

FALSE CONFESSIONS

The Basics

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Why do innocent people confess? Some reasons include:

Duress

Coercion

Intoxication

Diminished Capacity

Mental Impairment

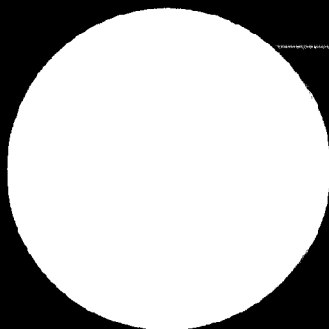
Ignorance of the Law

Fear of Violence

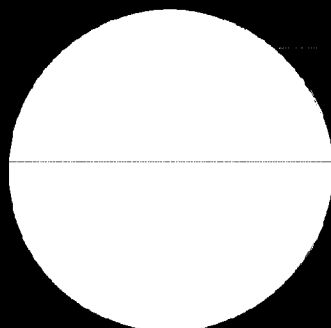
Actual Infliction of Harm

Threat of a Harsh Sentence

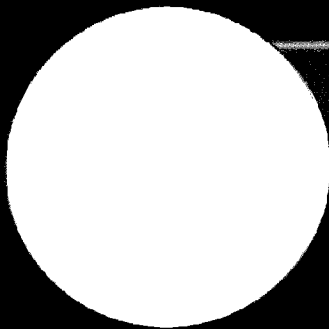
SOURCE: Innocence Project



False confessions are one of the leading causes of wrongful convictions analyzed in a recent report released by the National Registry of Exonerations (www.exonerationregistry.org).



The Registry reports that the primary reason for false confessions is coercion – occurring in at least 60% of the false confession cases analyzed.



According to the Registry, 75% of false confessions documented occurred in homicide cases.

Table 16: Exonerations by Crime and Type of False Confession

	Confession By Defendant	Confession by Co-defendant	Confession by Defendant or Co-defendant
Homicide (416)	25%	23%	<u>39%</u>
Sexual Assault (203)	8%	3%	8%
Child Sex Abuse (102)	7%	1%	8%
Robbery (47)	2%	2%	4%
Other Crimes of Violence (47)	15%	6%	19%
Non-Violent Crimes (58)	3%	9%	12%
ALL CASES (873)	15%	13%	24%

SOURCE: National Registry of Exonerations – Full Report

http://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf

Table 17: False Confessions by Age and Mental Disability

Age and Mental Status of the Exonerated Defendant	Proportion Who Falsely Confessed
Juveniles – under 18 at time of crime (39/92)	<u>42%</u>
11 – 14 year olds (14/19)	<u>74%</u>
15 – 17 year olds (25/73)	<u>34%</u>
Mentally Ill or Mentally Retarded (53/70)	<u>75%</u>
Adults Without Known Mental Disabilities (56/719)	8%
ALL CASES (135/873)	15%

SOURCE: National Registry of Exonerations – Full Report
http://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf

COERCED CONFESSIONS

A Case Study

Excerpts from a Coerced Confession

Interviewer:

I'm a psychologist. It's my job to get inside someone's head and maybe let them know what's going on in their life, okay, and so on and so forth. All right? We try to help people. I'm here – *I'm in a business of helping people.*

Interviewer: There's two roads we can go down here today.

Okay? This is something that you can recover from here today or you are a mass murderer and a malicious person. It's one of the two ways here today. Okay? Absolutely. Okay? Either the – either my psychological report is wrong or you saying you're not a monster but you really are, and you're that cunning and – and clever – hey, then you're a monster, and – and we need to deal with you in that light. Okay?

Because strapping this thing around you in the State of Texas for committing murder, it's the needle. Okay? That's it. If you – the next time you see this, if you're a monster – if you're going to tell me you're a monster, the next time you're going to see this, okay, that's down in Huntsville and they're going to put a needle in your arm for capital murder. Okay? And that's – but I don't want – that's not going to happen to you. Okay?

Interviewer: His wife got a new job, everything else, you know. She just moved back to where she always wanted to go, and she was going out with her friends all the time. You know what? She saw the writing on the wall. She's like, you know what, not that I don't care about my kids, but I don't care about my husband, okay, and stuff like that; I want a better life because he's always wanting me to do things and do things and do things, go to the store; he always wants to have sex with me and X, Y, Z, and stuff like that. Okay? And she found sanctuary in her friends. You know what I'm saying? And within those friends, she found freedom, okay, because she – she already – she – she felt that she already raised her kids and stuff like that.

