

IN THE SUPREME COURT OF PENNSYLVANIA

No. 27 EAP 2012

COMMONWEALTH OF PENNSYLVANIA,

Appellant,

v.

JOSE ALICIA,

Appellee.

**BRIEF OF *AMICI CURIAE* THE INNOCENCE NETWORK AND
THE PENNSYLVANIA INNOCENCE PROJECT
IN SUPPORT OF APPELLEE**

Appeal by Allowance from the Order of the Superior Court dated March 14, 2011,
at No. 2445 EDA 2008,

Affirming the Order of the Court of Common Pleas of Philadelphia County,
Criminal Trial Division, dated August 12, 2008, at No. CP-51-CR-0107261-2006

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TABLE OF CONTENTS

	<i>Page</i>
INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. False Confessions Are a Real and Continuing Problem	4
A. False Confessions Demonstrably Have Occurred in a High Number of Cases Where Innocence Later Was Proven.....	4
B. Over Several Decades of Study, Researchers Have Identified Factors That Increase the Likelihood that Police Interrogations Will Elicit False Confessions.....	7
II. Jurors Do Not Understand the Phenomenon of False Confessions, and Expert Testimony on False Confessions Will Assist Jurors Without Invading Their Factfinding Function.....	9
A. Potential Jurors Have an Incorrect or Incomplete Understanding of False Confessions and Would Benefit from Expert Testimony on the Phenomenon. ...	10
1. Jurors Have an Incomplete and Inaccurate Understanding of Interrogations and Confessions.....	10
2. Jurors Have Difficulty Crediting Evidence That a Confession May Be Coerced or False	13
3. Potential Jurors Have Indicated That They Would Benefit from Hearing Expert Testimony About Interrogation and Confessions.....	14
B. Expert Testimony on False Confessions Will Assist the Finder of Fact Without Invading Its Province	15
III. Expert Testimony Regarding Interrogations and False Confessions Accords with Current Practice in Pennsylvania	17
A. Expert Testimony on False Confessions Will Assist the Trier of Fact.....	17
B. This Court Has Recognized the Problem of False Confessions	19
C. Pennsylvania Allows Expert Testimony Regarding a Related Phenomenon	20
CONCLUSION.....	21

TABLE OF AUTHORITIES

	<i>Page</i>
CASES	
<i>Arizona v. Fulminante</i> , 499 U.S. 279 (1991).....	7
<i>Boyer v. State</i> , 825 So. 2d 418 (Fla. 2002)	19
<i>Commonwealth v. Kacsmar</i> , 421 Pa. Super. 64, 617 A.2d 725 (1992)	20
<i>Commonwealth v. Miller</i> , 430 Pa. Super. 297, 634 A.2d 614 (1997).....	20
<i>Commonwealth v. Puksar</i> , 597 Pa. 240, 951 A.2d 267 (2008).....	18
<i>Commonwealth v. Robinson</i> , 864 N.E.2d 1186 (Mass. 2007)	18
<i>Commonwealth v. Wright</i> , 609 Pa. 22, 14 A.3d 798 (2011).....	4, 19
<i>J.D.B. v. North Carolina</i> , 131 S. Ct. 2394 (2011)	7
<i>Miller v. State</i> , 770 N.E.2d 763 (Ind. 2002)	19
<i>Riley v. State</i> , 604 S.E.2d 488 (Ga. 2004).....	18
<i>United States v. Hall</i> , 93 F.3d 1337 (7th Cir. 1996).....	19
<i>Vent v. State</i> , 67 P.3d 661 (Alaska Ct. App. 2003).....	19
RULES AND STATUTES	
42 PA. C.S. § 5920.....	20
PENNSYLVANIA RULE OF APPELLATE PROCEDURE 531(A)	1
PENNSYLVANIA RULE OF EVIDENCE 702	10, 17
OTHER AUTHORITIES	
Advisory Committee on Wrongful Convictions, <i>Report of the Advisory Committee on Wrongful Convictions</i> (Sept. 2011)	5
Iris Blandon-Gitlin, Katheryn Sperry & Richard A. Leo, <i>Jurors Believe Interrogation Tactics Are Not Likely to Elicit False Confessions: Will Expert Witness Testimony Inform Them Otherwise?</i> , 17 PSYCHOL., CRIME & LAW 239 (2011), reprinted as University of San Francisco Law Research Paper No. 2011-05.....	12
Danielle E. Chojnacki, Michael D. Cicchini & Lawrence T. White, <i>An Empirical Basis for the Admission of Expert Testimony on False Confessions</i> , 40 ARIZ. ST. L. J. 1 (2008).....	10, 13, 15

