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50 CRIMINAL FALSE CONFESSIONS

1. Introduction

There is a long-standing myth that innocent people do not falsely confess to crimes they did not commit. This myth has, however, been rebutted by prevalent research which reveals that 367 convicted individuals in the United States (US) have been exonerated by DNA evidence since 1989, of which 28 per cent involved false confessions (Lackey, 2020). As this chapter will demonstrate, police-induced or 'confession-driven' false confessions are a leading cause of wrongful convictions. An overview will be provided demonstrating the causes and different types of false confessions, before discussing interrogation techniques and its implications for producing erroneous and misleading testimony. This chapter concludes with recommendations for policing and the judicial system in order to improve the accuracy of confession evidence, and to reduce the likelihood of miscarriages of justice.

1.1 Causes and Types of False Confessions

The chapter will now discuss causes and types of false confessions. Kassin and Wrightsman (1985) identified three types of false confession, namely 'voluntary', 'coerced-internalised', and 'coerced-compliant' false confessions. Voluntary false confessions are offered by individuals in the absence of external pressure from police interrogation, suggesting that this type of confession is internally driven by the confessor's underlying psychological state. Kassin and Wrightsman (1985) argued that voluntary false confessions occur for a number of reasons: a desire for notoriety, an unconscious need to expiate guilt over previous wrongful acts, or an inability to differentiate between reality and fantasy. In addition, people may also provide a false confession due to the external pressure to, for instance, protect the real culprit or provide an alibi for an unrelated crime.

1.1.2 Voluntary False Confessions

Due to the internal pressure that elicits voluntary false confessions, this type of confession may be more commonly applied in those individuals with a mental illness. Gudjonsson (2003) suggested that voluntary false confessions originate from different processes of psychopathology, with three interrelated features: a loss of reality testing,

an element of depression, and a need for notoriety. The first component, a loss of reality testing, is associated with severe psychiatric illnesses such as schizophrenia. Due to the distorted perceptions of reality, schizophrenic individuals develop a false belief that they are guilty of the criminal act which results in a false confession (see case example, 'Miss S' in Gudjonsson, 2003, p 218).

The second component, an element of depression, pertains to severely depressed individuals whose false confession is triggered by intense and deep-seated feelings of guilt. Gudjonsson (2003) theorised that the guilt emerges from past experiences and is, in turn, projected onto current external occurrences. These individuals are likely to be psychotically depressed, which unlike schizophrenia, is defined as delusional thought processes that are accusatorial in nature. In other words, the delusions stem from actual past experiences, with the resulting long-standing guilt being the primary motive to falsely confess to crimes (for example, 'Mrs H' in Gudjonsson, 2003, p 219).

The last component, a need for notoriety, is characterised by individuals who have a pathological need to enhance their self-esteem and exhibit a morbid desire for recognition. It is assumed that these feelings are generated by marked feelings of inadequacy, which can be compensated by a state of being infamous. The need for notoriety, therefore, can involve falsely confessing to crimes in the desire to gain attention for being a 'criminal', despite being faced with the prospect of punishment. These individuals commonly exhibit severe personality disorders, such as antisocial and narcissistic personality disorders, which interfere with their faulty reality monitoring, resulting in an inability to distinguish reality from fantasy (such as, 'Mr. M' in Gudjonsson, 2003, p 220).

1.1.3 Coerced-Internalised False Confessions

Furthermore, the coerced-internalised false confession is where the innocent suspects begin to doubt their memory during the interrogation process and are persuaded that they did, in fact, commit the crime they are accused of (Kassin and Wrightsman, 1985). This type of memory distortion can occur in two contexts: the first context is where the suspects are guilty of committing the crime but has no recollection of committing it, possibly due to amnesia or being intoxicated at the time of the offence.

As a result, these suspects come to believe that they must have committed the offence that they are accused of. In the second context, the suspects are confident of their innocence at the beginning of the interrogation process, however due to the manipulative tactics used by the interrogator, they gradually begin to doubt their assertions of innocence. In other words, due to suspects' memory distortions, they are more likely to become susceptible to suggestions during police interviewing, despite having no actual memory of the alleged offence (for example, Mr. Peter Reilly; Gudjonsson, 2003, p 234).

