

# Flawed Evidence: A Recipe for Wrongful Conviction in Nigeria

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## Abstract:

*Judicial decisions are made based on the evidence presented before the court. In criminal cases, evidence must be overwhelmingly convincing—beyond a reasonable doubt—to secure a conviction of the defendant. When evidence is obtained through flawed processes or is improperly evaluated by the court, it often results in wrongful conviction. Reliance on coerced confessional statements, faulty eyewitness identifications, jailhouse informants, flawed forensic evidence, and improper judicial evaluation of evidence have been identified as major causes of wrongful conviction in Nigeria. This issue is prevalent in Nigeria, and the courts tend to be somewhat lenient regarding these practices. While learning from foreign jurisdictions, it is suggested that Nigerian courts strictly adhere to the provisions of the law on the admission of confessional statements and rigorously evaluate evidence to prevent miscarriages of justice. This would compel law enforcement agents and prosecutorial authorities to focus on intelligence gathering and the proper use of forensic science in criminal investigations, rather than relying heavily on confessional statements. There is also a need for statutory entrenchment of these recommendations.*

**Keywords:** Wrongful Conviction, Evidence, False Confessional Statement, Identification Parade, Forensic Science, Criminal Justice System

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## I. Introduction

A wrongful conviction is one where a Court renders a guilty verdict upon someone who is factually innocent of the criminal indictment; a conviction of a person that was not involved in the commission of the crime. It does not refer to instances where a defendant is found innocent due to a defective legal proceeding, but the persistence of factual innocence. Wrongful conviction in this context, concerns those appellants who are factually innocent rather than those appealing their conviction based on technical irregularities.

Wrongful convictions, arising from procedural and substantive defects, have considerable implications on the defendant, such that even when a person is acquitted and discharged of criminal liability, they could still face consequential civil suit and denting criminal records labelling them as ex-convict.<sup>1</sup> A defendant requires exoneration, which is granted only in limited instances, to eliminate the charges and incarceration time.<sup>2</sup> Wrongful conviction is a worrisome social problem which portends a critical cost implication in terms of human, material and financial resources, public safety, and devastation.

The major causes of wrongful conviction are false, faulty, or inadequate eyewitness' testimony,<sup>3</sup> false confession, and employment of flawed techniques by the police. Criminal justice actors like police officers who mostly have initial contact with suspects, usually apply force in extracting confessional statements from the suspect which the courts eventually rely on in reaching a conviction.<sup>4</sup> The use of force and torture compels suspects to make guilty pleas even though they may be innocent.<sup>5</sup>

In criminal cases, the prosecution must establish their case beyond any reasonable doubt.<sup>6</sup> Until such a standard of proof is achieved, the defendant continues to enjoy the presumption of innocence. The defendant is entitled to

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<sup>1</sup> Morgan BLA, 'Wrongful convictions: Reasons, remedies and case studies' Unpublished MSc Thesis, Appalachian State University, North Carolina, 2014, 1.

<sup>2</sup> Smith B, Zalman M, and Kiger A, 'How justice system officials view wrongful convictions' 57(5) *Crime and Delinquency*, 2011, 663.

<sup>3</sup> Petro J and Petro N, *False justice: Eight myths that convicts the innocent*, Kaplan Publishing, London, 2010, 52.

<sup>4</sup> Akujobi AT, 'The Nigerian criminal justice system's abuse of confessional statements: A call for judicial policy reforms' 2(2) *University College, Corks Law Journal*, 2022, 149.

<sup>5</sup> See the following cases decided by the Court of Appeal: *Oniama v. State* (2015) LPELR 24517; *Efjiog v. State* (2009) 1 NWLR (Pt. 1122) 325; *Abamba v. State* (1992) 5 NWLR (Pt. 242) 450. See also Petro and Petro, *False justice*.

<sup>6</sup> Section 36 (5) Constitution of the Federal Republic of Nigeria 1999 (as amended).

the benefit of doubt in his favour and a duty only to disprove the case of the prosecution or prove any defence otherwise available to him.<sup>7</sup> Judicial decisions are reached based on evidence as proof in establishing the guilt of a defendant. Where evidence is wrongly obtained, interpreted, or applied, it is likely to lead to wrongful conviction of the defendant and miscarriage of justice.

Wrongful convictions violate the most fundamental principles of justice—that persons should not be punished for crimes they did not commit.<sup>8</sup> It is a flaw in the administration of the criminal justice system, which can be used as a window to survey and examine all sorts of imperfections in the criminal justice system. These are lapses that arise in the criminal justice process, especially during trials. In some instances, a wrongful conviction could remain unrevised for several years; at times, persisting even after the convict dies in custody. This only further points to the need for corrective reform of the justice administration, especially in Nigeria.

