't know. If I was there I would have told you.
21:37:08	53	20	Yeah, I told you. I was not involved in that. I wasn't even there.
21:38:40	55	3	I didn't see what happened. I didn't hear about anything.
21:42:48	60	7	I don't know.
21:42:50	60	9	I don't know.
21:42:55	60	15	I didn't know that.
21:46:14	63	13	He didn't buy nothing that day. ... He didn't buy nothing when I went with him.
21:47:53	64	1	I wasn't there.
21:49:36	65	4	I didn't know that he had died. I didn't know who they robbed.
21:57:39	70	11	I'm telling you everything I heard and seen.
21:58:30	70	22	That's what I seen and heard.
21:58:56	70	27	Yeah, 'cause that's how it was.
21:59:20	71	1	I'm just telling you what I seen and heard.
21:59:32	71	5	I'm telling you the truth.
22:09:30	74	22	That's all I know.
22:09:33	74	24	That's all I know.
22:17:06	81	10	'Cause I wasn't involved. Ya'll talkin' about how I was involved in it.
22:18:09	82	1	I wasn't there.
22:18:47	82	3	I told you everything I know.
22:19:12	82	11	I wasn't involved.
22:21:41	83	7	[Kanye shakes his head no.]
22:22:50	83	12	I don't know.
22:22:54	83	14	I didn't even see. I wasn't there.
22:24:52	83	23	I'm just telling you the truth.
22:24:54	84	1	I'm just telling you the truth.
22:24:58	84	3	I'm telling you right now.
22:25:02	84	7	I was telling you the truth.
22:25:39	84	17	I just told you everything.
22:25:42	84	19	Yes I did.
22:25:44	84	21	Yeah.
22:28:26	86	5	I didn't do nothing.
22:28:47	86	9	I don't know who did.
22:29:36	86	17	[Kanye shakes his head no]
22:30:04	86	20	Something I did not do.
22:30:18	86	22	I don't know. I wasn't there. I don't think I want to be here.
22:42:05	90	35	I didn't have nothing to do with it.
22:42:09	90	36	[Kanye shakes his head no]
22:42:11	91	1	Unh-unh [no]
22:54:36	95	7	I am [telling the truth].

Appendix D: Human Lie Detectors (Examples)

Time	Page	Line	By	Quote
19:31:09	7	17	Q1	If you don't even know why you're down here then that tells me right away that you're not being honest with me.
	17	1	Q1	You're a horrible liar. ... It's pretty obvious you're making this up.
19:54:39	20	Last	Q2	You're one of the worst liars in the world, you know?
20:31:40	29	9	Q2	Quit picking at your face, okay, 'cause that just shows me you're nervous, so quit.
21:14:36	41	16	Q1	You're lying. You're lying. You've been lying from the minute we got in here.
21:18:41	43	25	Q1	No, you wouldn't, because you lied about everything else. You lied about touching the phone! You lied about being a Latin King! You lie! You've been lying! You are a liar!
21:20:21	44	26	Q1	You're lying. You've been lying since the minute you got in here. You've been lying since the minute you got in here.
21:22:00	45	6	Q1	If you wanted me to believe you, then you shouldn't have lied from the beginning. You shouldn't have lied about the most simplest things. That's how, that's how this stuff works.
22:19:04	82	7	Q1	You just proved to us that you've lied. You're withholding information.
22:19:25	82	14	Q1	I just proved you're a liar.
22:21:40	83	6	Q1	It's obvious you're lying to me.
22:26:30	85	5	Q1	You're lying.

APPENDIX E: Overwhelming Evidence of Guilt (Examples)

Time	Page	Line	By	Quote
19:36:30	10	21	Q1	Obviously your name's been brought up. Your picture's been pointed out.
19:43:04	14	13	Q1	I have people that gave me sworn statements to your involvement in this robbery. And you know what? Your involvement is the worst.
19:43:16	14	20	Q1	I've got three or four people saying the same thing about you. And don't just think I'm going by what they're saying 'cause there's evidence out at the scene – okay, you know. Ski masks and stuff – have you ever heard of DNA like you see on TV? Fingerprints, all that?
19:47:02	17	20	Q1	People are planting ski masks with your DNA?
19:56:32	22	17	Q1	Like I said, people have already given sworn statements, pointed your picture out, yeah this is the guy, this is the guy that shot Big E. I got your ski mask there at the scene. I got a gun that belongs to you guys at the scene, which has evidence all over it. I got people telling me you're talking about the murder after it happened.
20:02:37	24	23	Q1	Your brother talked about this in front of the wrong people. ... But that's not the half of it. It's the evidence found at the scene, it's it's everything Kanye.
20:31:40	29	4	Q2	How are we gonna explain your DNA? How are we gonna explain that mask? ... How are we gonna explain that mask? ... How are we gonna explain that mask? For what possible explanation could there be for that mask?
20:43:31	34	14	Q2	The mask is there. Your DNA is there. You were there.
20:44:40	34	21	Q2	Kanye, look at me. Your mask is there. Your DNA's in that mask. And it's laying right near where E's body was found.
20:49:11	35	20	Q2	[pointing to a photograph] That's a ski mask! A ski mask with your DNA in it! That's what that is. Kanye, that's your ski mask. That's yours. That's E. That's what you did.
20:49:33	36	1	Q2	[pointing to photograph] And your ski mask with your DNA put you right there. It puts you right there, Kanye. Look at me! Don't you dare look away from what you did! Don't you dare! There's your big ass initiation into the gang. SIT UP! You did that! Yeah you did. ... and there's your mask

				that got torn off your face.
10:50:45	36	10	Q2	Kanye, your DNA's in that.
21:04:20	36	11	Q2	We bag people's hands and clothes. Once they go then they take fingernail clippings and they swab their hands and they can tell what DNA was on their hands. Now maybe, maybe we can explain the DNA on that mask that somebody took that mask or whatever. How do you explain the DNA that's on his hands that's yours?
21:04:	36	17	Q2	How do you explain it I said? I know you're telling me you weren't there. Okay, how do you explain the DNA that's on his hands and under his hands that's yours? [Kanye: My DNA?} Yeah.
21:05:35	37	2	Q2	The mask that we've already picked up and collected over here with your DNA, you know the mask that you tried on and then took right back off? Well, you didn't take it off. It came off while you were here [pointing to photo].
21:08:09	38	11	Q2	How'd your mask with your DNA get there? Huh? That's what you need to explain to me.
21:09:40	38	26	Q2	No that's your ski mask. Okay, that's the ski mask with your DNA in it. How do you explain your ski mask being right there, right next to dead E? [pointing at photos] Huh?
21:10:50	38	15	Q2	The ski mask with your DNA. How did your ski mask with your DNA get there. Then how did your ski mask get there?
21:14:00	41	1	Q1	I got all kinds of evidence in here against you. I've got people giving me sworn statements. People identifying you by photograph. Listen, dude, I know all about it.
21:20:21	44	29	Q1	I got video surveillance. I've got people giving me sworn statements. I've got them picking you out of lineups. Picking you out of single photographs. I've got everything, buddy, everything. I've got everything. I've worked murders where I had a lot less on people, and they still got convicted. I've got overwhelming on you. I've got so much it's, it's ridiculous.
21:44:00	61	19	Q2	Your mask with your DNA is there, hon.
21:46:14	63	11	Q2	The ski masks that you try on with your DNA that ends up next to a dead man.
21:46:33	63	16	Q2	He buys the ski masks, okay. The same one that you tried on with the tag, the same one that's in that video with him buying it with the tag is the same one that's out at the scene with your DNA.