Interviewer: What happened with – with Jimmy, Jimmy, 35 years old, okay, working his butt off, working from 4:00 in the morning, okay, until 7:00 p.m., taking care of five kids while mom's at work, and God only knows what she's doing after work. You know what I'm talking about? Okay? They got into a fight. They got upset. Okay? And one thing led to another. Okay? And he's like, well, let's have sex now. She's like, No, I don't want to have sex with you, and, as a matter of fact, I'm thinking about leaving you. Okay

Interviewer: He was mad. It stewed inside him. Okay? You know what that's called? What do you think that's called? Mental anguish. You ever heard of heat of passion? What's heat of passion? What do you do things in – when somebody does something in the heat of passion or heat of the moment –

Mr. Hall: They're like not thinking right or whatever?

Interviewer: Absolutely. Okay. *You think that's a defense?*

Mr. Hall: Yeah.

Interviewer: *Absolutely.*

Say for instance – look at me. Look at me, Timothy. Say my ex-wife – okay. Say I walk in the room, and you and my ex-wife are sleeping together, and somebody – and I pull out a 45 and shoot you and shoot my ex-wife, and I have to take care of my five kids, and I have a stressful job, and stuff like that. Okay. And I initially lie to the police and say, No, nothing like that happened. Okay? But then I tell, you know, the polygraph examiner – because I am going to fail the polygraph because I am a sociopath. Okay? Even sociopaths fail the polygraph. But whatever. Okay? *How much trouble do you think I'm going to be in in the State of Texas?* How much? If I'm the breadwinner, if I'm the caregiver, how much trouble do you think I'm going to be in in the State of Texas?

Mr. Hall: None?

Interviewer: *None. It's a fact. Okay?*

Interviewer: *None. It's a fact.* Okay? All right? But you've got to help me tell your side of the story. Okay? Either the police out there are going to think you're a monster or a killer or it was something in the heat of passion and the moment that you didn't even do that she infuriated you. Okay? It's one of the two, my friend. All right? It's very simple, very cut-and-dried. Okay?

Mr. Hall: Okay.

Interviewer: I already know you're not a bad guy. You are a good man. *You're going to see your kids.* I can – listen. Listen. *I can offer you and promise you counseling.* Would you take counseling over this? Would you take counseling over this? Okay? Was it something like I said earlier? Was – did she hurt you? Did she hurt you? Did she hurt you, Timothy? Was it like that? Was it the heat of the moment? Was it the heat of the moment and you were scared? Was it? Was it the heat of the moment, Timothy? Tell me, was it heat of the moment? You're not a monster are you?

Mr. Hall: (Inaudible).

Interviewer: Was it heat of the moment? Huh? I know it's hard. I know it's hard. It was, wasn't it? Huh? It was, wasn't it?

Mr. Hall: No.

Interviewer: What was it? What was it, son? I know you can do it. I know you can do it. You're not a monster. It was the heat of the moment, wasn't it?

Mr. Hall: It was an accident, I guess.

Interviewer: What happened?

Mr. Hall: Exactly the way you said.

Interviewer: Exactly. And what happened?

Mr. Hall: She liked to be choked. I don't –

Interviewer: I know you've –

Mr. Hall: -- know.

Interviewer: I know you've been holding this in.

Mr. Hall: I don't know.

Interviewer: Tell me exactly what happened that day. You woke up?

Mr. Hall: I woke up, and she wanted to make love, and she wanted –

Interviewer: Uh-huh.

Mr. Hall: -- to be choked.

Interviewer: Uh-huh?

Mr. Hall: And so I did, and she just fell and wouldn't get back up.

Interviewer: No. You can do anything you want, Timothy.

Okay? But the most important thing is you told me the truth here. Okay? I – I – I know you didn't – you didn't go out and – and stab or hack anyone with an ax. Okay? You know what I'm saying?

Mr. Hall: I just did what she wanted.

Interviewer: Okay. And that was – and that's – and that's exactly what happened?