Mark Costanzo, Netta Shaked-Schroer & Katherine Vinson, <i>Juror Beliefs About Police Interrogations, False Confessions, and Expert Testimony</i> , 7 J. EMPIRICAL LEGAL ST. 231 (2010).....	11, 13, 15
Steven A. Drizin & Richard A. Leo, <i>The Problem of False Confessions in the Post-DNA World</i> , 82 N.C. L. REV. 891 (2004).....	4-5, 8, 9, 13
Itiel E. Dror & David Charlton, <i>Why Experts Make Errors</i> , 56 J. FORENSIC IDENTIFICATION 600 (2006).....	6
Brandon L. Garrett, <i>Judging Innocence</i> , 108 COLUM. L. REV. 55 (2008).....	5, 10
Brandon L. Garrett, <i>The Substance of False Confessions</i> , 62 STAN. L. REV. 1051 (2010)....	12, 18
Samuel R. Gross & Michael Shaffer, <i>Exonerations in the United States, 1989-2012</i> , Report by the Nat’l Registry of Exonerations (June 2012)	5, 10
Lisa E. Hasel & Saul M. Kassin, <i>On the Presumption of Evidentiary Independence: Can Confessions Corrupt Eyewitness Identifications?</i> , 20 PSYCHOL. SCI. 122 (2009).....	6, 13
Linda A. Henkel, Kimberly A.J. Coffman & Elizabeth M. Dailey, <i>A Survey of People’s Attitudes and Beliefs About False Confessions</i> , 26 BEHAV. SCI. & LAW 555 (2008).....	11, 14
Fred E. Inbau <i>et al.</i> , CRIMINAL INTERROGATIONS AND CONFESSIONS (5th ed. 2013).....	11, 12
Innocence Project, Eddie Joe Lloyd Profile, http://www.innocenceproject.org/Content/Eddie_Joe_Lloyd.php	5
The Innocence Project, Understand the Causes: False Confessions, http://www.innocenceproject.org/understand/False-Confessions.php	6
Saul M. Kassin, <i>On the Psychology of Confessions: Does Innocence Put Innocents at Risk?</i> , 60 AM. PSYCHOL. 215 (2005)	13
Saul M. Kassin <i>et al.</i> , <i>Police-Induced Confessions: Risk Factors and Recommendations</i> , 34 LAW & HUM. BEHAV. 3 (2010).....	<i>passim</i>
Saul M. Kassin & Katherine Neumann, <i>On the Power of Confession Evidence: An Experimental Test of the Fundamental Difference Hypothesis</i> , 21 LAW & HUM. BEHAV. 469 (1997).....	14
Saul M. Kassin & Holly Sukel, <i>Coerced Confessions and the Jury: An Experimental Test of the “Harmless Error” Rule</i> , 21 LAW & HUM. BEHAV. 27 (1997)	14
Richard A. Leo & Brittany Liu, <i>What Do Potential Jurors Know About Police Interrogation Techniques and False Confessions?</i> , 27 BEHAV. SCI. & LAW 381 (2009).....	12

Nat'l Registry of Exonerations,
<http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx>..... 5, 6

Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice
and Irrational Action*, 74 DENV. U. L. REV. 979 (1997)..... 6, 13

INTEREST OF AMICUS CURIAE

The Innocence Network and the Pennsylvania Innocence Project submit this brief as *amici curiae* under Rule 531(a) of the Pennsylvania Rules of Appellate Procedure in support of appellee Jose Alicea.¹

The Innocence Network (“the Network”) is an association of organizations dedicated to providing *pro bono* legal and/or investigative services to prisoners for whom evidence discovered post conviction can provide conclusive proof of innocence. The 66 current members of the Network represent hundreds of prisoners with innocence claims in all 50 states and the District of Columbia, as well as Australia, Canada, the United Kingdom, and New Zealand.² The Network and its members are also dedicated to improving the accuracy and reliability of the criminal justice system in future cases. Drawing on the lessons learned from cases in which the system convicted innocent per-

¹ Mr. Alicea’s name is incorrectly spelled “Alicia” on the docket.

² The member organizations include the Alaska Innocence Project, Association in Defense of the Wrongly Convicted (Canada), California Innocence Project, Center on Wrongful Convictions, Connecticut Innocence Project, Illinois Innocence Project, Duke Center for Criminal Justice and Professional Responsibility, The Exoneration Initiative, Georgia Innocence Project, Hawaii Innocence Project, Idaho Innocence Project, Innocence Network UK, Innocence Project, Innocence Project Arkansas, Innocence Project at UVA School of Law, Innocence Project New Orleans, Innocence Project New Zealand, Innocence Project Northwest Clinic, Innocence Project of Florida, Innocence Project of Iowa, Innocence Project of Minnesota, Innocence Project of South Dakota, Innocence Project of Texas, Justice Project, Inc., Kentucky Innocence Project, Maryland Innocence Project, Michigan Innocence Clinic, Mid-Atlantic Innocence Project, Midwestern Innocence Project, Mississippi Innocence Project, Montana Innocence Project, Nebraska Innocence Project, New England Innocence Project, Northern Arizona Justice Project, Northern California Innocence Project, Office of the Public Defender (State of Delaware), Office of the Ohio Public Defender, Wrongful Conviction Project, Ohio Innocence Project, Osgoode Hall Innocence Project (Canada), Pace Post-Conviction Project, Palmetto Innocence Project, Pennsylvania Innocence Project, Reinvestigation Project (Office of the Appellate Defender), Rocky Mountain Innocence Center, Selenger Centre Criminal Justice Review Project (Australia), Texas Center for Actual Innocence, Texas Innocence Network, Thomas M. Cooley Law School Innocence Project, Thurgood Marshall School of Law Innocence Project, University of British Columbia Law Innocence Project (Canada), Wake Forest University Law School Innocence and Justice Clinic, Wesleyan Innocence Project, Wisconsin Innocence Project, and Wrongful Conviction Clinic.

sons, the Network advocates reforms designed to enhance the truth-seeking functions of the criminal justice system and thereby prevent future wrongful convictions. In this case, the Network seeks to present a broad legal and scientific perspective on false confessions to the end of informing the Court's determination of whether the continued categorical exclusion of genuinely scientific expert testimony regarding the risks of false confessions serves the interests of justice or perpetuates the risk of convicting the innocent and allowing the guilty to escape justice.