There are instances where it is discovered that a defendant was wrongfully convicted of a crime and upon appeal of the decision of the trial court. It turns out to be more hurtful when an accused has partly served some years in prison as a result of a wrong conviction. This discovery could become obvious when new evidence arises, perhaps, through forensics or the application of technology. It may also emanate from testimony obtained from an eyewitness to a crime that was for certain reasons, not considered during an investigation; where a new supporting piece of evidence exonerating the victim comes to the limelight; or, where the emergence of material evidence or legal technicalities that were not considered during the trial.<sup>9</sup>

Miscarriages of justice, through wrongful conviction, have been recognised as ‘a normal and expected consequence of imperfect procedures of investigation, prosecution and court trials and they ordinarily conceived as exceptional and unacceptable event’.<sup>10</sup> Even though some judges have expressed scepticism

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<sup>7</sup> Hanson MD, ‘The philosophy of criminal law: How fair so far with victims of crime in Nigeria’ 1(1) *Juris Insight*, 2014, 34. Ocheme, however, adds that unlike the prosecutor, the standard of proof required of the defendant is on the balance of probability. See also: PA Ocheme, *The Nigerian criminal law*, Liberty Publications, Kaduna, 2008, 57.

<sup>8</sup> Section 7, *Criminal Code Act*, (Nigeria), creates the category of persons regarded as parties to offence. Section 7, *Administration of Criminal Justice Act* (Nigeria) prohibits arrest of a person in lieu of a crime suspect.

<sup>9</sup> Shobola A and Ajeigbe T, ‘Inmates incarceration and family support as precursors of prison recidivism in Nigeria’ 11(34) *European Scientific Journal*, 2015, 1857.

<sup>10</sup> Noble R and Schiff D, *Understanding miscarriages of justice*, 1<sup>st</sup> ed, Oxford University Press, Oxford, 2000, 78.

about the occurrence of wrongful conviction in the criminal justice process,<sup>11</sup> the rate of DNA exoneration in countries like the United States of America (USA) and the United Kingdom (UK), coupled with the number of successful criminal appeals in Nigeria have certainly proved this belief to be false. This has altered the way people perceive the accuracy of the criminal justice system.<sup>12</sup> In reaction to this, many networks of lawyers, journalists, and other key advocates of justice have emerged towards preventing and advocating against wrongful convictions. Some of these groups include: The Legal Defence and Assistance Project, Centre for Justice Mercy & Reconciliation, and Innocent Project, among others.

This study shall therefore examine the evidence-related causes of wrongful conviction in Nigeria. It is structured into three main sections: the first provides an introduction, the second examines key evidential causes of wrongful convictions in Nigeria, and the final section presents recommendations for Nigeria and concludes the paper.

## II. Causes of Wrongful Conviction

Although every justice system aims to provide fair and just judgments, however, more often than not, human nature takes its course, either due to hidden evidence or the unethical practices of law enforcement agencies like the police and prosecutors. Consequently, innocent persons are framed, tried, and convicted of offences they did not commit. A wrongful conviction can be caused by many factors, including mistaken eyewitness testimonies, mistaken identification of a suspect resulting from a defective identification parade, false confessions by the suspect, and forensic errors arising from a lack of functional forensic laboratories or incompetent scientific methods experts.

### A. Inaccurate Eyewitness Testimony

Inaccurate eyewitness testimony is one of the factors responsible for the instances of wrongful convictions. One of the challenges encountered by prosecutors and defence counsels during trial is eyewitness errors, which have continued to plague the criminal justice system. For example, of the one hundred and eighty cases where exoneration is recorded in the USA, faulty eyewitness

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<sup>11</sup> See the pronouncement of Judge Learned Hand in the case of *US v Garrison* (1923).

<sup>12</sup> Johnson TL, 'Eye witness testimony, false confession and human performance technology: An examination of wrongful conviction' Unpublished PhD Thesis, University of Toledo, Ohio, 2013, 107.

testimony was a recurring decimal in over seventy-five per cent.<sup>13</sup> While statistical records may not be readily available to demonstrate the impact of faulty eyewitness testimony on wrongful conviction in the Nigerian context, the Nigerian Supreme Court gave judicial cognition to this point in the case of *People of Lagos State v Umaru*,<sup>14</sup> where it quoted and relied on Kingmill Moor J. thus:

‘It is necessary that in all cases where the judgement depends substantially on the accuracy of an identification, their attention should be called in general terms to the fact, a number of instances, such identification has shown to be erroneous, the possibilities of mistake in the case before it and the necessity of caution. Nor do we think such warning should be limited to cases where the identification is that of only one witness. Experience has shown that errors can occur where two or more witnesses have made positive identification’.<sup>15</sup>

Eyewitness testimony holds a position of infamy for the wrongful conviction of innocent persons due to the frailty of human memories. Memory involves a cognitive procedure. Post-event facts supplied by persons like the police, prosecutors or media can change an eyewitness’ account of the events of a crime. For instance, posing a leading question such as, ‘is the perpetrator of a diminutive stature or considerable height?’ has the potential to modify the witness’s recollection; once a memory is altered, it becomes exceedingly challenging to accurately recall the details of the crime or its circumstances perpetrator.<sup>16</sup> It can increase eyewitness confidence to give inaccurate information which can lead to wrongful conviction.

