Subj: **False confession stuff**
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The State also claims that the information Dr. White supplies on interrogation techniques that can lead to a false confession in his report and testimony was already available to the court and jury. This assertion is unsupported by any reference to the trial transcript or other authority. It is submitted that this information, especially the scientific research that supports the connection between the characteristics of the person being interrogated and the techniques used to elicit the confession is not within the common knowledge of most jurors. This part of the State's argument seems to claim that Dr. White's report and testimony would not be admissible at trial.

The State relies upon but a partial quote from State v. Whitaker, 167 Wis.2d 247, 255, 481N.W.2D 649 (pp. 1992). The case involved admission of gang expert testimony by the trial judge. The Court of Appeals stated,

> First, expert testimony is *required* only if the issue to be decided by the jury is beyond the general knowledge and experience of the average juror. Kujawski v. Arbor View Health Care Center, 139 Wis. 2d 455, 463, 407N.W.2d 249, 252-253 (1987). Expert testimony is *permitted,* however, even though it may not be required, when it will "assist the trier of fact to understand the evidence." Rule 907.02, Stats. See also Lievrouw v. Roth, 157 Wis. 2d 332, 356-357, 459 N.W.2d 850, 859 (Ct. App. 1990). The trial court did not abuse its discretion in concluding that the police officer's testimony could assist the jury in evaluating the evidence. (emphasis in original)

Using the correct "assist the jury" test, Dr. White's information and opinions would certainly be admissible at a trial. Wisconsin does not use the more stringent Frey standard for admissibility of expert testimony. State v. Walstad, 119 Wis. 2d 483, 514; 351 N.W.2d 469 (1984).

Courts using the Frey standard have held it to be reversible error to exclude such testimony in cases where the alleged confession is critical to the State's case. Crane v. Kentucky, 476 U.S. 683, 691, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986); United States v. Hall, 93 F.3d 1337 (7th Cir. 1996) on remand, 974 F.Supp. 1198; United States v. Shay, 57 F.3d 126 (1st Cir. 1995); Boyer v. Florida, 825 So.2d 418 (Fla. App. 2002); People v. Lopez, 946 P.2d 478 (Colo. 1997); People v. Page, 2 Cal. App. 4th 161 (1991); State v. Vaughn, 171 Conn. 454, 370 A.2d 1002 (1976); Reilly v. State, 32 Conn. Supp. 348, 355 A.2d 324 (1976); Callis v. Indiana, 684 N.E.2d 233 (1997).

Following State v. Thiel, supra, District II of our Court of Appeals reversed a conviction because trial counsel failed to seek an adjournment to locate an accident reconstruction expert when that expert came in after trial and testified to opinions that supported the Defendant's theory of the accident that killed another. State v. Olson, Appeal No. 2005 AP 1221-CR (9/20/06) (unpubl.); §809.23 (3), Wis. Stats. It also reversed a conviction in the interest of justice when the defense lawyer failed to adduce evidence of a blood test that corroborated the defense in the case. State v. Arebalo, Appeal No. 99-2120-CR (November 8, 2000) (unpubl.) §809.23 (3), Wis. Stats.

There can be no serious dispute that the information and opinions offered by Dr. White in this case would be admissible at a new trial.

The notion that this is just part of the jury's credibility call offered by the State is preposterous. (State's Brief at 14) If juries truly understood about police interrogation techniques and the benefits to the State from the failure to record custodial interrogations, there would be no convictions of the innocent. History and the research tells us differently. While the citizens of this country are becoming more aware of the fact we have a system that results in the conviction of the innocent based upon confessions to activities that are false, it is a far cry to assume that experts are not needed to educate juries as to how and why false confessions are obtained.