Interviewer: Yeah? Okay. Okay. Okay. Okay. All right. All right.

Okay. Timothy, shh. It's going to be okay. Okay? It's okay. You got it out of you. Okay?

I can promise you – I can promise you you're going to feel much better in the – in the upcoming months. Okay? Because you know what? You're not going to have so much repression and depression. You're not going to be feeling the weights of the world on your shoulders. Okay? You've got to get stuff like this out. You have to. And if you keep stuff like this inside you, you know, who knows what happens. All right? And this is the first step in healing yourself. Okay?

Mr. Hall: Am I going to jail?

Interviewer: Shh, shh, shh, shh, shh, shh. We're going to talk about this some more. Okay? Can I bring – can I bring the other investigator in and tell her what happened real quick? Okay? No? You want to talk to me a little bit more?

Mr. Hall: I thought I was going to get to –

Interviewer: Shh, shh, shh, shh.

Mr. Hall: -- see my kids.

Interviewer: Hey, this is the road. Timothy, look at – look at me. Look at me right now. This is the road. Okay? You are on the path to helping yourself and helping your family. Okay?

I'm not going to – I'm not going to – I'm not going to blow any smoke up your butt and lie to you. Okay? This is the road. You voluntarily came in here, right?

Interviewer: About not lying, about not being a deceiver, and stuff like that. Okay? And that's the good thing. That tells me you're not a monster, that you're not a bad person. Okay?

Interviewer: And now that we've gotten it out, okay, we've already gone through the hard part. Okay? Don't you agree? We've already gone through the hard part. Okay?

I'm going to have the other investigator come in here with me, and we're going to ask you some more questions. Okay? And it's not going to be embarrassing you and stuff like that. This is – we already knew – they already know out there that you weren't a monster. Kay has already told them that you were not a monster. Okay? But they have more details about what happened there, and they just need to ask you some questions. And you just be honest with – with them and me, just like you've been honest with me here today. Okay?

Mr. Hall: I just did what she wanted me to do.

Mr. Hall: And she kind of put it in, and I proceeded. And then she grabbed my arms and put them on there and started squeezing down, and then she just passed out.

Donna: She put her arms where?

Mr. Hall: On mine and then put my arms on her.

Interviewer: Then you squeezed and squeezed?

Mr. Hall: And she just said, Please, harder, please.

Interviewer: Okay. What happened after that?

Mr. Hall: She fell over.

Mr. Hall: I just want to go home to my kids.

Mr. Hall: Am I going to go to jail?

Donna: I don't know that yet. I'm not going to lie to you. I don't know that yet. Okay?

Mr. Hall: *He just told me that I was either going to go to jail or admit to that.*

Donna: You had anal sex with her (inaudible) No? Regular sex?

Mr. Hall: He said it was anal.

Donna: He did?

Mr. Hall: He said that someone sodomized her.

Donna: Uh-huh.

Mr. Hall: *And I just confessed to it because I just want to go home.*

Interviewer: All right, (inaudible). Come on now, it's going to be all right. Okay? It's going to be all right. All right? *You didn't tell me that just because you want to go home. This is what happened. Okay? And it's time to man up.* It's okay. All right, Tim? Okay? It's okay.

I know you were under a lot of pressure. I know you're – I know you've been carrying this thing around for a week. Okay? And that's the kind of pressure I'm talking about. All right?

From this day forward – all right, this day forward – today, from September 28th, 2005, is the day Timothy Hall is going to get on the right track. Okay? You can't keep this inside you. Okay? You would torture yourself. You'd torment your –

Mr. Hall: I just –

Interviewer: -- kids.

Mr. Hall: did what she wanted.

Interviewer: Okay. I know you did.

Mr. Hall: Is that a crime?

Interviewer: Huh? Is that a crime? Timothy, you've got to tell us everything and what happened. Okay? All right?

Mr. Hall: No. I just didn't want to do that.

Interviewer: Huh? You didn't want to do what?

Mr. Hall: I didn't want to do that.

Interviewer: Do what?

Mr. Hall: The –

Interviewer: The – the what?

Mr. Hall: The – what the hell do you call it? The choking while having sex.

Interviewer: Uh-huh.

Mr. Hall: The asphyxiation.

Interviewer: Uh-huh?