The duration of the criminal process is another factor that affects the accuracy of eyewitness testimony. This problem is prevalent in the Nigerian Justice System where the wheel of justice grinds slowly. Most criminal matters get protracted in court for years due to factors such as administrative bottlenecks, and protracted court adjournments, among other reasons.<sup>17</sup> Where this is the case, the witnesses in the case may have died, relocated or due to human mental frailty, may not accurately recall the crime incident when they are eventually called to testify.<sup>18</sup> This would affect the lucidity and veracity of their testimony. In the

<sup>13</sup> Wise AR, Sartori G, Magnussen S and Safer MA, ‘An examination of the causes and solution to eyewitness error’ 5 *Frontiers in Psychiatry Review* 2014, 1.

<sup>14</sup> (2014) 6 All FWLR (Pt. 737) 685-686.

<sup>15</sup> See the case of *People (Attorney-General) v Casey* (No. 2) (1963) 1 IR 30, 33.

<sup>16</sup> *ibid.*

<sup>17</sup> Osamor R, ‘Administration of criminal justice and plea bargain in Nigeria: Motions without movement’ 6(2) *African Journal of Law and Human Right*, 2022, 122.

<sup>18</sup> See, *Aposi v The State* [1971] NMLR 315, 316, where the Court is quoted as saying: “it is desirable that in a case like this (offence committed 26<sup>th</sup> September, 1965, trial began 4<sup>th</sup> December, 1967, and concluded 17<sup>th</sup> July, 1968) that neither the prosecution nor the judgment should be unduly delayed, in view of the mental agony of the accused person for his life and the fact that impressions get blurred with time”.

worst-case scenario, it could lead to a wrongful conviction if such evidence is relied upon.

Attempts have been made to deal with protracted criminal trials by successive governments in Nigeria. The latest effort to expedite the criminal justice process was the enactment of the Administration of Criminal Justice Act (ACJA) in 2015. The legislation contains provisions that require criminal matters to be determined within a reasonable time.<sup>19</sup> Hence, criminal trials should be conducted on a day-to-day basis or not exceeding five adjournments of not more than fourteen days intervals in between each adjournment.<sup>20</sup> However, the implementation of the provisions of such law has not been successful due to the congestion of courts with cases.

### B. *Misconducted Identification Parade*

In *Archibong v The State*, the Supreme Court of Nigeria defined identification as:

‘A whole series of facts and circumstance for which a witness or witnesses associate an accused person with the commission of the offences charged. It may consist of or include evidence in the form of fingerprints, hand writing, voice, identification parade, photographs identity or the recollection of the features of the culprit by a witness who saw him in the act of commission of a crime or a combination of two or more of these’.<sup>21</sup>

An identification parade is a procedure that involves the lining up of some persons by the police to determine if the complainant or witness can recognise the criminal suspect(s). It is the most reliable way of identifying suspects under common law. Elsewhere, it was referred to as ‘evidence showing that the person charged with the offence is the same as the person who was seen committing the crime’.<sup>22</sup> An identification parade is an extra-judicial exercise coordinated by the police when the proper identity of the perpetrator of a crime cannot be ascertained by the victim or eyewitness to the crime. However, the victim or eyewitness must be sure to have had a reasonable opportunity to observe the suspect at the time of the commission of the offence, such that the suspect could be recognised or have a fair recollection of how he looks if the eyewitness is allowed to see him. Identification parades are essential if the victim of the crime or the

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<sup>19</sup> Section 36 (4) Constitution of the Federal Republic of Nigeria (1999) (as amended).

<sup>20</sup> See also, Section 396 (3-5) Administration of Criminal Justice Act 2015.

<sup>21</sup> (2006) 14 NWLR (Pt. 1000) 349.

<sup>22</sup> *Olagesin v The State* (2013) All FWLR (Pt. 670) 1382.

eyewitness to the crime must not have previously known the suspect's identity. It is mostly carried out where mass arrests have been made.<sup>23</sup>

There is currently no legislative framework regulating the conduct of identification parades in Nigeria. Disappointingly, the ACJA 2015 did not provide rules relating to the proper conduct of the identification parade. What forms the *corpus juris* on identification parade is contained in the Nigerian Police Training Manual for Basic and Advanced Studies.<sup>24</sup> Over the years, the courts have also been compelled to develop rules to fill this void in our statute books.