The Pennsylvania Innocence Project, a member of the Network, is a nonprofit legal clinic and resource center founded in 2008 and housed at Temple University's Beasley School of Law. Its board of directors and advisory committee include practicing lawyers, law professors, former United States Attorneys, former state court prosecutors, and the deans of the law schools of Temple University, Villanova University, Drexel University, the University of Pennsylvania, and Rutgers-Camden. The Project provides *pro bono* investigative and legal services to indigent prisoners throughout the Commonwealth of Pennsylvania whose claims of actual innocence are supported by the results of DNA testing or other powerfully exculpatory evidence or whose claims, after a preliminary investigation, evince a substantial potential for the discovery of such evidence. In addition, the Project works to remedy the underlying causes of wrongful convictions to ensure that no one will be convicted and imprisoned for a crime he did not commit and to lessen the risk that a wrongdoer will escape justice because an innocent person was convicted in his stead. Allowing into the courtroom the light shed by expert testimony on interrogation methods and the psychology of confessions will assist jurors in evaluating false confessions and, in that way, foster the ascertainment of the truth and the just determination of criminal proceedings.

Amici have a compelling interest in ensuring that criminal trials arrive at accurate determinations of guilt and promote justice. Inasmuch as false confessions are a principal cause of

wrongful convictions, *Amici* have a compelling interest in the adoption of rules of evidence that reduce the risk of findings of guilt based on juror misunderstandings and inaccurate assumptions regarding false confessions.

SUMMARY OF ARGUMENT

People confess to crimes they did not commit. Certain commonly used police interrogation techniques are designed to break down a suspect's resistance to confessing, but these techniques can produce confessions from both the guilty and the innocent. If every accused who confesses after being subjected to such techniques were to be convicted, many innocent people inevitably would be among them. Indeed, untrue confessions are among the most frequent causes of wrongful convictions in this country: the most comprehensive study of exonerations shows that 15% of exonerations involve false confessions, a number that rises to 25% for homicide convictions. Studies of interrogations and confessions have demonstrated that confessions impact potential jurors more than do other forms of evidence, and that potential jurors do not discount confession evidence even when evidence of coercion, without explanation, is introduced. These results are not surprising: the idea of an innocent person confessing to a crime is highly counterintuitive to a layperson.

This case presents the Court with the opportunity to assist juries in their role as factfinders by allowing trial courts to admit expert testimony generally describing law enforcement interrogations and the factors that can lead to false confessions. Experts would be permitted to testify on subjects such as the training interrogators receive, the conduct and purpose of interrogations, and the psychological impact on suspects of certain interrogation tactics. Experts would educate jurors on the factors that research studies have shown to contribute to false confessions, including both situational factors that relate to interrogation conditions and individual factors that relate to characteristics of a suspect that may make the suspect more vulnerable to pressure. Such testimony would give

juries the tools they need to assess the reliability of confessions without invading their factfinding function — experts would *not* testify on the credibility of the witnesses or give opinions on whether a confession is true or false. Indeed, Pennsylvania law already allows experts to educate juries about other situations, such as battered person syndrome, because such situations are outside the experience of most laypersons and involve individuals whose reactions are counterintuitive to how laypersons believe they would react in the same situation. Extending that rationale to the present context would be consistent with the substance and the goals of Pennsylvania’s evidence law.

ARGUMENT

I. FALSE CONFESSIONS ARE A REAL AND CONTINUING PROBLEM.

A. False Confessions Demonstrably Have Occurred in a High Number of Cases Where Innocence Later Was Proven.

This Court recently reiterated that the problem of false confessions is very real: “We need not be reminded of the countless situations where persons confess to crimes of which they are innocent, either out of a desire to cover up for the guilty person or because of a psychological urge to do so.” *Commonwealth v. Wright*, 609 Pa. 22, 50-51, 14 A.3d 798, 816 (2011) (quoting *Commonwealth v. Conklin*, 399 Pa. 512, 514-15, 160 A.2d 566, 568 (1960)). That some people falsely confess to crimes they did not commit has been conclusively demonstrated. One of the most high-profile examples is the case of the so-called “Central Park jogger,” for which five juveniles were convicted after confessing to a 1989 rape. Over a decade later, a New York court vacated all five convictions when DNA testing and another man’s confession established that the rape had been committed by a different person. Steven A. Drizin & Richard A. Leo, *The Problem of False Confes-*

sions in the Post-DNA World, 82 N.C. L. REV. 891, 894-900 (2004).³ In the same year, DNA evidence proved the innocence of Eddie Joe Lloyd, a Michigan man who had falsely confessed to a 1984 rape and murder and had served 17 years in prison. Innocence Project, Eddie Joe Lloyd Profile, http://www.innocenceproject.org/Content/Eddie_Joe_Lloyd.php (last visited Aug. 11, 2012).

These stories illustrate a common statistical phenomenon in American criminal jurisprudence. In a recent analysis, the National Registry of Exonerations examined 873 exonerations from the last 24 years and found that 135 of those cases (15%) involved false confessions or false accusations by a codefendant who confessed; for homicide cases, the percentage rose to 25%. Samuel R. Gross & Michael Shaffer, *Exonerations in the United States, 1989-2012*, Report by the Nat'l Registry of Exonerations 40, 57 (June 2012). The Registry currently lists thirty Pennsylvania exonerations, six of which are associated with false confessions. Nat'l Registry of Exonerations, <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx> (last visited Aug. 11, 2012). Indeed, all members of the Pennsylvania Advisory Committee on Wrongful Convictions concur that false confessions are a contributing factor to the wrongful conviction of innocent people. Advisory Committee on Wrongful Convictions, *Report of the Advisory Committee on Wrongful Convictions* 83 (Sept. 2011), available at <http://jsg.legis.state.pa.us/resources/documents/ftp/documents/9-15-11%20rpt%20-%20Wrongful%20Convictions.pdf>.