1.1.4 Coerced-Compliant False Confessions

The coerced-compliant type of false confession, on the other hand, occurs when the suspect succumbs to the coerciveness or pressures of the interrogation process. Here, the suspect knowingly confesses to gain perceived immediate instrumental benefit, for instance to end an aversive custodial interrogation process, to take advantage of promised leniency, or avoid an anticipated punitive sentence. In other words, the suspect considers the benefits of providing a self-incriminating confession due to short-term benefits (such as release from custody, mitigated punishment), which are perceived to outweigh the long-term consequences of denial (for example, apprehension, harsher punishment). Kassin and Wrightsman (1985) conjectured that suspects may naively believe their innocence will, sooner or later, exonerate them. Coerced-compliant confessors are therefore likely to retract their false confession as soon as the immediate pressures associated with the interrogation are over.

Whilst individuals are able to withstand interrogation pressure, certain psychological vulnerabilities generate a greater risk towards confabulatory responding and misleading self-incriminating confessions under pressure (a good example of this is the 'Birmingham Six' (see Gudjonsson, 2003, p 452). These features include individuals who are highly suggestible or compliant, have learning disabilities, high anxiety, low IQ, poor self-esteem, low assertiveness, or eager to please people, particularly authority figures. To sum, the causes and implications of false confessions can take several forms, however the literature has thus far dedicated extensive work into the prominent cause of wrongful convictions; coercive-compliant false confessions.

1.2 Interrogative Interview Techniques

Next interrogative interview techniques will be discussed. Although many interrogation manuals have originated from the US, the Reid technique (Inbau, Reid and Buckley, 2013) is the most dominant and influential police manual on suspect interviewing. This technique is accusatorial and guilt-presumptive in nature, based on a nine-step model which uses direct confrontation, psychological coercion, and theme development to break down a suspect's resistance to provide a self-incriminating confession. Here, interrogators are encouraged to employ a two-stage process; the first stage is called the 'behavioural analysis interview' which is non-accusatory, aims to obtain general background information about the suspect, build trust and rapport, and to determine signs of deception and guilt displayed by the suspect. If the suspect is considered to be dishonest about the alleged offence, the interrogator proceeds to a nine-step accusatory approach, referred to as the 'interrogation' (Inbau et al, 2013).

The first step involves 'direct, positive confrontation'; the interrogator confronts the suspect with 'absolute certainty' regarding his or her involvement in the alleged offence, and attempts to convince the suspect of the benefits of confessing. This is despite cases where there is no tangible evidence to suggest that the suspect is, in fact, guilty. The second step refers to 'theme development'; the interrogator attempts to gain the suspect's trust by displaying signs of sympathy and understanding. The aim here is for the interrogator to minimise the moral implications and seriousness of the alleged offence by, for instance, providing contextual or moral excuses for the commission of the crime. The third step is 'handling denials'; during this phase, most suspects deny their guilt. The interrogator is encouraged to, in its crudest form, interrupt the suspect when denial statements are made, as failure to do so would provide the suspect with a psychological advantage over the interrogator. The fourth step is 'overcoming objections'; the interrogators attempt to overcome objections made by the suspect when denying their involvement, and does so through emphasising and maintaining their guilt.

The fifth step includes the 'procurement and retention of the suspect's attention'; the suspect starts to show signs of withdrawal from active participation in the interrogation once the objections for their innocence becomes ineffective. The

interrogator responds to this by, for instance, moving physically closer to the suspect, making physical contact (for example, hand on shoulder) and mentioning the suspect's first name. As a result of this manipulative ploy, the 'guilty' suspect becomes more attentive to the suggestions provided by the interrogator. The sixth step is 'handling the suspect's passive move'; the aim here is for the interrogator to continue breaking down the suspects' remaining resistance by exhibiting signs of sympathy, understanding, and by appealing to their sense of decency, with the ultimate intention to elicit a confession.