21:57:10	70	2	Q2	And then a couple of days later that same mask was found out at a murder scene. Correct? I'm telling you it is and the mask with your DNA in it.
22:19:33	82	15	Q1	I got all the evidence to prove it.
22:31:00	87	7	Q3	Let me tell you something. We don't just pick you up and bring you in here because we THINK you did it. ... It's not like we THINK you did it. We KNOW you did it. And these cases only go one way. They only go guilty.
22:41:39	90	26	Q3	Fuck, we got the approval of our chief. We got the approval of the state attorney's office. ... They don't let us arrest somebody for a case like this unless it's a hundred percent. ... We got all we need right now to prosecute this case and to convict the people and get them life in prison.

APPENDIX F: Confess or Else (Examples)

Time	Page	Line	By	Quote
19:30:12	7	6	Q2	... there's reasons that can explain how things, things go, all right? It doesn't necessarily mean that you're a bad person. It doesn't mean that that's' what you meant for things to happen the way they go down.
19:34:40	9	19	Q1	... And those people are a lot better off than the ones that just do what you're doing now ...
19:37:28	12	8	Q2	We can hang it on you. Quite frankly, we'll get done either way, okay?
19:41:46	13	19	Q1	If you want to go down for a murder charge then two hours ago was the last fresh breath of air you got – 'cause you don't get out no matter how old you are. So if you want your last memory of freedom to be us pulling up behind you over there on Figuera then, then that will be it. But I think you've got something to say here.
19:43:04	14	13	Q1	Now I'm giving you an opportunity to set the record straight. I have people that gave me sworn statements to your involvement in this robbery. And you know what? Your involvement is the worst. So that's why you're here. That's why you're here first cause they could be lying on you. I don't know that but until you start telling me what exactly happened I'm gonna go with what they're saying 'cause that's more believable.
19:46:41	17	7	Q1	... alls I want to know is why and if Big E was meant to be hurt or he wasn't.
19:49:00	17	23	Q1	Kanye, we're going after the bigger fish here. ... We don't want the small fish. We want the big fish. What we're getting is you're a small fish. Through my investigation ... Everybody's saying you're the big guy in this. ... You're the small guy on the totem pole. You probably have the least involvement, but people are painting you to be the bad guy. ... They're trying to push it all on you. ... I do know you played a part in it. ... I need to know from you what exactly was your involvement and what were your intentions that night. ... If you tell me ... I went there to shoot him and kill him, then that's what it'll be. But if you say no I went there because this guy told me to and I was helping him out, but I didn't want to help him out, he made me do it and it went bad and they did this and I got caught up in it

				and I'm, I'm only sixteen years old, and I can't go down for all this. ...
19:50:43	18	23	Q1	And help me get the bigger guy who is responsible for this 'cause I know you didn't plan all of this. This isn't your idea. ... I'm laying it out on a platter for you.
19:51:00	19	1	Q1	... People told me already, but they're telling me that you're the one that planned this. You're the one that got everything for everybody. You're the one that, everybody's listening to you. You're the leader. I know you're not, but that's what they're telling me. So if that's what you want me to put on the paper when it goes across the street and the judge listens to it then that's what I'll put 'cause you're not telling me anything and you're just sitting there lying. But if you tell me what you really did and what your involvement was, which I think was minimal, give me a reason to believe you.
19:51:58	19	13	Q1	Kanye, don't do this to yourself. You're a young kid. You sit here and lie, when we get done and I put all that in my, in my paperwork, and it goes across the street, you'll look like a stone cold killer.
19:52:46	19	28	Q1	They're shoveling it on you. They want you to go down. They want you to take the hit. ... They're admitting yeah it was a robbery and Big E got shot. They're telling me you did it all. You planned it, you went there, you wanted his money. You shot him. That's what they're telling me. All of them.
19:55:58	22	1	Q1	Do you understand what's going on here? Do you know what murder is? Do you know what robbery homicide is?
19:57:06	22	17	Q1	Like I said, people have already given sworn statements, pointed your picture out, yeah this is the guy, this is the guy that shot Big E. I got your ski mask there at the scene. I got a gun that belongs to you guys at the scene, which has evidence all over it. I got people telling me you're talking about the murder after it happened. Come on, dude, the game is over. It is completely over. And all that's gonna go in the report if you want to leave it like that and it's gonna go across the street and the judge is gonna read it and then the attorneys are gonna read it and a jury's gonna read it. And who do you think they're gonna believe, you or me?
19:47:48	23	2	Q1	... I don't think you did as much as everybody else

				is saying you did. ... If it was you were just standing there and you watched someone rob him or kill him or whatever it is ... Whether you were there as a lookout or you were just coming along for protection for other guys or you just were gonna get a little bit of money out of it, whatever. I don't think you went there to kill the guy. I think you went there to just get some money.
19:59:32	23	21	Q1	Maybe you didn't do it as much as they're telling that, saying that you did it. But you were there, dude. Come on, Kanye, Kanye, your lying will make this worse. Trust me.
20:01:30	24	11	Q1	I know you were there but I don't think you did all that. ...
20:02:37	24	23	Q1	Your brother talked about this in front of the wrong people. ... But that's not the half of it. It's the evidence found at the scene, it's it's everything Kanye. It's over. You're down here. It doesn't get any better until you start telling the truth. Like I told you I did my investigation and my investigation shows that you were a part of it but I don't think you did that much. ... You saw something go down and now you're scared to say something. If that's what happened then just tell me that's what happened. If it isn't and I'm wrong then tell me what you really did, but I know you were there and I know you played a little part in it. I want to know why and was it the intention to kill this guy or did he did he fight and he got killed on accident?
20:33:16	29	19	Q2	Do you understand how serious a murder charge is? Do you?
20:34:00	30	1	Q2	This is you, sitting there, for murder! Do you know what 10-20-life is? Use a gun you're done. How old are you, 16? Ten years is what, 26? Twenty years is 36. You know what life is? ... Look at me! It goes by according to your crime. How does 26 sound? How does 36 sound? How does NEVER sound! Which one of those do you think your mom would choose? The 10, the 20, or the life? ... Do you understand what I'm saying to you? <ul style="list-style-type: none"> • <i>Kanye shakes his head no.</i> *
20:35:30	30	20	Q2	You need to have a solid explanation for that math. 10, 20, life.
20:40:12	31	26	Q2	Give me a reasonable explanation for the mask. ... How could your DNA be in that mask?
20:41:25	33	5	Q2	If my son said I did it on accident, ma, I could for-

				give him. ... I know you didn't mean to do it. ... And I don't even think you did it on purpose. I think the gun went off.
20:43:31	34	14	Q2	The mask is there. Your DNA is there. You were there. It just went wrong. You were just supposed to scare the guy. You were just supposed to get his money and get the hell out of there. ... What does your mom get to live with Kanye? That her son's just a stone cold killer?
20:44:40	34	21	Q2	It was a fuck up. It was an accident. It just went wrong. Kanye, look at me. Your mask is there. Your DNA's in that mask. And it's laying right near where E's body was found.
21:07:30	37	8	Q2	Look at me. And we know you were there. Yes you were. That's how that mask got there and that's how that DNA in that mask got there and then that DNA that comes back on his hands is gonna be there. ... As it was, we got a murder charge and you holding it and that's the only thing you got out of this whole thing. ... When all that comes back, Kanye, then it's our spin. And it's just that you're a cold calculating murderer, absolutely, absolutely, absolutely. Sit up and look at me. Don't look at the floor. You want to play in the real big boy world then sit up and take it like a real big boy, okay. But the thing is, is when all this comes back and we get to put our spin on it and like I said you planned it, unfortunately it went wrong and then you shot him and you killed him. For no other reason other than you're a bad ass tough guy. That's our spin. That's how it will go. ... Look at me! [snaps fingers] I'm serious. Stop looking at the floor, okay. Ten, twenty, life. It's that simple.
21:13:13	40	15	Q2	You suck that bad. But you end up with, oh, I'm sorry, 10, 20, or life. And there's no other explanation because you can't tell me or V how that mask got there. [pointing to photo]
21:13:34	40	20	Q1	Kanye, that mask is the least of your problems, Kanye. Do you understand that I have people – Look at this file right here. It's evidence against you, buddy. This is stuff that's gonna put you away. ... I've talked to everybody. I got all the information. It's all pointing to you. ... This is not gonna go away with you shaking your head.
21:13:34	40	26	Q2	{Note: Q2 and Q1 are <i>simultaneously</i> telling Kanye that there is overwhelming evidence of his