Other studies have yielded similar results. A study of the first 200 DNA exonerations found that in 16% of the cases the exoneree had made a false confession. Brandon L. Garrett, *Judging Innocence*, 108 COLUM. L. REV. 55, 88 (2008). The Innocence Project has found that in approximately 25% of DNA exoneration cases, the defendant made an incriminating statement, a

³ All of the articles and studies cited in this Brief are collected in a separately-bound Addendum to the Brief, filed contemporaneously with this Brief.

false confession, and/or pled guilty. The Innocence Project, Understand the Causes: False Confessions, <http://www.innocenceproject.org/understand/False-Confessions.php> (last visited Aug. 11, 2012).

A confession's power can influence all aspects of the case against the confessor. Police frequently suspend investigations upon receiving a confession, thus curtailing the likelihood that the true perpetrator will be found. Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979, 984 (1997). A person who has given a confession likely will be subject to harsher charges than a suspect who has not confessed, and the prosecutor likely will put the confession at the center of the case. *Id.* Prosecutors are less likely to offer plea bargains to suspects who have offered confessions. *Id.* In addition, a confession may influence the content of other witness' testimony, thus corrupting supposedly independent (and possibly exculpatory) evidence. Lisa E. Hasel & Saul M. Kassin, *On the Presumption of Evidentiary Independence: Can Confessions Corrupt Eyewitness Identifications?*, 20 PSYCHOL. SCI. 122, 125 (2009). Knowledge that a suspect has confessed even can taint forensic examination results. *See* Itiel E. Dror & David Charlton, *Why Experts Make Errors*, 56 J. FORENSIC IDENTIFICATION 600, 605-13 (2006) (finding that fingerprint experts' identifications were influenced by contextual information such as whether the suspect had confessed).

Although many people may associate false confessions with the use of torture or other forms of physical harm, mere verbal, psychological interrogation techniques can be just as effective. Most confessions later proven false by DNA testing have occurred in the absence of physical coercion. *See* Saul M. Kassin *et al.*, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 6 (2010) (noting that by the mid-1960s, law enforcement had abandoned physical interrogation techniques); Nat'l Registry of Exonerations (showing none of the exonerations

using DNA evidence were for convictions prior to the 1970s). Indeed, as the United States Supreme Court recently noted, “the pressure of custodial interrogation is so immense that it ‘can induce a frighteningly high percentage of people to confess to crimes they never committed.’” *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2401 (2011) (quoting *Corley v. United States*, 556 U.S. 303, 321 (2009)); cf. *Arizona v. Fulminante*, 499 U.S. 279, 293 (1991) (White, J., dissenting) (“[T]he use of coerced confessions, ‘whether true or false,’ is forbidden ‘because the methods used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system — a system in which the State must establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth.’”) (quoting *Rogers v. Richmond*, 365 U.S. 534, 540-41 (1961)).

B. Over Several Decades of Study, Researchers Have Identified Factors That Increase the Likelihood that Police Interrogations Will Elicit False Confessions.

The study of false confessions has taken place over several decades, and hundreds of academic articles and books have been published on the topic. The pace of research has increased in the past 15 years, as has academic and legal notice of the phenomenon. Significantly, the American Psychology-Law Society (a division of the American Psychology Association), after extensive peer review, has published a White Paper on false confessions. Saul M. Kassin *et al.*, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3 (2010) (“APA White Paper”). A significant portion of this now-accepted research has focused on the factors that can cause a person to produce a false confession.

The scientific research has shown that false confessions are a product of two main types of factors: (1) situational factors, factors external to the suspect and introduced by the interrogator that create an atmosphere of oppression; and (2) dispositional factors, factors inherent to the

individual being interrogated that make the suspect particularly vulnerable to police pressure. Understanding relevant psychological principles and the specific factors that create a risk of eliciting a false confession will assist juries by providing them with a framework for analyzing the reliability of suspects' confessions and providing information they neither have nor intuitively know.

Situational factors. Situational factors that frequently appear in cases involving proven false confessions are lengthy interrogations, the presentation of false evidence, and minimization. Studies have found that while most interrogations last less than two hours, APA White Paper at 16, false confessions tend to occur in interrogations lasting significantly longer, *see* Drizin & Leo, 82 N.C. L. REV. at 948-49 (study of 125 proven false confessions finding that, of those cases in which the interrogation length was available, 84% lasted longer than six hours). Studies also have shown that even though interrogators legally may lie to a suspect about the existence of evidence against him, the introduction of such false evidence can make the suspect vulnerable to manipulation, such as causing him to believe he is trapped and has no option other than confessing, or causing him to doubt his own memory and believe the purported "evidence" instead. APA White Paper at 16-18. Lastly, both laboratory studies and analyses of proven false confessions have shown that minimizing the moral turpitude of the suspect's alleged crime by developing themes that allow the suspect to justify or otherwise explain the reasons the crime occurred, such as by suggesting it was an accident or was another person's idea, can elicit false confessions. *Id.* at 18-19.

Dispositional factors. Dispositional factors that can affect an individual's decision-making in an interrogation setting include youth, cognitive and intellectual disabilities, and personality traits and psychopathology. Drizin and Leo's study of 125 false confessions found that juveniles (persons under 18 years of age) comprised approximately one-third of the cases examined. Drizin & Leo, 82 N.C. L. REV. at 944; *see also* APA White Paper at 19-20 (discussing how the psychological

and developmental makeup of juveniles makes them particularly susceptible to interrogation techniques that can produce false confessions: compared to adults, they have less maturity and responsibility, are more vulnerable to outside pressure, have less developed personalities, and are less knowledgeable about legal matters). Those with intellectual disabilities, including various tendencies that create a higher susceptibility to suggestion and other forms of influence, as well as a diminished capacity to understand and appreciate *Miranda* warnings, also are overrepresented among false confessors. APA White Paper at 20-21. Persons with mental illnesses are a third category of persons overrepresented with false confession cases. *Id.* at 21-22. Antisocial personality traits are associated with both false denials and false confessions, and traits associated with mental illness have been linked to false confessions. *Id.*

While some of these factors may appear obvious, surveys of potential jurors and laypersons have revealed that they do not fully comprehend the impact these factors may have in eliciting a false confession, or they may not understand when these factors apply.