Identification parades are necessitated under specific circumstances. These circumstances include instances in which the victim or witness lacked prior knowledge or interaction with the offender, and the criminal incident constituted their initial encounter; the duration of that encounter was exceedingly brief; and due to the constraints of time and circumstance, the victim or witness was unable to adequately observe the features of the assailant. An identification parade is deemed unnecessary when the defendant admits to perpetrating the offence, when the defendant is apprehended during the act, or when the defendant is already well-known to the victim's eyewitness.

The established protocol for conducting an identification parade is crucial and must be adhered to. Consequently, it is necessary to provide evidence detailing how it was executed. The victim or witness who identified the suspect is also required to testify regarding this matter. An identification parade that is not properly conducted raises doubts in the perception of the court. In suitable cases, the defendant should be pronounced accordingly acquitted.<sup>25</sup>

The problem with identification parades is that it appears like searching for something that was not lost in the first place. Equally problematic is the inability of the witness to pick the actual person due to faint recollection or close resemblance of paraded participants. In a desperate move to pin criminal responsibility on someone, the witness may innocently or maliciously pick the wrong person.

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<sup>23</sup> See, *Bashyay v The State* (1998) 4 SCNJ 202.

<sup>24</sup> Police College Enugu, *Nigerian police training manual for basic and advanced studies*, Ferdinco Printing Press, Enugu, 1976.

<sup>25</sup> See, *Aliyu Wakala v The State* (1991) 8 NWLR (Pt. 211) 552. In *Ikarua v The State* (2013) All FWLR (Pt. 671) 1479, the court held that: "where the quality of identification evidence is poor, the court should return a verdict of not guilty unless there is other evidence to support the correctness of identification. The evidence of identification can be poor even though it is given by a number of witnesses. The witnesses may only have had the opportunity of a glance or a longer observation made in a difficult condition". See also, *Afolabi v The State* (2013) All FWLR (Pt. 702) 1703, where the court counselled for caution and careful examination of identification evidence.

The Court of Appeal gave judicial concern to this issue, in the case of *Aichenabor v The State*, and stated thus:

'A person who is the victim of an unlawful act would want the culprit or culprits to be arrested, to be brought to justice to be answerable for his/her wrong deed/deeds. The courts, (particularly as it relates to evidence of identification) have recognized that a victim of a crime in the search or pursuit that the perpetrator(s) of the crime against him is punished, might be genuinely mistaken in his identification of the said suspect or might out rightly decide to accuse someone or persons of known bad characters, just as the law enforcement agencies might also want to capitalise on the crime committed, to have known or perceived miscreants put behind bars. It is against this background of the human error to which it can be put that the courts, while realizing the primary or pre-eminence of identification evidence in proof of the commission of a crime by an accused person, have consistently counseled for caution or some restraint in convicting on same where it is wholly or substantially the evidence relied upon by the prosecutor'.<sup>26</sup>

In *Ndidi v The State*,<sup>27</sup> the Supreme Court counselled that to avoid wrongful conviction arising from mistaken identity, the court must take cognisance of the following:

- i. What conditions was the eyewitness when they saw the accused or defendant?
- ii. What was the length of time the witness saw the suspect or defendant?
- iii. How was the lighting condition?
- iv. Was there an opportunity for close observation?
- v. Were there previous relations between both parties?

In the USA, the practice dictates that the counsel for the defendant must be present and allowed to participate in the identification procedure. In appropriate cases involving the application of irregular procedures, the defence counsel may file a motion in court to prevent the prosecution from presenting a suggestive identification at trial. Bearing this in mind, the prosecuting authority is obligated to follow the correct procedure. This is one of the safeguards established to check eyewitness errors, identify them, and analyse their accuracy. Legal practitioners and judges are required to develop additional effective safeguards in this context regard.<sup>28</sup>

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<sup>26</sup> (2015) All FWLR (Pt. 763) 2005.

<sup>27</sup> (2005) 17 NWLR (Pt. 953) 17.

<sup>28</sup> Wise RA and Safer MA, 'A method for analysing the accuracy of eyewitness testimony' 48 *Court Review*, 2012, 22.