Mr. Hall: But there – there's DNA in her butt of mine and everything?

Interviewer: You know what I think happened here? I think it happened the way you said. Okay? But I think you guys got into an argument, into a fight, and you were mad. Okay? And there was a bit of rage involved. I – I guarantee you there was a bit of rage involved. Okay? And things went too far. Things really went too far, half part because – is she wanted you to do this and the other part because you couldn't really handle what was happening in your relationship, and you went overboard. Okay? That's what happened here.

And if that's the case, Timothy, let me tell you something, there is an absolute solution for that, and it's called seeing a psychologist and getting on medication and getting on the road to recovery. Okay?

It's either you did that, my – my friend, or you're a psychopathic monster. Okay? Was there a bit of rage involved in this?

Mr. Hall: It was just an accident.

Mr. Hall: It was an accident, though.

Mr. Hall: I would have let her just leave if that's what she wanted, though. Alls (sic) I was doing was making love with her in the morning, and she wanted me – she grabbed my hands and put them on there.

Interviewer: Okay. And you squeezed hard, didn't you? Just like she liked it, huh?

Mr. Hall: She told me to.

Interviewer: All right. Timothy, you're telling me you're not a mass murderer, right? Was that what we – was that what we discussed? You're not a mass murderer. You're not out there hacking up people with axes, right?

Mr. Hall: Yeah.

Interviewer: This was an accident, right?

Interviewer: All right. Do you want to come over here and – and move all your stuff here?

And I've already – I've already read your Miranda rights, right?

Okay? You're willing to talk to us at any time, right? *And, Timothy, you know you're free to go at any time, correct?*

Mr. Hall: Am I?

Interviewer: *But you are – but you want to help yourself out, correct, and are?*

Mr. Hall: *I don't want to go to jail. I just want to go see my kids.*

Interviewer: Okay. Okay. Okay. But we want you to tell your side of the story. Okay?

Mr. Hall: Once I do that, are you going to arrest me?

Interviewer: *I'm not going to do anything to you. Okay? But look – Timothy, look – look, don't get sidetracked. Okay? Tell your side of the story. Okay? And then what I'm going to do with this –*

Donna: You need this opportunity.

Interviewer: -- I'm going to go out there, and we're going to go ahead and further discuss this. Okay?

I'm going to tell you something. Nine times out of ten in situations like this, we have to go out and call the district attorney's office. Okay? And you know what? Guess what? It's after hours, and we need to get ahold of them, things like that. Okay?

If you write your side of the story, I can go out there and better tell him or her what's going on. You – you know what I'm talking about? Because there's a lot to it. Okay? And this is – this is your time to go ahead and tell me everything that you've talked about here in this room. Okay?

Mr. Hall: *I think I want to go.*

Interviewer: Okay. You don't want to write a statement?

Mr. Hall: *I think I want to go.*

Interviewer: Timothy –

Donna: This is the one opportunity you have to tell your side of the story, Timothy.

Mr. Hall: But –

Donna: You have –

Mr. Hall: *you're making it seem like now, once I do that, they're going to try to –*

Donna: *No, that's –*

Mr. Hall: *-- arrest me.*

Donna: *--not – that's not what we're saying. That's not what we're saying.*

Interviewer: *Timothy, absolutely not.*

Donna: *That is not what we're –*

Interviewer: *Absolutely –*

Donna: *--saying.*

Interviewer: *-- not. That's not any – that's not what I'm saying at all. Okay?*

Mr. Hall: *I can write this and leave?*

Donna: *You can leave.*

Interviewer: *Absolutely.*

Donna: *Okay?*

Interviewer: Put your name right there.

Donna: I, the undersigned, that's you.

Mr. Hall: *I should get a lawyer.*

Donna: Okay.

Interviewer: You should?

Mr. Hall: Don't you think?

Donna: I don't know.

Interviewer: Timothy, I can't give you any legal advice.
Okay?

Donna: I can't either.

Interviewer: Absolutely, I can't give you any legal advice.
You can do whatever you want. Okay?

Mr. Hall: *Well, then, I'm going to get a lawyer.*

Interviewer: You want a lawyer?

Mr. Hall: Yeah.

Donna: It's everybody's right to tell their side of the story. And without your side of the story, all we can assume is that you are a monster. You see what I'm saying? But now we know what happened.