				<p>guilt, and that he needs to explain whether it was an accident or whether it was calculated} It was either an accident and it just went wrong or you did it, you calculated it.</p>
21:14:46	41	16	Q1	<p>That's what you want everybody to think across the street? They know you're gonna be a liar. Everything is being recorded right now. Do you understand that? They're gonna look at this. They're gonna know you lied right from the beginning. They're gonna see what kind of person you are. ... You're not even willing to say you're sorry or to give an excuse why this happened?</p>
21:15:24	41	26	Q1	<p>You were there. What I wanted you to do is tell me what you did there. Because there's other people that are saying you did a lot more than I think you did. Kanye, do you understand me? There's people that are saying you did a lot more and I don't believe them. That's why I'm giving you this opportunity to tell me exactly what you did. If you were just there and you watched someone else do something that's what you need to say, dude, because your life is on the line right now. Your life is on the line. If you were there and you just saw something go down, that's what you need to say. If you were there and you did a little more, you were a lookout or you waited in the car or whatever it was, that's what you need to say, 'cause there's evidence, there's masks, there's DNA, there's people telling me stories. I've got sworn statements. I've got photographs, this whole thing is filled. I got video surveillance of the masks being bought. Dude, it's all right here. It is all right here, buddy, and it's gonna go across the street along with this tape of these last couple of hours I've been talking to you. What do you think a judge and a jury is gonna say when they look at this? ... People forgive juveniles when they make mistakes. You're allowed to make a mistake. I'm telling you, you're allowed to make a mistake. But you're gonna sit here and you're gonna act like a stone cold killer. Yeah, you are, and that's what people are gonna think. ... That's what you want everybody to think? ... A cold-hearted killer, is that what you want people to think you are?</p>
21:19	44	9	Q1	<p>They're gonna book you as an adult. You're not gonna sit with kids or 16-year-olds.</p>

21:20:21	44	29	Q1	I got video surveillance. I've got people giving me sworn statements. I've got them picking you out of lineups. Picking you out of single photographs. I've got everything, buddy, everything. I've got everything. I've worked murders where I had a lot less on people, and they still got convicted. I've got overwhelming on you. I've got so much it's, it's ridiculous. I'm giving you an opportunity to help yourself and you're being stupid. Yeah, you are. You're being real foolish right now. You're being real stupid. ... All's I want to know is why.
21:22:10	45	12	Q1	You can sit there and go I wasn't there, I wasn't there, and 20 years from now when I'm retired I'll come to the prison to see you, and you'll be an old man. You'll be an old man sitting in prison and you're gonna tell me I wish I would have told you.
21:24:35	46	27	Q1	Then you're telling me you planned it and you sent out other people to do this.
21:29:01	50	12	Q1	Kanye, like I said, once I'm gone, I'm gone. I can't do anything for you. I can't – I won't be able to listen you your side of the story. I'll just have to listen to everybody else. ... They don't want murderers walking around on the streets. You're gonna disappear. Nobody's gonna, nobody's gonna remember you and nobody's gonna care about you.
21:30:12	50	26	Q1	You're gonna sit in that room that's smaller than this room right here. That concrete room ... when they throw the lights on, they ring the bells, and they tell you to get up and get dressed ... 'cause you sat here and you lied.
21:33:00	51	10	Q1	When you're sitting down at the County Jail with the adult population.
21:34	51	19	Q1	They 'fess up when they do wrong and they apologize and it goes across the street and the attorneys read it and they, you know, when you're apologetic and you have remorse and you feel sorry for what you did and you're willing to make the situation right ... they sympathize with that. ... They forgive people like that. They don't forgive the ones that just lie and tell stories.
21:39:20	55	16	Q1	The only people that act like you're acting are guilty people.
21:59:02	70	28	Q2	[jeering] How do you think a jury's gonna think of that story?
22:31:00	87	7	Q3	Let me tell you something. We don't just pick you

				up and bring you in here because we THINK you did it. ... It's not like we THINK you did it. We KNOW you did it. And these cases only go one way. They only go guilty. The only way that something can change like that is, the only way it can go better for you is if you give us some, some information that maybe helps yourself.
22:31:00	87	7	Q3	Let me tell you something. We don't just pick you up and bring you in here because we THINK you did it. ... It's not like we THINK you did it. We KNOW you did it. And these cases only go one way. They only go guilty. The only way that something can change like that is, the only way it can go better for you is if you give us some, some information that maybe helps yourself.
22:41:39	90	26	Q3	Fuck, we got the approval of our chief. We got the approval of the state attorney's office. ... They don't let us arrest somebody for a case like this unless it's a hundred percent. ... We got all we need right now to prosecute this case and to convict the people and get them life in prison. You still want to say you weren't there? You had nothing to do with this?
22:42:53	91	16	Q3	We didn't trick you into anything. We didn't lie to you.
22:45:21	93	1	Q1	You're the person he's talking about in those stories. ... You have the best opportunity, and you're getting ready to blow it.
22:47:17	93	21	Q1	I'm here to listen to you now and only now. ... I'm telling you the options. ... She and her friend got four years. ... The guy in the back who said F you ... he's gone and he's never getting out. You're in the identical situation.
22:49:19	94	1	Q1	You're the little fish. I want the big fish. ... I know you're the little fish. ... If you want to lie to me and not tell me what's going on, then I'll have to assume you're the big fish. ... hanging out with these guys but what happens is they know about they have information, that's called conspiracy to commit the crime. Under Florida law you're just as guilty as the person who committed it.
22:55:27	95	15	Q1	There's nothing to experience in prison unless you want to experience homosexuality or anything else in there. ... You tell me exactly what happened. ... You'll thank me when it's over. You'll thank me ... when I see you on the street, or when I drop by

				your house on Bellaire and say what's up to your mom. Maybe 15 years from now, five years from now, whatever ... you get a good job and you have a family and kids. I'll stop by. ... You'll be with a wife and kids probably. ... I'll make it painless for you man, I've got everything right here.
22:59:20	96	9	Q1	I know you're the small fish. ... There's no future in prison, man. There's none. There's no wives, there's no kids. No birthdays. ... It's just a bunch of men, a bunch of grown men. And the only thing they like to do in the prison is fighting and fucking. And there's only other guys so you figure it out.
23:05:40	97	23	Q1	You're trying to set a record here by taking so long.