The seventh step involves 'presenting an alternative question'; the suspect is presented with two alternatives, both highly incriminating, for the commission of the crime. The rationale underpinning this step is that, if the suspect is presented with two alternatives where one alternative is more 'save-facing' than the other, the suspect is more likely to admit to a lesser offence and thereby more likely to fully confess. The eighth step includes 'having the suspect orally relate various details of the offence'; the suspect has accepted one of the alternatives provided in the previous step, and consequently produces a full self-incriminating admission. This includes providing a detailed account of the motive, circumstances, and nature of the criminal offence. The ninth and final step is 'converting an oral confession into a written confession', as this is deemed much stronger evidence in court than an oral confession.

Evidently, the quilt-presumptive and psychologically manipulative tactics inherent in the Reid technique has ethical implications for the lives of the innocent, and policy implications for police training. Despite these concerns, Inbau et al, (2013, p 187) consider their approach to be admissible on the grounds that 'none of the steps is apt to make an innocent person confess and that all the steps are legally as well as morally justified'. The authors also impudently claim that, since its initial implementation in 1962, the technique is 'effective' in eliciting confessions through breaking down suspects' resistance to deny the alleged criminal act. Specifically, the authors assert an 80 per cent (true) confession rate, despite the distinct lack of scientific evidence to support this claim (Gudjonsson, 2003).

Further limitations of this technique concern the psychological inducement of promising the suspect a more lenient punishment upon confessing and threaten a

more punitive sentence if the suspect is reluctant to confess. There is a risk that the false confessions obtained by police impropriety and coercion are likely to be ruled inadmissible and therefore has no evidential value in court (Gudjonsson, 2003). A technique that potentially aims to elicit a confession, particularly at the expense of thorough and ethical criminal investigation, has arguably legal implications for policing and the criminal justice system. It is important to acknowledge here that the majority of custodial interrogations, guided by the Reid manual or otherwise, are inevitably coercive to an extent due to the authority and power dynamic of the interrogation (Kassin et al., 2010b). Nevertheless, the limitations associated with the Reid technique has led researchers to recommend alternative interrogation techniques.

1.3 Recommendations for Future Practice

The chapter will now turn to recommendations for future practice. A competing model, referred to as the PEACE technique, has been developed in the United Kingdom (UK). The PEACE model (an acronym for Preparation and Planning, Engage and Explain, Account and Clarification, Closure and Evaluation), is based on prudential principles and non-coercive techniques that aligns closely with the domains of rapport building and trust (Meissner, Kelly and Woestehoff, 2015). This model has been generally regarded as a promising and effective method that predicts robust supervision and specialised training, facilitates true confessions, and safeguards the innocent against the risk of false confessions (Meissner et al, 2015). Since its implementation in 1993, the PEACE model has been widely employed in the UK as well as in other countries, including Australia, Norway, and Sweden.

Other research-based recommendations include mandatory electronic recording of police interrogations, improved educational training on false confessions for police officers, and prohibiting coercive interrogation methods including deceiving suspects to obtain a confession (Kassin, Appleby, & Perillo, 2010a; Meissner et al, 2015). Although the US has made slower progress to incorporate these reforms, a call for enhanced interrogation practices in the last few years has prompted the US government to evaluate and identify productive evidence-based techniques for interviewing suspects. Taken together, evidence-based practice has the potential to reduce the incidence of false confessions and prevent wrongful convictions of the innocent.

To conclude, this chapter has outlined the different causes and factors for why innocent individuals confess to crimes they did not commit, and it has discussed the ethical and legal implications of psychologically coercive interrogation methods. Alternative interrogation techniques and research-based recommendations to prohibit or reduce false confessions were reviewed, emphasising the importance of educating both the police and the judicial system in order to protect the innocent from future incidence of wrongful convictions.

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Relevant chapters: **Criminal Justice Systems; Detecting Deception; False Memories**

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