### C. *False Confessional Statement*

This is another avenue for erroneous conviction of an innocent person when not properly done according to law. A false confession is a statement made by a suspect which is averse to his person. Black's Law Dictionary explains confession to be a statement recognising all facts essential for the conviction of a crime.<sup>29</sup> Section 28 of the Evidence Act (2011) of Nigeria defines confession as 'an admission made at any time by a person accused of a crime inferring that he committed that crime'.<sup>30</sup> While confession is any statement admitting or accepting all facts necessary for conviction of an offence, it would still not satisfy all the elements of the offence and the requirement of the law unless the suspect takes responsibility for such an act.

There are two types of confessions: judicial and extra-judicial confession. Judicial confession is a plea of guilt freely made on arraignment, or in due course of the trial, by a defendant of sound mind.<sup>31</sup> This confession is made in court before a magistrate, a judge, or other criminal tribunal admitting the commission of a crime. An example of this kind of confession is in instances where a defendant makes a guilty plea to a criminal charge upon the same being read over to him in the language of his understanding in the courtroom; or where the defendant admits commission of the offence upon examination-in-chief, cross-examination, or re-examination.

Extra-judicial confession is a confession made elsewhere, other than before a magistrate or judge during a court proceeding. These are the confessions made outside court, especially during investigations by law enforcement agents or any other person.<sup>32</sup> Confession can be oral or in written form and is usually obtained while the defendant is in police custody. Extra-judicial confession can lead to voluntary and involuntary false confessions.

A voluntary false confession is a self-incriminating statement by a suspect free from the exertion of external pressure, without any psychological cause or tangible benefit from the police or any other security agents. The main component

<sup>29</sup> Garner BA, *Blacks' Law Dictionary*, 8<sup>th</sup>edn West Publishing Co., Minnesota, 2004, 889.

<sup>30</sup> It can either be written or oral. See the case of *State v Sule* [2009] All FWLR (Pt. 481) 809.

<sup>31</sup> This form of judicial confession is not available for persons arraigned for capital offences. Whereas guilty is pleaded in this circumstance, the law requires the court to record a not-guilty plea for the defendant and the prosecution would still be required to prove the defendant's guilt beyond reasonable doubt.

<sup>32</sup> Nnabugwu, TI 'Confessions in Nigeria Evidence Act' 2011 — <<http://titusnnabugwu.blogspot.com/2012/06/confessions-in-nigeria-evidence-act.html>> accessed on 7 August, 2023.

of such a confession is the fact that it is made deliberately.<sup>33</sup> Several studies of erroneous conviction in the UK and USA have shown that about twenty to thirty per cent of cases appraised involved false confession; and false confession when relied upon as evidence during criminal proceedings, usually leads to the conviction of the innocent.<sup>34</sup> An Amnesty International report spanning ten years recorded over five hundred instances of Nigerian security forces' employment of torture to extract confessional statements from suspects.<sup>35</sup>

It is always very difficult to understand why individuals would admit criminal responsibility for offences they did not commit. However, there are a few possible explanations for this. First, voluntary false confession can be made to protect someone else, especially a confession made by a juvenile. Juveniles sometimes act according to a moral code that regards loyalty as one of its highest values. This can be attributed to the immature moral reasoning of adolescents to protect their peers.<sup>36</sup> Children are sometimes put in incredibly tense situations and do not understand the consequences of a false confession. Even adults can make a voluntary false confession to protect family, friends or spouses. Some people take responsibility for offences committed by others. Women may take responsibility for offences committed by their children or partners thinking that their absence would be less harmful to the survival of the family than the absence of their son or husband who are the breadwinners of the family. However, the consequence is that such confessions often lead to years in prison or the execution of innocent individuals.

Second, persons may incorrectly think that they committed the crime and thereby make a voluntary confessional statement. This may be a result of mental delusion, psychological imbalance, or illiteracy. This is common among mentally challenged persons who, due to their state of mind, may be unable to distinguish truth from dream. It is their delusional idea to assume criminal responsibility for an offence they knew nothing about and thereby get convicted easily. Such persons may admit to offences to prevent investigation or charges for more serious offences.

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<sup>33</sup> Aebi FM and Campistol C, 'Voluntary' false confessions as a source of wrongful convictions, the case of Spain' in Ronald H and Martin K (eds), *Wrongful convictions and miscarriage of justice: Causes and remedies in North American and European criminal justice*, Routledge Publishing, London, 2013, 194.

<sup>34</sup> Leo RA 'False confessions: Causes, consequences and implication' 37(3) *Journal of the American Academy of Psychiatric and the Law*, 2009, 332.

<sup>35</sup> Amnesty International, *Welcome to hell fire: Torture and other ill-treatment in Nigeria*, 2014, 12.

<sup>36</sup> Beyer M, 'Immaturity, culpability and competency in juvenile: A study of 17 cases' 15(2) *Criminal Justice Magazine*, 2000, 26.