Sample Deposition

1
2
3 GREGORY DECLUE, Ph.D.
4 was called as a witness, and being duly sworn by the Notary, was examined and
5 testified as follows:
6 DIRECT EXAMINATION
7 BY MR. GONZO:
8 Q Please state your full name, sir.
9 A Gregory DeClue.
10 Q Dr. DeClue, my name is Zeus Gonzo. I'm a prosecutor with the State Attorney's
11 Office in Hillsborough County, Florida. You're here for a deposition in reference to the
12 JoJo Themonkey case. I have a series of questions, quite a few questions maybe, for
13 you. If I ask you any questions that are vague or unclear, would you please let me
14 know?
15 A Yes.
16 Q You were listed by Mr. Chainsaw on behalf of Mr. Themonkey as a potential
17 defense witness.
18 A Okay.
19 Q Please go ahead and give me the history of your involvement with this case.
20 When were you first contacted by whom, was it oral, in writing, over the phone or what
21 have you, and walk me through that -- by dates, my preference is.
22 A Okay. I'll begin with what I can tell you for sure. I received on November 30,
23 2006 a letter from Mr. Chainsaw. We had at that point talked on the phone and I had
24 agreed to work on the case. Along with that letter, he sent me a DVD ROM that
25 included recorded statements of Mr. Themonkey and those were in MP3 format, and
26 then PDF documents of police reports and transcripts of officers, so that was November
27 30th. What had transpired before that is we had talked on the phone and I agreed to
28 accept the case and then he sent me this information.
29 Q What information have you provided, if any at this point, in writing, for example,
30 to Mr. Chainsaw regarding your involvement in this case?
31 A Just prior to us going on the record, you asked for any notes that I had. I
32 provided a copy to you and to Mr. Chainsaw. He had seen that about 20 minutes
33 before and that was the first time I had given him any written information at all, and as I
34 just said, it's the same information you have. That's all of the written report.
35 Q Any idea as to how Mr. Chainsaw came in contact with -- I'm assuming this is the
36 first contact you've had with Mr. Chainsaw regarding work-related matters?
37 A Yes. This case is the first case, and I don't recall talking to him before this case.
38 Q Are you presently working in any other criminal cases or civil cases where Mr.
39 Chainsaw is the attorney of record?
40 A No.
41 Q Go ahead, Doctor, and tell me please what were you asked to do in this case.
42 A I'm going to read probably about two sentences from here. *It is my intent to file a*
43 *Motion To Suppress alleging the denial of the right to counsel, improper Miranda*
44 *warnings, and coercion by the officers, playing upon his weakened mental state, length*
45 *of time, plus physical distress, so your testimony regarding the interrogation process*

1 *and validity of the confession could be crucial. And he adds, as I mentioned, the State*
2 *is seeking the death penalty.*

3 Q Okay. And your focus, again, would that be the stated issues such as Miranda,
4 interrogation, what have you? Which -- are you focusing on Miranda, whether it was
5 given, the legality or the sufficiency of the Miranda, or are you -- is it -- does your
6 specific involvement in the case have to do with the interrogation and the psychology of
7 the interrogation?

8 A What I would anticipate would be that I would be asked questions related to three
9 legal issues. One would be whether the evidence shows that he gave a knowing,
10 intelligent, and voluntary waiver of his Miranda rights, and there might be other
11 questions relating to that; the second would be whether there was evidence of coercive
12 police conduct and questions related to that; and the third would be related to the
13 reliability of the confession statement.

14 I would anticipate being asked about what interrogation procedures can contribute to a
15 false confession and whether procedures were used in this case that could produce a
16 false confession and other questions related to the reliability of Mr. Themonkey's
17 statement.

18 Q Okay. Let me first address the first issue involving whether the defendant in this
19 case knowingly waived his Miranda rights. Do you feel confident that your background
20 and expertise in psychology would qualify you to answer that question?

21 A I am confident that my background and expertise would qualify me to give
22 information that would be relevant to that question. I think ultimately it's an issue that
23 the judge would decide, but the type of information that I would provide and the opinions
24 that I would be able to offer would be relevant to the judge's ultimate decision.

25 Q So your -- in your opinion, for example, you're not going to be -- you're not going
26 to opine that the waiver by Mr. Themonkey was not knowingly given, but you will give
27 information that may assist the judge in making that call?

28 A I'm going to say yes to that, and then whether I would address the ultimate issue
29 or not would likely depend on the form of the question that was asked of me and
30 whether that question was objected to or not.

31 Q Okay. If that question -- I promise you, if that question is asked, I'll be objecting.
32 What I'm trying to get at, is this a legal issue? Because you are limited to --

33 A Right.

34 Q -- the fact that it -- obviously, it's up to Her Honor to decide, but do you agree with
35 me that that's a legal issue more than a psychological or scientific issue?

36 A I think that as I phrased -- and I'll focus on that one -- as I phrased it was in legal
37 terms and the -- I think my information and opinion will be relevant to that. In my
38 experience, judges have not been uniform about what they will allow any expert in my
39 role to testify about.

40 How close to the ultimate legal issue or, in fact, being asked the ultimate legal issue, it's
41 not been uniform in my experience how judges rule on that, so, again, if I'm asked the
42 question and it sounds like an ultimate legal issue but the judge says I'll allow you to
43 answer that, then if I have an opinion about it, I'll offer an opinion.

44 Q Okay. Have you been allowed in cases in the past to render an ultimate opinion
45 as to whether a Miranda -- a waiver of Miranda was knowingly given by a suspect -- a
46 criminal suspect?

- 1 A I don't recall. I don't recall whether I've actually been given that question in
2 exactly that form and said yes or no to it.
- 3 Q Okay. Regarding the second item is evidence of the presence or lack thereof of
4 coercive police conduct.
- 5 A Yes.
- 6 Q That's an issue that you've looked at in this case, correct?
- 7 A Yes.
- 8 Q And have you in the past been allowed to render an opinion as to whether you
9 have an opinion as to whether the conduct by the police was coercive or not?
- 10 A Yes, I have.
- 11 Q Okay. So unlike the first factor, you're sure now, the second factor, you were
12 allowed to give an opinion regarding that?
- 13 A Yes.
- 14 Q Okay. But then in the third, the reliability of the statement, do you feel that you're
15 qualified to address this issue?
- 16 A I'll answer in two ways with that. In terms of ultimately whether it is a true or false
17 confession, I don't -- I do not believe that I'm qualified and I don't believe any expert can
18 answer that question. That's up to the judge or jury to decide.
19 With regard to whether there were techniques that were used that have been
20 recognized as contributing to false confessions, I would anticipate being able to answer
21 that question.
- 22 Q Is there an expert witness out there that you have encountered, somebody who
23 testified and gave an opinion that is quite contrary or opposite to your testimony in the
24 past on more than one occasion?
- 25 A Let me make sure I understand the question. Are you asking specifically on
26 cases that I've testified and another expert has testified and we've disagreed and that's
27 come up more than once?
- 28 Q Correct. Yes.
- 29 A There were -- yes. Dr. Jumping Frog, he had testified at the request of the
30 defense and I had testified at the request of the State. Those would be the cases that
31 Craig Schaeffer hired me on.
- 32 Q That's in Sarasota?
- 33 A Sarasota. And I don't -- I know that our opinions differed. I'm not sure how far
34 the cases went, whether we went and testified at a hearing or whether it was resolved
35 before that or not. That would have been approximately 2002 or so.
- 36 Q So Dr. Frog was the defense witness and you were a State witness?
- 37 A Yes.
- 38 Q Okay. Were there any situations where you were a defense witness and that
39 opposition came from an expert for the State? Was your finding, for example, that there
40 was evidence of coercion or the statements shouldn't be relied on because of police
41 tactics or misconduct or what have you where the other person, the other expert, opined
42 differently?
- 43 A I'm thinking about that. I don't believe so. I don't believe I've ever offered
44 testimony for the defense for which there was an opposing expert -- or an expert from
45 the State that had a different opinion. I don't believe that's occurred. Often the defense
46 calls an expert and the State does not call any experts on the psychology of

1 interrogations and confessions. So, in those cases, there is no similar expert providing
2 testimony in the case.