II. JURORS DO NOT UNDERSTAND THE PHENOMENON OF FALSE CONFESSIONS, AND EXPERT TESTIMONY ON FALSE CONFESSIONS WILL ASSIST JURORS WITHOUT INVADING THEIR FACTFINDING FUNCTION.

Recent research challenges the assumption that jurors understand interrogations and false confessions and do not need the assistance of expert testimony. Surveys have shown both that potential jurors do not know about permitted interrogation techniques and that they do not understand how and why such interrogation techniques can elicit false confessions. Such gaps in juror understanding are particularly troubling in light of studies that have shown that laypersons place great faith in confessions. Moreover, when asked, potential jurors have expressed a desire for greater information about interrogations and confessions and agreed that expert testimony on interrogation and confessions would benefit them. These results are not surprising: the idea that someone would

falsely confess to a crime is counterintuitive, and it is even more counterintuitive that someone would falsely confess to a serious crime such as murder, yet studies show that murders produce the highest percentage of proven false confessions. See Gross & Shaffer, *Exonerations in the United States, 1989-2012* at 40; Garrett, *Judging Innocence*, 108 COLUM. L. REV. at 90 (positing that because “where a victim is dead, police often need to rely on other evidence,” they “may pursue a confession more vigorously in murder cases”).

The circumstances present here — gaps in juror knowledge, coupled with a counterintuitive phenomenon that makes it difficult for a juror to understand how to interpret the information presented — are precisely those under which Pennsylvania Rule of Evidence 702 permits expert testimony: “If scientific, technical or other specialized knowledge beyond that possessed by a layperson will assist the trier of fact to understand the evidence or to determine a fact in issue.”

A. Potential Jurors Have an Incorrect or Incomplete Understanding of False Confessions and Would Benefit from Expert Testimony on the Phenomenon.

1. Jurors Have an Incomplete and Inaccurate Understanding of Interrogations and Confessions.

In the past five years, numerous published surveys and scientific studies have demonstrated that although laypersons are generally aware that false confessions occur, they possess incomplete or inaccurate information about the phenomenon.

Interrogation techniques. Laypersons may have great faith in confessions because they are not aware of the techniques an interrogator legally may use. For example, in one survey, more than half of potential jurors were unaware that a police officer legally may lie to the suspect. Danielle E. Chojnacki, Michael D. Cicchini & Lawrence T. White, *An Empirical Basis for the Admission of Expert Testimony on False Confessions*, 40 ARIZ. ST. L. J. 1, 37-38 (2008). Many jurors

think that such techniques are, or should be, impermissible. Mark Costanzo, Netta Shaked-Schroer & Katherine Vinson, *Juror Beliefs About Police Interrogations, False Confessions, and Expert Testimony*, 7 J. EMPIRICAL LEGAL ST. 231, 238-39 (2010) (only 17% of mock jurors surveyed agreed that lying about the existence of matching fingerprints or DNA was a permissible tactic); Linda A. Henkel, Kimberly A.J. Coffman & Elizabeth M. Dailey, *A Survey of People's Attitudes and Beliefs About False Confessions*, 26 BEHAV. SCI. & LAW 555, 567 (2008) (69% of respondents disagreed with the proposition that, “[i]t is okay for the police to lie about the existence of physical evidence or a witness in order to elicit a confession.”). Jurors thus have a gap in their understanding of what techniques may be utilized during an interrogation, and experts can help to fill that gap.

Jurors also may have little or no knowledge of certain widely known techniques used in eliciting confessions, such as the Reid Technique. The Reid Technique is a nine-step method that has been taught to hundreds of thousands of investigators and that uses psychological tactics to elicit a confession. APA White Paper at 6-7; Fred E. Inbau *et al.*, CRIMINAL INTERROGATIONS AND CONFESSIONS viii (5th ed. 2013). Under the Reid Technique, an interrogator follows a process that includes both positive and negative incentives designed to induce a confession, including directly accusing the suspect, confronting him with evidence (which may be true or fabricated), interrupting denials of guilt and professions of innocence or turning them into justifications, expressing empathy, and offering alternative scenarios of the crime (none of which includes the suspect's innocence). *See id.* at 185-325 (describing the nine steps of interrogation); APA White Paper at 6-7. The method is designed to present the suspect with only two alternatives — one scenario in which the crime is cold-blooded, inexcusable, and indefensible, and a second scenario in which the crime is accidental, impulsive, or justified. Inbau *et al.*, CRIMINAL INTERROGATIONS AND CONFESSIONS at 293-301. If the technique works, the suspect will confess to the less heinous scenario to avoid being associated with the more negative one. *See id.* Jurors also may not know about the importance of independent cor-

roboration: “information about a suspect’s crime that was not known until the confession and was independently verified by the investigator,” *Id.* at 355, or about the phenomenon of police contamination and its prevalence in known cases of proven false confessions, *see* Brandon L. Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, 1066-92 (2010) (analyzing 40 confessions later shown by DNA evidence to be false and finding contamination in 36 of the cases).