The third possibility is to use admission as a plea bargaining chip to gain a reduced sentence or to avoid harsher punishment, especially for offences with the death penalty.<sup>37</sup> Fourth is to attract attention; some people might falsely confess to having done notorious criminal acts just because of the attention they could get from such a confession or conviction. For example, in 1947 about sixty people were said to have admitted criminal responsibility for the murder of Elizabeth Short, referred to as Black Dahila in Los Angeles.<sup>38</sup> Lastly, ignorance and poverty level may induce some individuals to voluntarily give a false confession to a crime thinking that the monetary reward attached to such crime will come to them and their family.

An involuntary or coerced false confession obtained by the police could lead to errors which contribute to wrongful conviction. A false confession is a result of pressure exerted on suspects during interrogation; suspects admit culpability for an offence to escape police pressure and brutality. This happens when police erroneously regard an innocent person to be guilty. When this happens, the interview and interrogation are thereafter directed by the presumption of guilt, rather than of innocence as required by law. Prominent among the causes of wrongful conviction are confessional statements police extract from the defendant by oppression. The suspect falsely confesses to the offence despite personally believing in their innocence, hoping that the truth will eventually emerge and lead to their exoneration.

In Nigeria, it is not uncommon for police to use torture and ill-treatment on suspects detained in police cells. There are reported cases of police shooting suspects on the foot, beating and hanging them from the ceiling for long periods to extract information and confessions. Other forms of torture include flogging suspects with whips, beating them with batons and machetes, issuing death threats, inserting sharp objects into suspects' genitals, inflicting burns on suspects with cigarette lights, giving them psychological and mental torture by starvation, among other illegal and inhumane tactics.<sup>39</sup>

Convictions based on false confessions undermine the integrity of the criminal justice system, inflicting unnecessary injustice. They lead to unwarranted incarceration, the denial of liberty before trial, significant financial burdens in

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<sup>37</sup> Beyer M, 'Immaturity, culpability and competency in juvenile', 473.

<sup>38</sup> Leo RA and Ofshe JR, 'The consequences of false confessions: deprivation of liberty and miscarriage of justice in the age of psychological interrogation' 88(2) *Journal of Criminal Law & Criminology*, 1998, 429.

<sup>39</sup> Okeshola FB, 'Human rights abuse by Nigerian police in four selected states and the Federal Capital Territory, Abuja' 13(2) *British Journal of Arts and Social Sciences*, 2013, 244.

defending one's innocence, irreversible damage to careers and reputations, and profound emotional distress for loved ones.<sup>40</sup> When confessions are involuntarily obtained, there is a grave danger that the defendant has falsely implicated himself.<sup>41</sup>

False confessions likely lead to the denial of liberty and conviction of innocent persons. The court places much reliance on such statements that it outweighs other evidence that could establish the innocence of a defendant. The courts have often held in a plethora of cases that a confessional statement is the most credible evidence to ground a conviction.<sup>42</sup> The utility of confessional statements in criminal trials, especially the ones prosecuted by the police, cannot be overemphasised. There is hardly any criminal trial prosecuted by the Nigerian Police without reliance on confessional statements extracted from the defendant. Most times, the requirement of the law is not complied with.

In Nigeria, there are several legal safeguards and procedures for obtaining admissible confessional statements. Prominent among them is the provision of the Constitution which prohibits torture and other kinds of inhuman or humiliating treatment. This is contained in Section 34(1) of the Constitution which guarantees the right of everyone to receive respect towards the dignity of his status as a human being; and by that fact, must not be put in danger of torture, inhuman, or demeaning treatment. Article 17(2) (b) African Charter on Human Rights supports the position that human dignity must be maintained and enhanced. The court is obliged under Section 29 (2)(a) Evidence Act, 2011 not to admit any evidence obtained by oppression of the maker. The definition of 'oppression' under subsection (5) encompasses torture, inhuman or degrading treatment, acts and the threat of violence whether it amounts to torture or otherwise.

The King's Bench of England developed certain requirements for obtaining confessional statements from suspects in police custody. These were regarded as Judges' Rules of 1964. They are administrative rules not necessarily rules of law.<sup>43</sup> Part of the requirements of the Judges' Rule is that a suspect must be brought before a superior police officer when obtaining a confessional statement. The suspect must also be cautioned by the police or any law enforcement agent

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<sup>40</sup> Leo RA and Ofshe JR, 'The consequences of false confessions', 494.

<sup>41</sup> Ibraheem OT, 'The relevance of confessions in criminal proceedings' 3(21) *International Journal of Humanities and Social Science*, 2013, 291.

<sup>42</sup> See the case of *Ajayi v State* (2014) All FWLR (Pt. 756) 418, where the court stated that: "there cannot be evidence that is stronger than an accused own direct, positive and unequivocal confessional statement, which alone is sufficient to ground conviction".