3 Q Doctor, what's your definition of a confession?

4 A I'm going to be speaking off the top of my head and it will be less formal than it
5 might be in another context. When a person is asked to make a statement by the police
6 and the person makes a statement that is -- that he admits to actions that are in
7 violation of the law, that is a confession.

8 There have been distinctions made where a person might make a partial confession
9 where he makes an admission; that would admit to -- admit to actions that might be
10 used to increase the likelihood that he committed a crime; for example, I was there but I
11 didn't do it. And then there's what's called a full confession where a person says, I was
12 there and I shot the guy, or, I was there and I committed the crime.

13 But basically, a confession is a statement where a person admits to breaking the law
14 and admits to a police officer to having done so.

15 Q And when you said a partial confession, is this -- can it also be classified as when
16 a person minimizes his or her involvement in a crime?

17 A Not necessarily, because certainly a partial confession can be completely true. A
18 person might make an incriminating statement or a statement that could be used to
19 incriminate him, and a person might actually be telling the truth when he says, I was
20 there but I did not commit the crime.

21 Q What's your definition of an admission? Is there a difference between a
22 confession and an admission?

23 A Well, an admission would be I admit that I did something. A person could admit
24 to anything, either a state of being, such as being male or female or sexual orientation
25 or to an action or I did this or I did that.

26 Q I asked the question about minimization. Is there a -- I don't know how to
27 describe it -- a condition or -- where criminal defendants minimize or some of them do
28 minimize their involvement in a crime? Is that a phenomenon or is that a -- I don't know
29 if you want to call it a phenomenon or condition or --

30 A I understand the question, yeah, and I think there are probably two ways I'd like
31 to answer that. In interrogations, interrogators are trained to use techniques to help to
32 elicit a confession from a suspect.

33 One of the techniques that is used is termed minimization where the interrogator would
34 present the action in a way that would tend to minimize criminal culpability, either
35 minimize or eliminate. For example, suggesting that the offense may have occurred by
36 accident or in self-defense.

37 And so interrogators will sometimes follow their training and try to get a suspect to admit
38 to committing an act under the -- or in a style that would be less criminally culpable than
39 if it had not been an accident.

40 Now, just to follow up on the other part, a suspect might do that without encouragement
41 from the law enforcement officer, so a suspect might, when faced with certain facts, try
42 to answer the question to explain why my fingerprints were there; for example, to say,
43 Well, I saw the wallet on the ground and I picked it up and put it on the counter and
44 that's probably how my fingerprints got on the billfold.

1 If, in fact, the person took the billfold, took money out of it and then left the billfold and
2 then gave a different explanation, that would be a form of minimization where the
3 motivation came directly from the suspect rather than from the interrogator.

4 Q And that's what I'm focusing on --

5 A Okay.

6 Q -- the suspect side of the equation as opposed to being suggested to or
7 presented by the interrogators. So -- so we're in agreement that criminal suspects do --
8 there are cases where criminal suspects will minimize their involvement in a criminal
9 enterprise?

10 A Yes.

11 Q And there are -- equally to say, you'd agree with me that criminal defendants do
12 confess to crimes that they commit?

13 A Yes, that does occur.

14 Q And like you said, you'd agree with the fact where sometimes they give partial
15 confessions?

16 A Yes. What would probably be more accurate would be to say that criminal
17 suspects sometimes make statements that may include some potentially incriminating
18 information and sometimes they make statements that would reach the level of being a
19 full confession.

20 Q Okay. But you'd agree with me that it's a known fact that criminal defendants,
21 depending on their degree of intelligence, education, or their prior contacts with law
22 enforcement or the legal system, sometimes do deny crimes that they commit?

23 A Sure.

24 Q And -- and -- or sometimes at first contact -- you would agree there are situations
25 where at first contact they deny and then ultimately confess, start with a denial and they
26 ultimately confess to a crime that they did, independent of police tactics, misconduct, or
27 anything like that?

28 A Well, let me answer that in parts, because I think there's more than one part to it,
29 and feel free to follow up. In my experience, both direct experience and indirect through
30 my training, criminal suspects do sometimes change their story, so they do sometimes
31 go from saying I did not do it to I did do it and there may be various steps in-between.
32 If it ends in a full confession, there may be some things in-between that. Often that is
33 done -- going to the last part of your question now, often that is done in response to
34 police tactics to influence the person, and suspects do that, going from saying I did not
35 do to saying that I did it, and that occurs both in cases that independent evidence shows
36 that the person very likely is guilty of the crime and it also occurs in cases where
37 ultimately independent evidence shows that the person did not commit the crime and
38 that it was a false confession. So the basic short answer is yes, with all those
39 qualification in there.

40 Q I understand what you're telling me, but are we in agreement where there are
41 cases where -- I think -- I'm going through a list in my mind where criminal defendants
42 who -- for example, grand theft auto, where a person is truly guilty or he was the person
43 who admitted he stole a vehicle, but upon first contact with the police they deny it and
44 then if it presented -- independent of -- let's assume there was no police misconduct --

45 A Okay.

1 Q -- or anything visited upon the person being interviewed by the police,
2 independent of that, so you agree that there are cases where people will deny and then
3 admit and they are truly -- their admission is a full confession, like you said, where they,
4 in fact, did that?

5 A Okay. I'll answer it this way. There are certainly cases where a person initially
6 denies, ultimately admits that he did it, and everything suggested this is a guilty person
7 because there's independent evidence, aside from the confession, that shows that and
8 where there is no evidence of police misconduct. I would agree to all of that.

9 Q Okay. Does a true confession, as you call it, or true meaning factually correct as
10 to when a person said, I did this, and in fact that he did, does it have to have
11 corroboration to be a true confession?

12 A Well, the question would be is how do we know it's a true confession if it's not
13 corroborated?

14 Q There was a car that was missing.

15 A Well --

16 Q And the suspect said, I did it.

17 A I'll give this example. Two hundred people confessed to taking the Lindbergh
18 baby and not all of them did it. There was really a crime. That baby really was taken
19 and not all 200 of them did it.

20 Q Is it possible that one of them did it?

21 A It's certainly possible that one of them did it. Somebody took it and it may be one
22 of those, maybe two. Maybe two people were involved, but --

23 Q Why would a criminal defendant deny a crime that he or she committed?

24 A For the same type of reason that if somebody gets pulled over while driving and
25 was going over the speed limit and the police officer steps up and says, How fast were
26 you going, the person won't necessarily say, Well, I was actually going about 75, but
27 usually I drive about 80 here but -- and you got me. You know, that person will not
28 always admit to that right away. It's for self-preservation, self-interest, and so on.

29 Q Self-interest?

30 A Yes.

31 Q And would the self-interest be also motivation for people to minimize -- a criminal
32 defendant to minimize his or her involvement in the case?

33 A Yes. I would just add that people lie for lots of reasons, but those would be
34 common reasons, I believe, in those kinds of cases.

35 Q And also criminal defendants who are being questioned by the police and he or
36 she do not want to go to jail or be convicted of a crime?

37 A Right. And just to -- just to be -- I think it's worth saying that everybody who is
38 questioned by the police as a suspect is a criminal suspect, but not all of them are
39 criminals, so I'm accepting your terminology, but I guess I'm pointing that out that we're
40 talking about innocent people as well, I assume, as you're asking that.