Factors that can produce false confessions. Even when jurors know about non-physical coercive tactics that may be used, studies show they do not have the tools to evaluate the psychological effects these tactics may have. This is not surprising, because the vast majority of jurors have never personally experienced interrogations themselves. One survey of persons in a jury pool found that jurors do not instinctively recognize how coercive non-physical interrogation tactics may be. Iris Blandon-Gitlin, Katheryn Sperry & Richard A. Leo, *Jurors Believe Interrogation Tactics Are Not Likely to Elicit False Confessions: Will Expert Witness Testimony Inform Them Otherwise?*, 17 PSYCHOL., CRIME & LAW 239 (2011), *reprinted as* University of San Francisco Law Research Paper No. 2011-05, 9 (“[E]xcept for actual or threat of violence . . . participants rated the likelihood of eliciting true confession as significantly higher than eliciting false confessions in all interrogation categories, even for those perceived as highly coercive.”). Another survey found that participants did not appear to believe that psychological interrogation techniques were likely to produce false confessions. Richard A. Leo & Brittany Liu, *What Do Potential Jurors Know About Police Interrogation Techniques and False Confessions?*, 27 BEHAV. SCI. & LAW 381, 387-88, 395 (2009) (finding that participants, when scoring effectiveness of psychological interrogation techniques, “did not appear to believe that psychological interrogation techniques were likely to elicit false confessions”).

In addition, jurors do not understand the dispositional factors that render individuals vulnerable to false confession. One survey found that 57% of the potential jurors surveyed disagreed with or were uncertain about the statement that children and youth are more likely than an adult to confess to a crime when interrogated by police, and that 46% disagreed with or were uncertain about the statement that mentally impaired individuals are more likely to produce false confessions when interrogated by police. Chojnacki, Cicchini & White, 40 ARIZ. ST. L. J. at 33.

These views directly conflict with evidence of proven false confessions that were elicited by interrogations using psychological techniques. *See generally* Drizin & Leo, 82 N.C. L. REV. 891; Ofshe & Leo, 74 DENV. U. L. REV.; APA White Paper at 19-22. Jurors thus do not understand, or fully comprehend, the impact that psychological interrogation tactics may have on a suspect, particularly vulnerable individuals, and the fact that such interrogations can produce false confessions.

2. Jurors Have Difficulty Crediting Evidence That a Confession May Be Coerced or False.

“[P]eople reflexively trust confessions, as they do other statements against self-interest.” Hasel & Kassin, 20 PSYCHOL. SCI. at 122. To most people, the idea that someone would confess to a crime he did not commit is highly implausible, and laypersons believe that they would never falsely confess to a crime during a police interrogation. *See, e.g.*, Costanzo, Shaked-Schroer & Vinson, 7 J. EMPIRICAL LEGAL ST. at 238-39 (over 91% of mock jurors surveyed disagreed that they would be likely to confess to a minor crime if interrogated by police; over 93% disagreed that they were likely to confess to a serious crime); *cf.* Saul M. Kassin, *On the Psychology of Confessions: Does Innocence Put Innocents at Risk?*, 60 AM. PSYCHOL. 215, 218-19 (2005) (describing study demonstrating that innocent suspects may waive their rights during interrogation because they think their innocence means they have no need for such protections).

Jurors' personal beliefs about their own likelihood of confessing to a crime they did not commit, combined with their lack of understanding of the pressures brought against an accused during interrogation or the psychological effects of those pressures, may help explain studies showing that the introduction of confessions will increase conviction rates even when non-expert evidence of coercive techniques is introduced without further explanation. For example, in one study, the presence of a confession was sufficient to convert an acquittal into a conviction, "irrespective of the contexts in which it was elicited and presented." Saul M. Kassin & Holly Sukel, *Coerced Confessions and the Jury: An Experimental Test of the "Harmless Error" Rule*, 21 LAW & HUM. BEHAV. 27, 42 (1997). Other studies have shown that confessions are one of the most powerful forms of evidence that can be introduced against a defendant, significantly surpassing eyewitness evidence and character evidence. See Saul M. Kassin & Katherine Neumann, *On the Power of Confession Evidence: An Experimental Test of the Fundamental Difference Hypothesis*, 21 LAW & HUM. BEHAV. 469, 475-76, 481 (1997); see also Henkel, Coffman & Dailey, 26 BEHAV. SCI. & LAW at 561 (only 26% of respondents disagreed with the statement that "[a] confession is a strong indicator of a person's guilt," and 66% stated that a person who signed a written confession during interrogation was definitely or probably guilty). In the absence of expert testimony, then, laypersons tend to put great weight on a confession's existence, even if the confession is uncorroborated, undermined by other exculpatory evidence, or otherwise proven to be unreliable. Expert testimony would help jurors to understand how to weigh the confession's veracity and not to place undue reliance on the mere fact that it exists.

3. Potential Jurors Have Indicated That They Would Benefit from Hearing Expert Testimony About Interrogation and Confessions.

Surveys that ask laypersons whether jurors would benefit from hearing expert testimony on interrogation and confession have received overwhelmingly positive responses. In one

survey, 80% of respondents agreed that jurors would benefit from such testimony, and 81% disagreed that most jurors already know enough about interrogations and confessions to make informed judgments about confession evidence at trial. Chojnacki, Cicchini & White, 40 ARIZ. ST. L. J. at 43-44. Another survey found that over 70% of the mock jurors surveyed agreed that it would be useful for jurors to hear an expert witness testify about interrogation techniques and why an innocent defendant might falsely confess. Costanzo, Shaked-Schroer & Vinson, 7 J. EMPIRICAL LEGAL ST. at 239-43. Such a strong response indicates that potential jurors recognize that they do not possess sufficient information to make informed decisions related to interrogation and confession issues and would appreciate the opportunity to learn more.

