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Confessing to Crime, but Innocent

By **JOHN SCHWARTZ**

KANSAS CITY, Mo. — Eddie Lowery lost 10 years of his life for a crime he did not commit. There was no physical evidence at his trial for rape, but one overwhelming factor put him away: he confessed.

At trial, the jury heard details that prosecutors insisted only the rapist could have known, including the fact that the rapist hit the 75-year-old victim in the head with the handle of a silver table knife he found in the house. [DNA evidence](#) would later show that another man committed the crime. But that vindication would come only years after Mr. Lowery had served his sentence and was paroled in 1991.

“I beat myself up a lot” about having confessed, Mr. Lowery said in a recent interview. “I thought I was the only dummy who did that.”

But more than 40 others have given confessions since 1976 that DNA evidence later showed were false, according to [records compiled](#) by Brandon L. Garrett, a professor at the [University of Virginia School of Law](#). Experts have long known that some kinds of people — including the mentally impaired, the mentally ill, the young and the easily led — are the likeliest to be induced to confess. There are also people like Mr. Lowery, who says he was just pressed beyond endurance by persistent interrogators.

New research shows how people who were apparently uninvolved in a crime could provide such a detailed account of what occurred, allowing prosecutors to claim that only the defendant could have committed the crime.

An [article](#) by Professor Garrett draws on trial transcripts, recorded confessions and other background materials to show how incriminating facts got into those confessions — by police introducing important facts about the case, whether intentionally or unintentionally, during the interrogation.

To defense lawyers, the new research is eye opening. “In the past, if somebody confessed, that was the end,” said [Peter J. Neufeld](#), a founder of the [Innocence Project](#), an organization based in Manhattan. “You couldn’t imagine going forward.”

The notion that such detailed confessions might be deemed voluntary because the defendants were

not beaten or coerced suggests that courts should not simply look at whether confessions are voluntary, Mr. Neufeld said. “They should look at whether they are reliable.”

Professor Garrett said he was surprised by the complexity of the confessions he studied. “I expected, and think people intuitively think, that a false confession would look flimsy,” like someone saying simply, “I did it,” he said.

Instead, he said, “almost all of these confessions looked uncannily reliable,” rich in telling detail that almost inevitably had to come from the police. “I had known that in a couple of these cases, contamination could have occurred,” he said, using a term in police circles for introducing facts into the interrogation process. “I didn’t expect to see that almost all of them had been contaminated.”

Of the exonerated defendants in the Garrett study, 26 — more than half — were “mentally disabled,” under 18 at the time or both. Most were subjected to lengthy, high-pressure interrogations, and none had a lawyer present. Thirteen of them were taken to the crime scene.

Mr. Lowery’s case shows how contamination occurs. He had come under suspicion, he now believes, because he had been partying and ran his car into a parked car the night of the rape, generating a police report. Officers grilled him for more than seven hours, insisting from the start that he had committed the crime.

Mr. Lowery took a lie detector test to prove he was innocent, but the officers told him that he had failed it.

“I didn’t know any way out of that, except to tell them what they wanted to hear,” he recalled. “And then get a lawyer to prove my innocence.”

Proving innocence after a confession, however, is rare. Eight of the defendants in Professor Garrett’s study had actually been cleared by DNA evidence before trial, but the courts convicted them anyway.

In one such case involving Jeffrey Deskovic, who spent 16 years in prison for a murder in Poughkeepsie, prosecutors argued that the victim may have been sexually active and so the DNA evidence may have come from another liaison she had. The prosecutors asked the jury to focus on Mr. Deskovic’s highly detailed confession and convict him.

While Professor Garrett suggests that leaking facts during interrogations is sometimes unintentional, Mr. Lowery said that the contamination of his questioning was clearly intentional.

After his initial confession, he said, the interrogators went over the crime with him in detail — asking how he did it, but correcting him when he got the facts wrong. How did he get in? “I said, ‘I kicked in the front door.’” But the rapist had used the back door, so he admitted to having gone

around to the back. “They fed me the answers,” he recalled.

Some defendants’ confessions even include mistakes fed by the police. Earl Washington Jr., a mentally impaired man who spent 18 years in prison and came within hours of being executed for a murder he did not commit, stated in his confession that the victim had worn a halter top. In fact, she had worn a sundress, but an initial police report had stated that she wore a halter top.

Steven A. Drizin, the director of the Center on Wrongful Convictions at the [Northwestern University](#) School of Law, said the significance of contamination could not be understated. While errors might lead to [wrongful arrest](#), “it’s contamination that is the primary factor in wrongful convictions,” he said. “Juries demand details from the suspect that make the confession appear to be reliable — that’s where these cases go south.”

Jim Trainum, a former policeman who now advises police departments on training officers to avoid false confessions, explained that few of them intend to contaminate an interrogation or convict the innocent.

“You become so fixated on ‘This is the right person, this is the guilty person’ that you tend to ignore everything else,” he said. The problem with false confessions, he said, is “the wrong person is still out there, and he’s able to reoffend.”

Mr. Trainum has become an advocate of videotaping entire interrogations. Requirements for recording confessions vary widely across the country. Ten states require videotaping of at least some interrogations, like those in crimes that carry the death penalty, and seven state supreme courts have required or strongly encouraged recording.

These days Mr. Lowery, 51, lives in suburban Kansas City, in a house he is renovating with some of the \$7.5 million in settlement money he received, along with apologies from officials in Riley County, Kan., where he was arrested and interrogated.

He has trouble putting the past behind him. “I was embarrassed,” he said. “You run in to so many people who say, ‘I would never confess to a crime.’ ”

He does not argue with them, because he knows they did not experience what he went through. “You’ve never been in a situation so intense, and you’re naïve about your rights,” he said. “You don’t know what you’ll say to get out of that situation.”