CHALLENGING CONFESSIONS

The Basics

CONFESSION CLAIMS

1. **Article 38.21**
2. **Article 38.22**
3. **Article 38.23**
4. ***Miranda***
5. **Due Process**

C.C.P. ART. 38.22 CLAIMS

A.K.A. the "Confession Statute"

Defendant's State of Mind & Police Conduct

Protects Defendant from Self and Police

ARTICLE 38.22 §§ 2 & 3 CLAIMS

Expands *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (U.S.Ariz. 1966)

Applies to custodial interrogation statements

Only warned and waived statements are admissible

ARTICLE 38.22 §6 CLAIMS

Challenges
General
Voluntariness

Hearing
Outside Jury's
Presence

Applies to
custodial and
non-custodial

C.C.P. Art. 38.23 CLAIMS



**The
“Exclusionary
Rule”**

(a) No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.

MIRANDA CLAIMS

Focuses on
Police Behavior

Protects the
defendant from
the officers

Interrogation
MUST be
custodial

DUE PROCESS CLAIMS

Focuses on
Police
Behavior

Interrogation
does NOT
have to be
custodial

Protects
Defendant
from Police

MUST involve
police
“overreaching”

HOW TO PROCEED: PRE-TRIAL

Motion to Suppress

Challenge defendant's mindset under Article 38.22

Challenge any issue of fact under Article 38.23

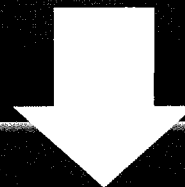
Challenge any alleged waiver of *Miranda*

Challenge Any Coercion under Due Process

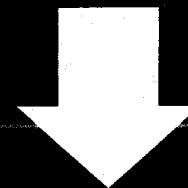
Judge Required to Make Findings under Art. 38.22 and, if requested, under Art. 38.23

HOW TO PROCEED: TRIAL

Opening: First chance to mention why statement is being challenged



Make sure “voluntariness” is raised (i.e., notify judge, renew objection to statement, offer evidence)



Request Jury Instructions

HOW TO PROCEED: TRIAL

Goal: Trigger Exclusionary Rule Instruction (C.C.P. art. 38.23)

Goal: Trigger Voluntariness Instruction

Mere cross-examination or argument not enough

HOW TO PROCEED: TRIAL

Raise “voluntariness” with I.F.A.M.

Issue of Fact

Affirmatively Contested

Material to Lawfulness of Challenged Conduct

HOW TO PROCEED: JURY INSTRUCTION

Three Types

General Voluntariness (Art. 38.22, §6)

General Warnings (Article 38.22, §7)

Specific Exclusionary Rule (Article 38.23(a))

STATE CASELAW

Oursbourn v. State, 259 S.W.3d 159
(Tex.Crim.App.,2008)(outlines requirements for
admissibility of custodial and non-custodial statements).

Penry v. State, 903 S.W.2d 715
(Tex.Cr.App.1995)(whether a statement is voluntary is
based on an examination of the totality of the
circumstances).

Herrera v. State, 241 S.W.3d 520
(Tex.Crim.App.2007)(defendant in county jail for a
separate offense not “in custody” for *Miranda* purposes).

SCOTUS CASES

Jackson v. Denno, 378 U.S. 368 (U.S.N.Y. 1964)(petitioner entitled to hearing outside presence of jury on the question of voluntariness of the confession).

Davis v. United States, 512 U.S. 452 (1994)(a suspect must “unambiguously” invoke right to remain silent).

North Carolina v. Butler, 441 U.S. 369 (1979)(waiver of *Miranda* rights can be “inferred from the actions and words of the person interrogated.”).

Colorado v. Connelly, 479 U.S. 157 (1986)(coercive police activity is a necessary predicate to finding a confession involuntary).

Schneckloth v. Bustamonte, 412 U.S. 218 (1973) (due process precludes admission of a confession where “a defendant's will was overborne” by the circumstances of the interrogation).

Berghuis v. Thompkins, 130 S.Ct. 2250 (2010)(fact that defendant was silent during the first 2 hours and 45 minutes of 3 hour interview was insufficient to invoke right to remain silent).

COERCION AT ITS WORST