B. Expert Testimony on False Confessions Will Assist the Trier of Fact Without Invading Its Province.

The strong desire of laypersons to be educated about false confessions, coupled with research showing the gaps and inaccuracies in potential jurors' knowledge and the harm that such incomplete knowledge can cause, demonstrates that expert testimony on interrogations and confessions would assist the trier of fact in determining whether a confession is false.⁴ This expert testimony would not invade the jury's province of assessing credibility or determining the facts of the individual case before it. Interrogation and confession experts would not opine on the credibility of witnesses, nor would they offer opinions as to the truth or validity of particular confessions. The experts merely would provide a framework, based on established, general accepted research or clinical

⁴ In addition to benefiting jurors, expert testimony on this topic (and the resulting in-depth examination of confessions) would also benefit the investigation process as a whole by encouraging police officers to record interrogations and to perform additional investigation to find evidence that corroborates the confession. Such additional measures would strengthen cases against those who give true confessions.

evaluations of the suspect, for juries to consider in their weighing of confession evidence. No evidence shows that jurors would be misled by such testimony.

Pennsylvania allows expert testimony to assist jurors on a wide variety of topics; there is no reason not to trust jurors with expert testimony on interrogations and confessions as well. The argument that expert testimony on interrogations and confessions “impermissibly invades the jury’s exclusive role as the arbiter of credibility,” *Commw. Br.* at 18, incorrectly assumes that jurors already possess all necessary knowledge to make educated decisions about the veracity of confessions. Potential jurors do not have a complete and accurate understanding of how interrogations and confessions work, yet are asked to make factual findings concerning them. Expert testimony describing interrogation techniques and discussing how they can influence the interrogated person will assist jurors in determining whether a defendant’s false confession claim is supported; it will fill gaps in knowledge and give correct (and essential) information. The Commonwealth’s attempt to keep out such knowledge on the basis that it is credibility testimony misconstrues the nature and limited scope of the expert testimony.

The question of whether a confession is false should not be put to a jury without the assistance and context provided by expert testimony. Bromides about the credibility-determining function of juries aside, the fact is that unassisted juries frequently get the answer wrong. Jurors systematically disbelieve claims that anyone could have confessed to a crime he did not commit, even though it is undisputed that people, in fact, do falsely confess. Expert testimony about how interrogations work does not subvert the jury’s role of assessing witness credibility; instead, shielding jurors from such testimony hinders their ability to accurately assess witness credibility. Pennsylvania’s justice system places great trust in jurors’ ability to weigh various types of evidence and come

to a correct decision, and there is no reason to believe that jurors cannot be trusted to assess and weigh expert testimony on confessions as part of performing their duty.

III. EXPERT TESTIMONY REGARDING INTERROGATIONS AND FALSE CONFESSIONS ACCORDS WITH CURRENT PRACTICE IN PENNSYLVANIA.

A. Expert Testimony on False Confessions Will Assist the Trier of Fact.

Pennsylvania Rule of Evidence 702 states that “a witness qualified as an expert by knowledge, skill, experience, training or education may testify” “[i]f scientific, technical or other specialized knowledge beyond that possessed by a layperson will assist the trier of fact to understand the evidence or to determine a fact in issue.” Rule 702 thus recognizes that factfinders may need the assistance of expert testimony, and that such testimony may be introduced without disturbing the factfinder’s function.

The trial court’s ruling also recognized this distinction between the expert’s role and the factfinder’s role. Dr. Richard A. Leo, the false confessions expert, was permitted to testify about “the general concept of false confessions,” as well as “Police training methods in the field of interrogations,” “Police interrogation methods,” and “Why certain interrogation techniques, if used in a particular case, may increase the risk of false confession,” but not about issues specific to the interrogation and confession in question. Trial Ct. Order (8/12/08). As the trial court explained in its opinion, Dr. Leo’s testimony on the permitted topics would assist, not usurp, the jury’s factfinding role: “Dr. Leo’s testimony would serve to enhance the jury’s ability to assess the credibility of the defendant’s confession by giving them an increased knowledge and understanding of police interrogation techniques in general.” Op. at 6. This simply provides jurors with a framework for assessing the reliability of the confession without straying into its factfinding function.

The trial court’s opinion is hardly an outlier. This field has both wide and deep scien-

tific support and is generally accepted in the relevant field of psychology. The Commonwealth's assertion that false confession evidence is not based on any underlying science, Commw. Br. at 19-21, is belied by decades of research and hundreds of published academic articles and books. As discussed above, the American Psychology-Law Society, after extensive peer review, has published a White Paper on false confessions that in turn cites over 300 books, articles, and other sources on subjects related to police interrogations and false confessions. See APA White Paper at 31-38. Multiple studies have shown the rate of false confessions in known wrongful convictions, see Section I.A., *supra*, and have examined the circumstances of these false confessions, see, e.g., Garrett, *The Substance of False Confessions*, 62 STAN. L. REV. 1051, as well as laypersons' knowledge of interrogations and false confessions, see Section II.A., *supra*. The cases from other jurisdictions that the Commonwealth cites to support its argument that the field is not generally accepted, Commw. Br. at 20-21, predate many of these important developments.⁵ As this Court has stated, "the purpose of the [*Frye*] test is merely to help the court determine when a scientific principle or discovery crosses the line between the experimental and demonstrable stages." *Commonwealth v. Puksar*, 597 Pa. 240, 253, 951 A.2d 267, 275 (2008). The science examining interrogations and confessions has crossed that line into acceptability under *Frye*.