41 Q How long, Doctor, have you been involved in this specific area of evaluating
42 police interrogation and criminal defendants being interrogated and whether it's valid or
43 whether the conduct -- or misconduct or what have you?

44 A About 1994 would be when I started.

45 Q Some of us have mentors out there.

46 A Mentors?

1 Q Mentors, trainers or what have you. Who is -- when it comes to this field
2 specifically, interrogations and the psychology of interrogation, who is your mentor.

3 A I probably do not have a mentor in the sense of anybody who I trained with on a
4 regular basis for a period of time. The first case that I worked on, the psychologist who
5 was also involved in that case and I -- at my request, I sat in and observed his process
6 with the person, is Richard Ofshe. I believe it's O-F, as in foxtrot, S-H-E, and -- so that
7 would be firsthand contact that would be that.

8 Richard Leo is another psychologist and as I wrote my book, I actually asked him if he
9 would be interested in co-writing the book, and he said he was too busy. I tried to
10 encourage him. And then I used -- he provided me with a lot of his work and
11 suggestions and I used a lot of his work to form my ideas, and those two have written
12 together, Ofshe and Leo.

13 MR. CHAINSAW: Leo or Leal?

14 THE WITNESS: Leo, L-E-O.

15 BY THE WITNESS (resuming):

16 A The other would be Gisli, G-I-S-L-I, Gudjonsson, G-U-D -- let's see; that's a hard
17 one -- J-O-N-S-S-O-N, I think. He's in Britain and I corresponded with him, and his
18 publications have been very helpful in me learning the field. Solomon Fulero, F-U-L-E-
19 R-O --

20 Q I'm sorry. F --

21 A -- U-L-E-R-O is a psychologist in Ohio, and Lawrence Wrightsman, W-R-I-G-H-T-
22 S-M-A-N. Wrightsman had co-written with Saul Kassin, K-A-S-S-I-N, and their writings
23 have been helpful for me also. And Steve Drizin. D-R-I-Z-I-N.

24 Q And most of these, if not all of them, are mentioned in some of your articles?

25 A Yes, I would have cited them, so yes.

26 Q You have mentioned that you were provided by Mr. Chainsaw with the listed
27 information. Are those items specifically listed in the letter dated November 30? Am I
28 correct? Is it November 30th of '06?

29 A Yes, that's the right date, and no, they're not listed.

30 Q Can you help me out with what -- let's talk about the items that you were
31 provided. You're referring to a document. What is that?

32 A I'm looking at something now, and with your permission, I'm going to consult with
33 Mr. Chainsaw on the record -- I think we can do it or we can do it off the record if you'd
34 rather -- to help me answer the question. Is that okay?

35 Q Yes. Go ahead.

36 THE WITNESS: This is something that you sent me or I printed it out from something
37 that you sent me.

38 MR. CHAINSAW: Yes. This is essentially a matrix that I put together of the police
39 reports and I certainly don't mind Mr. Gonzo seeing that. I got all that stuff from him.
40 It's just a --

41 MR. GONZO: It's just a --

42 MR. CHAINSAW: It's just a summary of --

43 MR. GONZO: It looks like an index --

44 MR. CHAINSAW: Exactly.

45 MR. GONZO: -- so to speak. Okay.

1 MR. CHAINSAW: Yeah. In fact, if you don't already have one, it will probably make
2 your life a little easier. I'm sure you already do, but -- yeah, I don't mind him seeing that
3 at all.

4 MR. GONZO: Okay. We'll -- we'll make a pile here.

5 THE WITNESS: Okay.

6 BY MR. GONZO (resuming):

7 Q Are we to assume then that you had all these documents listed in four or five
8 pages here?

9 A It's seven pages and, yes, I was supplied with a DVD with these on a PDF
10 format.

11 Q Okay.

12 A And I have all of those.

13 Q Okay. All right. Have you reviewed all these documents, and I'll ask you to
14 define review if you tell me yes, no. Just tell me what did you do with these things.

15 A I have read many of these documents. I think that there were some that -- I don't
16 believe that I've read every one of these documents. I think that I got partway through
17 and started looking at them as they're titled to see if I felt they were important for me,
18 because there's a lot of information on this case and it did not seem necessary for me to
19 look at everything.

20 Q Okay. And specifically, transcripts of statements given by the defendant and/or
21 police reports referencing statements given by the defendant, did you read -- would it be
22 fair to say that you've read all those?

23 A Yes.

24 Q All right. How many hours approximately have you spent on this case?

25 A I'll see if I can answer that. It's about 16 hours as of December, 2006.

26 Q Okay. And since December of 2006, have you had any work done on the case?

27 A Just this morning.

28 Q Prior -- for the deposition?

29 A Right.

30 Q And approximately --

31 A About two and a half hours.

32 Q So you all in total about eighteen and a half hours of work?

33 A Yes.

34 Q Let's talk about your opinion in this case. Have you been able to reach an
35 opinion regarding your work on this case?

36 A Yes. I have prepared some notes towards some opinions and those occur on
37 two pages in the notes that I handed to you.

38 Q When was it, Doctor, that you first arrived at these opinions? I know that so far
39 you've spent 18 total, 16 plus two and a half hours to prep for this deposition. When
40 was it that you first arrived at these opinions, after how many hours?

41 A Well, I can tell you that it was on December 7, 2006, because I marked the time
42 there. That's when I formed those preliminary opinions.

43 Q If you are called to testify, would you have any additional opinions other than
44 what's summarized in pages 1 and 2 here?

45 A As of this time, no. I would anticipate that prior to testifying I would review
46 materials again, get everything fresh in my mind, and I would -- I anticipate that my

1 opinions would be along the lines of what I've jotted down there as the summary of
2 preliminary opinions, but I would likely have some additional opinions at that point,
3 either more detailed, more -- as I look at the material again, I may notice things that I
4 didn't notice the first time around and it's possible that I would change my mind, but
5 what I would anticipate as being most likely is that I would have similar opinions to that
6 but with more detail.

7 Q Okay. You said it's possible that you may have changed your opinion?

8 A Yes.

9 Q What do you mean by that? Change as in what?

10 A Well, if I look through -- as I prepare for trial or prepare for a suppression hearing,
11 I would look through the material again. In order to have the material fresh in my mind,
12 it's going to be necessary for me to look in some detail at that and I may notice
13 something that I didn't notice before.

14 If I notice something that is -- I don't anticipate this, but if I notice something that's --
15 would cause me to have a different opinion, I will of course express whatever opinion I
16 had that day.

17 Q Okay. When you say different opinion, as in, for example, would it possibly
18 include that there was no police coercion or the statement is reliable?

19 A Let me take those one at a time. In terms of there was no police coercion, I think
20 that's very unlikely that I would come up with that opinion. In terms of the statement is
21 reliable, I think it's very unlikely that I would come up with that opinion.

22 I would certainly have information that would show -- I anticipate that I would still see
23 the information I saw before regarding the reliability of it, and that would be aspects that
24 could -- things that were not there that ideally should be in an interrogation and
25 confession to assure reliability and things that were present that decrease reliability.

26 Q Okay. Has that ever happened before where you -- your initial opinion was that
27 there was -- your opinion is the statement is not reliable, and then later on upon closer
28 review of the material in preparation for a trial or suppression hearing where you
29 changed your mind?

30 A I don't recall that in a confession case. I can say that in forensic cases generally,
31 there have been times when I get new information that's supplied to me that changes
32 my opinion about the ultimate issue. For example, in the sexually violent predator
33 cases, there may be a whole other case that comes up that shows additional actions
34 from the person.