<sup>43</sup> Aguda TA, *Law of evidence*, 4<sup>th</sup> ed, Spectrum Law Publishing, Ibadan, 1999, 55.

interrogating him that he is at liberty to remain silent as the evidence may be used against him during trial. After the caution, if the suspect still wishes to make a statement, the officer is expected to keep a record of the period and place where the statement commenced and ended, including the identity of the person physically present. In the case of *R. v Ugnuora*,<sup>44</sup> the court stated that the Judges' Rules are to be followed as far as possible and practicable in Nigeria. Voluntary confessional statements obtained contrary to the Judges' Rules are admissible,<sup>45</sup> even though the weight the trial judge will attach to it may be affected.

To curtail the incidence of obtaining confessional statements by oppression, the procedure in Lagos State, Nigeria, is that the police officer is expected to make a video recording of obtaining the confessional statement and tendering copies in evidence during a trial. Where there is no video facility, the confessional statement must be in writing and must be made in the presence of a legal practitioner of the maker.<sup>46</sup> Regrettably, the courts have not been helpful in upholding this requirement of the law—with numerous rulings indicating that non-compliance does not significantly affect the admissibility of a confessional statement.

Leo contended that the damage occasioned by false confessions could be alleviated if the police were mandated to make video or audio recordings of the entire interrogation.<sup>47</sup> In *Owboruke v COP*<sup>48</sup> the Supreme Court earnestly endorsed the practice of obtaining confessional statements from suspects only when their counsel or a legal practitioner is present. The court is enjoined to consider the weight to attach to such confessional statements if there is no compliance with the Judges' Rules.

However, in a more recent decision of the Supreme Court, *Charles v The State of Lagos*,<sup>49</sup> it was held that it is a mandatory requirement of law and non-compliance would warrant the rejection of such confessional statements. This is a welcomed development. At least this would prevent the use of inhumane and degrading means to extract confessional statements from suspects. But up till now, the law enforcement agents hardly abide by this recommendation.

Even on occasions where these rules are purportedly applied, law enforcement agents have a way of bypassing these safeguards. The threat or any

<sup>44</sup> (1943) 9 WACA 73.

<sup>45</sup> See, *R. v Umo & Ors* (1944) 10 WACA 254; B Osamor, *Criminal procedure laws and litigation practices*, 2<sup>nd</sup> ed, Dee-Sage Books, Manchester, 2012, 101.

<sup>46</sup> See, Section 9(3) Administration of Criminal Justice Law Lagos State 2012.

<sup>47</sup> Leo and Ofshe, *The consequences of false confessions*, 332.

<sup>48</sup> (2015) 15 NWLR (Pt. 1483) 557-576.

<sup>49</sup> (2023) 13 NWLR (Pt. 1901) 213.

other acts of oppression that would otherwise make the confession inadmissible would be carried out before switching on the video or audio recorder or before inviting the legal counsel of the accused.<sup>50</sup>

Where a defendant challenges the admissibility of a confessional statement on grounds that it was not made involuntary, the prosecution is required to prove that the confession was obtained voluntarily before its admissibility by the court.<sup>51</sup> On its own accord, the court may require that the prosecution proves that in obtaining the confessional statement, nothing was said or done to make the confession inadmissible.<sup>52</sup> This is normally done in a proceeding that is referred to as trial within trial.<sup>53</sup>

A suspect may, in the quest to avoid the torture and pain of an interrogator, confess to the commission of the crime; hoping that he would have the opportunity to explain himself when brought before a judge. This is usually risky because the law is that: where the defendant denies ever making the statement or retracts a confessional statement, the court is required to admit the statement without going into trial within trial.<sup>54</sup> But the Court would consider the weight to be attached to such a confessional statement. In *Mohammed v The State*,<sup>55</sup> the court emphasised the need for the trial judge to look for corroborative evidence before acting on the statement.

Pursuant to Section 274 of the 1999 Constitution, Section 116 (1) Kano State High Court Law, and Section 37 (1) (f), (g), and (2) Criminal Procedure Code, the Chief Judge of Kano State made Practice Direction (No. 3) dated 20 July 2009. The Direction purportedly abolished trial within trial in the state. Accordingly, where the voluntariness of a confessional statement is in issue, it is to be admitted, although the court will have to determine the weight to be placed on the statement.<sup>56</sup> However, in determining the weight to be placed on

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<sup>50</sup> Agaba JA, *Practical approach to criminal litigation in Nigeria*, 3<sup>rd</sup> ed, Bloom Legal Temple, Abuja, 2015, 52-54.