Several other jurisdictions agree that such testimony is generally accepted and impor-

⁵ In addition, the three most recent of these out-of-jurisdiction cases the Commonwealth cites all have problems that severely limit their supposed support of the Commonwealth's argument. In *Commonwealth v. Robinson*, the court relied on the expert's statements about the status of the field — statements that were made *prior to* the defendant's **1997** conviction and thus predate significant developments in the field. See 864 N.E.2d 1186, 1187, 1190 (Mass. 2007). In *Riley v. State*, the court's decision was based on statements made by a supposed expert who admitted he had never studied the topic of false confessions prior to being retained for the case and who had only read five articles on the topic. 604 S.E.2d 488, 494-95 (Ga. 2004). The third case cited by the Commonwealth actually supports the decision of the trial court here, holding that whether to admit such testimony "is a question that fell within the broad discretion reserved to the trial court." *Vent v. State*, 67 P.3d 661, 670 (Alaska Ct. App. 2003).

tant to fill gaps in jurors' knowledge about interrogations and false confessions. *See, e.g., United States v. Hall*, 93 F.3d 1337, 1345 (7th Cir. 1996) ("It was precisely because juries are unlikely to know that social scientists and psychologists have identified a personality disorder that will cause individuals to make false confessions that the testimony would have assisted the jury in making its decision. . . . But the jury here [where the expert was excluded] may have been deprived of critical information it should have had in evaluating Hall's case."); *Boyer v. State*, 825 So. 2d 418, 419 (Fla. Dist. Ct. App. 2002) ("[T]he trial court is not compelled to exclude the [interrogation and false confessions] expert just because the testimony may cover matters within the average juror's comprehension. . . . Even though the jury may have beliefs about the subject, the question is whether those beliefs are correct."); *Miller v. State*, 770 N.E.2d 763, 774 (Ind. 2002) ("[T]he general substance of [the expert's] testimony would have assisted the jury regarding the psychology of relevant aspects of police interrogation and the interrogation of mentally retarded persons, topics outside common knowledge and experience."). These courts have recognized that providing juries with information on interrogations and false confessions is likely to assist them in reaching a fair and accurate decision.

B. This Court Has Recognized the Problem of False Confessions.

In *Commonwealth v. Wright*, this Court reiterated its longstanding recognition of the problem of false confessions: "We need not be reminded of the countless situations where persons confess to crimes of which they are innocent, either out of a desire to cover up for the guilty person or because of a psychological urge to do so." 609 Pa. 22, 50-51, 14 A.3d 798, 816 (2011) (quoting *Commonwealth v. Conklin*, 399 Pa. 512, 514-15, 160 A.2d 566, 568 (1960)). This Court further recognized that even when a confession is in evidence, the jury, as factfinder, still must determine whether its contents are true. 609 Pa. at 51-52, 14 A.3d at 816 ("Further, even if a confession has properly been admitted into evidence at trial, a finder of fact is still not compelled to believe the mat-

ters contained in the confession and to automatically return a verdict of guilty, since the confession is not decisive of the issue of the defendant's guilt or innocence."'). The importance of the jury's fact-finding function, combined with the known problem of false confessions, strongly weighs in favor of providing the jury with the tools it needs to make an educated assessment of a confession's truth.

C. Pennsylvania Allows Expert Testimony Regarding a Related Phenomenon.

Pennsylvania law permits expert witnesses to testify in order to fill gaps in jurors' knowledge of how people react to certain situations in ways that are counterintuitive to what most people would expect. For example, in the case of battered person syndrome, an abused person acts out of a belief that he is in danger of death or serious injury, even when the immediate circumstances would not lead the average person to believe that such an imminent danger exists. The Superior Court has held that expert testimony regarding battered person syndrome is relevant and "is not introduced to improperly bolster the credibility of the defendant, but rather, to aid the jury in evaluating the defendant's behavior and state of mind . . ." *Commonwealth v. Miller*, 430 Pa. Super. 297, 313-14, 634 A.2d 614, 622 (1997); *see also Commonwealth v. Kacsmar*, 421 Pa. Super. 64, 79, 617 A.2d 725, 732-33 (1992) (allowing psychiatric expert testimony because the reasonableness of defendant's belief that he was in danger of death or serious injury due to the interplay between defendant's lack of self esteem, the history of abuse, and events on the night of the shooting "is not within the understanding of the ordinary juror").⁶

⁶ In addition, experts will be able to testify about "specific types of victim responses and victim behaviors," although they will not be able to testify as to a witness's credibility. 42 PA. C.S. § 5920. This type of expert testimony addresses the same problem that occurs with false confession evidence — a person's response runs counter to that which a layperson would expect — and the type of testimony to be admitted mirrors that which defendant seeks to introduce here — testimony that generally discusses how people respond to interrogation

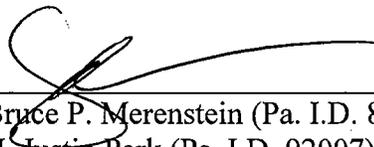
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The rationale behind allowing expert testimony on battered person's syndrome is the same as that for presenting expert testimony on false confessions. Both situations involve individuals who are placed in circumstances outside the experience of most laypersons, and whose reactions, for an array of psychological and sociological reasons that have been established through numerous scientific studies, are counterintuitive to how laypersons believe they would react in the same situation. Allowing expert testimony on these topics provides juries with essential tools for properly evaluating these reactions and for making informed decisions.

CONCLUSION

For the foregoing reasons, this Court should hold that expert testimony on false confessions may be presented to a jury in a criminal case.

Respectfully submitted,



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and why that response may appear counterintuitive to laypersons, but does not assess the credibility of a specific person.

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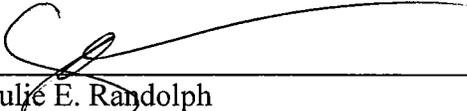
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