35 So the main thing I'm conveying to you is that I can tell you what my opinion is today
36 and I can tell you what my opinion was on December 7th and I can tell you in this case
37 that I don't anticipate a change. It would take some pretty strong new evidence in this
38 case to lead me to change my mind, but I'll continue to have an open mind always.

39 Q Okay. Fair enough. What evidence of police coercion did you find, if any, in this
40 case?

41 A Okay. Some of the things that were present are often present in criminal cases
42 but are --

43 Q If I may -- if I may interrupt a second?

44 A Yeah, go ahead.

1 Q If we can just -- and I appreciate the background information and I'm not saying
2 it's not important, but if we can go and directly address the JoJo Themonkey case, it
3 would be very helpful and save us some time.

4 A I understand, and I really am doing that. As I was saying, some of these are
5 things that are not unusual or uncommon and in and of themselves as a single factor I
6 would not anticipate that they'd be considered to be illegally coercive, but they are
7 coercive and it's important to consider those in this case also.

8 For example, the case -- the interrogation took place in a law enforcement setting,
9 what's termed in -- what's sometimes termed the inherently coercive atmosphere of a --
10 and then they say police station or words to that effect.

11 Mr. Themonkey was with police officers, being questioned by police officers about a
12 crime, and that in itself is -- has some power to it to where the police are in a more
13 powerful position than he is and they control some things like where it takes place, the
14 timing of it, whether he can go out for a cigarette break, when he can go and get
15 something to eat or use the restroom.

16 In other words, the police are in control, and that in itself is a part of the process that it
17 has some coercive aspects to it. There are some things that the police officers say to
18 Mr. Themonkey that are coercive.

19 Let me clarify what I mean when I say coercive. If I say something's coercive, it doesn't
20 necessarily mean that it is illegally coercive, but it is a practice that tends to push
21 someone towards a desired goal.

22 Q Desire to --

23 A -- a desired goal. Yeah, the police are trying to influence him to change his mind,
24 so it's a -- and if it's an influence tactic from a position of relatively stronger power
25 towards a person in a relatively weaker power, then that is coercive in the sense that
26 he's trying to get somebody or push somebody to do something. It may be at that time
27 psychologically coercive because -- it's a pressure tactic would be another word you
28 may want to substitute.

29 Q Can you give us an example?

30 A Sure. The law enforcement officers tell him that they know that he did the crime
31 and it is either that he's going to be facing the -- they know that he was there, so --
32 actually, I'm going to stop where I was and start over.

33 The police officers are telling him he was there and it's a question of whether he's going
34 to be going to prison for a lot of years or he's simply a witness to the event, so that's
35 one. Another example is where they tell him that they have a lot of incriminating
36 evidence about him, enough for probable cause and enough to prove that he did it, and
37 that other people -- and they mention Scott Peterson by name -- have been convicted
38 on less than what they already have on him.

39 They tell him that he could get the death penalty. They threaten inter-racial homosexual
40 gang rape, that if he doesn't cooperate with them then that's an event that is likely to
41 occur, and use tactics to influence or pressure or coerce him into changing his
42 statement and saying something different from what he said before.

43 Q Did you find that, in fact, JoJo Themonkey confessed to the crimes he's charged
44 with?

- 1 A I don't remember. I don't -- I would have to review that and I did not -- I did not
2 get to that point today in my preparation today, so at this point I don't remember what --
3 whether he did or did not.
- 4 Q When we were talking about reliability of his statement --
- 5 A Yes.
- 6 Q -- are we talking about the veracity of the statement?
- 7 A I'm nodding my head, not to say yes, but to say that I think I understand your
8 question. Is that the end of your question?
- 9 A Yes.
- 10 Q Okay. The reliability of the statement, when I use that term, refers to the -- it
11 does not mean that the statement is true or not true. Reliable means how confident can
12 a person be about the statement, and it would probably be better if I elaborate about
13 that. I'm going to give a little bit of a long-winded answer and -- but I'll try to make it not
14 longer than it needs to be.
- 15 If a person makes a statement that says that he committed a crime and he does so in a
16 way that he has not been provided any details of the crime, crime scene details, that
17 there's some guilty knowledge or secret knowledge that only somebody who had seen
18 the crime scene would know, and during the interrogation, if that's been recorded the
19 whole time, everything that the police have said to him has been recorded and so you
20 can look back and see that they never told him specific details, and then the person
21 confesses to the crime and then the police officers say, Now, I want to take some
22 additional statements and make sure I understand exactly what happened here, that's
23 termed a post-admission narrative.
- 24 And so the police officers ask the suspect to give details about it and the suspect names
25 details about the crime, the crime scene, that have not been provided to him by the
26 police and those crime scene details are corroborated independently, then that's the
27 type of statement that has increased reliability, as opposed to when there's no
28 corroboration or there's been contamination of the witness because the police have told
29 him crime scene details or that's all unknown because the interrogation or portions of
30 the interrogation were not recorded, those would all be less reliable.
- 31 Q How is that applicable to this case?
- 32 A To this case?
- 33 Q Yeah.
- 34 A Number one, parts of the interrogation were recorded and parts were not
35 recorded.
- 36 There's --
- 37 Q Okay. And do you know why the parts -- some parts were not recorded?
- 38 A Ultimately, no.
- 39 Q From your review of the police reports, was there any evidence explaining why
40 some parts were not recorded?
- 41 A There was some interrogation that took place prior to the tape recorder ever
42 being turned on. There's reference in the -- within the part that was recorded to
43 conversations that took place that are not recorded, so some is prior, some is during
44 breaks there were conversations between law enforcement officers and the suspect that
45 there are -- there's enough information within the recorded part to know that that took
46 place, so that's it.

1 Q Okay.

2 A Some before and some during.

3 Q I am assuming that the totality of your work so far has been to review the
4 documents that are listed in the index provided to you by
5 Mr. Chainsaw?

6 A I don't think that this lists everything. I think this lists all the police reports and I
7 think this does not list the recordings and the transcripts of the recordings. It wouldn't
8 include those. If you put those two together, I think that's everything.

9 Q Okay. So you did not conduct any interviews of anybody, including the
10 defendant?

11 A Correct.

12 Q Are you planning on conducting any interviews to that effect?

13 A I have not been requested to do so and I've had no hints that that's likely to
14 happen.

15 Q Okay. Well, did you -- is there anything that you requested of the defense that
16 has not been met yet? Did you ask for certain things and you have not been provided
17 with those things yet? Ask, as to the defendant; ask, as to a witness; ask, as to
18 photographs, autopsy report, anything like that?

19 A No.

20 Q Which means you're not planning on, obviously, talking to Mr. Themonkey?

21 A Right.

22 Q Do you see in the -- or do you deem it to be helpful to you to see the defendant to
23 be able to render any opinions that you were asked to consider?

24 A It's -- there are some things that I would not be able to answer if I did not have
25 direct contact with the defendant. I would not be able to testify, for example, about his
26 limitations, if any, intellectually or personality, if he has a mental illness, for example, or
27 if he had trouble following directions, if he has a hearing difficulty or understanding. I
28 would not be able to testify about any of that.

29 Q One of the things that obviously I need to attempt to satisfy myself is if your work
30 on this case is as complete as it can be or as near completion as possible and that I'm
31 not going to go back to Hillsborough County and find out next week or next month or
32 before the deposition that you went and evaluated the defendant.

33 A Right.

34 Q You know what I mean?

35 A Yes.

36 Q So you're not planning, as we sit here, to interview the defendant?

37 A No. No. And I can provide a little more information that I think will help you with
38 that. I've done everything up to this point that I anticipate doing on this case with two
39 possible exceptions.

40 One of those is there are some records in here that I have not reviewed that towards the
41 end -- that on my initial look at it did not look necessary to get started or to get
42 understanding of the case, and second would be that I would anticipate just reviewing
43 prior to trial, and that would be basically re-doing things I've already done, perhaps in
44 more detail, with the pressure of a trial coming up, and then it would only be if I'm
45 provided any new information about the case, actually by either attorney, with the
46 request that I review it.

- 1 I would have no objection to looking at more relevant information, but I don't anticipate
2 any of that, and there's certainly nothing that Mr. Chainsaw has suggested to me that
3 would make me think he's going to ask me to do things that I've not already done.
- 4 Q Okay. Let me go back to the question of when we were talking about the
5 reliability of the statement. I believe my question was is that the same thing as veracity.
6 You told me you were going to answer it the long way and I didn't allow you to finish.
7 Maybe I interrupted you and we didn't even get there. Would you address that?
- 8 A I think -- I think that the short answer is no, it's not the same as veracity.
- 9 Q So it is possible that you may deem a statement to be a reliable -- no, unreliable
10 actually, where, in fact, it's truthful?
- 11 A Yes. A statement could be truthful but not reliable in the sense that we don't
12 really know whether it's true or false.
- 13 Q Was there any evidence in this case where JoJo Themonkey lied to the police?
- 14 A He made statements that contradicted each other. I would say it's likely that he
15 lied to them at some point along the way.
- 16 Q Can statements made not in police interrogation be deemed unreliable; for
17 example, if somebody's talking to his girlfriend?
- 18 A Yes.
- 19 Q Okay. So let's go then and address your definition of reliable. So what you're
20 telling me is when you say a statement is unreliable, that statement can be truth, the
21 truth?
- 22 A It can be true or untrue. It's uncertain. We don't know whether -- we don't know
23 about it. We're not confident -- confident about it.
- 24 Q Okay. And what are other things that will give you the confidence to arrive at a
25 conclusion or opinion that it's truthful?
- 26 A Okay. If the process is done in such a way that the defendant describes
27 information that is independently verified and that it appears likely that he would have
28 not known that had he not had direct access to the crime scene, of course, either by
29 committing the crime or by some third person providing him those details, so he's -- he's
30 giving you guilty knowledge that he couldn't have gotten or unlikely got otherwise.
- 31 Q All right. Because of the offensive nature of certain interrogation techniques that
32 -- they convince the defendant that he did something that he, in fact, he didn't do?
- 33 A If I'm understanding you, there's two very different things that happen that look
34 the same. One is the defendant makes a false confession -- and we're talking -- at this
35 point, I'm talking about false confessions. If the defendant confesses to something that
36 he did not do, he might do that because at that moment he believes that he did do it, so
37 he thinks he's telling the truth and I'll just leave it at that.
38 Or he might be telling the police something that he himself doesn't believe and he
39 knows that he's telling them something untrue and he knows he's making a false
40 statement, but he nevertheless confesses.
41 The first one is called a "coerced-persuaded" or "coerced internalized" false confession.
42 The second is called a "coerced-compliant" false confession.
- 43 Q So part of the test of reliability, based on what you just told me after the review of
44 the material, is whether there was corroboration for what the defendant said?
- 45 A Yes.

- 1 Q So if there's corroboration for what he said, then that falls into the reliable
2 category of the description you stated?
- 3 A At least loosely speaking, yes.
- 4 Q My question had to do with it's my understanding that you look for corroboration
5 and did you find -- the defendant makes a statement of "A". You look at the evidence.
6 Okay. And it's -- whether it's crime scene evidence collected from the crime scene or
7 what have you and you find that that information is not given to the defendant or spoon
8 fed to the defendant by the police and -- but there's corroboration to suggest that what
9 he said is "A", you would deem that to be reliable because of the corroboration?
- 10 A Yes.
- 11 Q In addition to the issues that we've talked about or steps that we've taken so far,
12 have you elicited the help of either -- any staff of yours or any other consultants or
13 experts or what have you or are you planning on doing something like that?
- 14 A No.
- 15 Q So your testimony in this case, if you're allowed to testify at a suppression
16 hearing or trial, is that you found evidence to suggest that there was coercive police
17 conduct in this case?
- 18 A Yes.
- 19 Q And I believe it goes without saying that you haven't spoken to any of the police
20 officers who did the interrogation, correct?
- 21 A I have not.
- 22 Q And you're not planning on doing that, correct?
- 23 A That's correct.
- 24 Q Do you believe that allowing a defendant to give detailed information is an
25 important technique that you would highly encourage interrogators to follow?
- 26 A It is part of a proper interrogation, yes.
- 27 Q Did you see any evidence in this case where the interrogators, the police officers
28 who conducted the interviews, were urging the defendant to give a detailed account of
29 what happened?
- 30 A Yes.
- 31 Q Okay. If the police attempts to get detailed information which, you know, may
32 elicit corroboration and proof that, in fact, when the person said, I did, A, B, and C, that
33 suggests that he, in fact, did something, not just adopting information being spoon fed to
34 him or her by the police, and the defendant refuses to do something like that, would that
35 be the fault of the police or fault of a defendant who is not willing to provide or share
36 information?
- 37 A To answer your question as posed, that would not be evidence of police coercion
38 or misconduct. It would nevertheless reduce the reliability of the confession statement
39 in that you -- the reader of the transcript or the person who listens to the recording of it
40 would be less confident that the person really did it because they did not -- the person
41 says I did it, but does not provide guilty knowledge or, by his statement, evidence that
42 really shows that he must have done it.
- 43 Q So reliability can stem for -- from police action or from the defendant's actions?
- 44 A I'll put it this way, and you tell me if I'm missing anything. The police could do
45 everything right and what I would consider to be the most proper interrogation they
46 could do to make it least likely to get a false confession, and if a suspect was not

1 cooperative or only partially cooperative, the suspect might make a statement that
2 would still be unreliable, and in a sense it would be because the suspect didn't answer
3 some of the police questions, so I think the short answer to your question is yes.

4 Q How often does -- how often does a false statement or confession occur?
5 Studies have been done regarding interrogations and results of interrogations. How
6 often did those studies find that -- how prevalent are false confessions when it comes to
7 the study and the psychology of interrogations?

8 A You know, it sounds like a very simple question and there are some answers to
9 it, but I'm going to give you more than just one answer to it. One answer is that among
10 known cases of wrongful convictions, about one in four included a false confession, so
11 that's one way to look at it.

12 In terms of all the confessions that are made in police interrogations, often we don't
13 know for sure which are true and which are false. It has been estimated that it may be
14 about 1 percent or less of all confession statements are false confessions.

15 So among wrongful convictions, it's a pretty high percentage; among all confessions, it's
16 a pretty low percentage or at least it's estimated to be a pretty low percentage.

17 Q And can you put a number on it when you say low?

18 A No, I cannot put a number on it. It's estimated to be as low as 1 percent.

19 Q 1 percent. I'm sorry.

20 A Yes.

21 Q How long was JoJo Themonkey questioned by the police?

22 Q What time is it now, Doctor?

23 A Ten until 4:00.

24 Q Okay. I believe I'm done. I don't have any other questions, Doctor.

25 THE WITNESS: That's fine.

26 MR. GONZO: Apollo, do you have any questions?

27 MR. CHAINSAW: Not for the deposition, no.

28 (The deposition concluded at 3:50 p.m.)