<sup>51</sup> Section 29 (3), Evidence Act. See, *Okanlawon v State* [2015] 9 SCM 159, 184, where the Court held that for confessional statement of an accused person in a criminal case to be admissible in evidence it must be positive, direct, and unequivocal, such that where there is any discrepancy in such evidence, trial within trial ought to be conducted to ascertain its authenticity.

<sup>52</sup> Section 29 (4), Evidence Act 2011.

<sup>53</sup> See, *Mohammed v The State* [2007] 13 NWLR (Pt. 1050) 186.

<sup>54</sup> Naughton M, *The innocent and the criminal justice system: A sociological analysis of miscarriages of justice*, Palmgrave Macmillan Books, London, 2007, 72.

<sup>55</sup> Naughton M, *The innocent and the criminal justice system*, 72.

<sup>56</sup> Oniekoro FJ, *Practice notes and guides on litigation (civil and criminal trials)*, 3ed, Chenglo Ltd., Enugu, 2012, 613.

the confessional statement the court must satisfy itself with certain questions, such as: is there any evidence without the confession to ascertain its truth? Is the statement corroborated? Are the vital statements in fact true when subjected to some form of truth test? Was the defendant in a position of time and chance to commit the offence? Is there a possibility in the confession? Is the confession compatible with other prevailing and established facts?<sup>57</sup>

Trial within trial is a rule of evidence statutorily provided for in the Evidence Act. Evidential matters fall within item 23 of the Exclusive Legislative List of the Constitution; hence it is only the National Assembly that can exercise legislative competence on such matters. The powers of the Chief Judge of a State or even Chief Justice of the Federation are limited to making procedural rules to enhance Court proceedings and not to limit or contradict any statutory procedure in force, especially those not within the powers of the Chief Judge to make. Moreover, a Practice Direction is inferior to an enactment of the National Assembly in the hierarchy of laws. Hence, this Practice Direction (No. 3) must bow to the Evidence Act especially as it is made *ultra vires*.

#### D. Jailhouse Informants

‘All wrongful convictions detract from the public’s faith in the fair administration of justice, but the cost is especially high when wrongful convictions result from the testimony of questionable witnesses’.<sup>58</sup> Jailhouse informants fit into this description. A jailhouse informant is an inmate in prison; usually awaiting trial or already convicted and sentenced. Such persons may claim to have received a confession made by a defendant in prison custody on awaiting trial. The informant then decided to testify in court against the defendant, usually in exchange for some benefits.<sup>59</sup> They are inmates awaiting trial or pending sentencing, who assert to have heard other inmates with them in prison have voluntarily admitted committing the offence of which they are charged. Such informants then report other prisoners’ confessions to the authorities in the hope of exchanging the testimony for better treatment or clemency in sentencing. Jailhouse informants who give information about the confessions of fellow inmates are frequently used in criminal proceedings as witnesses for the state. Jailhouse confessions are susceptible to fabrication.

<sup>57</sup> *Mbang v The State* (2012) 6-7 MJSC (Pt. IV) 119; *Galadima v The State* (2012) 12 MJSC (Pt. III) 190.

<sup>58</sup> The Justice Project, ‘Jailhouse snitch testimony: A policy review’ — <[www.thejusticeproject.org](http://www.thejusticeproject.org)> accessed on 5 November, 2023.

<sup>59</sup> Sherrin C, ‘Jail house informants, part 1: Problem with their use’ 40 *Criminal Law Quarterly*, 1997, 106.

In Nigeria, when jailhouse informants are used to extract information from suspects, their testimony may be considered hearsay and thus susceptible to inadmissibility, as it does not constitute direct evidence of what the informant personally saw, heard, or perceived. As much as such evidence is inadmissible to prove the truth of the fact, it is not hearsay to prove the fact that the suspect actually made such a statement while in a jailhouse.<sup>60</sup>

In the USA, many individuals convicted based on fabricated jailhouse admissions remain imprisoned due to the lack of a legal mechanism to compel informants to recant their earlier testimonies, even when the convictions were based on false evidence. Without such a mechanism, a jailhouse informant will invoke his Fifth Amendment right out of panic for prosecution for perjury due to the previous perjured testimony which may have been based totally on fabricated evidence. The use of jailhouse informants to obtain conviction has been seen as one of the most abused aspects of the criminal justice system.<sup>61</sup>

Despite the criticisms against the practice, its use is still widespread. For example, the District Attorney's office in Los Angeles had to rely on informants' testimonies to secure convictions in more than one hundred and twenty cases.<sup>62</sup> Nonetheless, some jailhouse informants who are always rewarded for their testimonies have been revealed to go a large extent in deceiving and misinforming the prosecutors in the hope of refining their present situation with little or nothing to lose but so much to gain. Crafty and dishonest jailhouse snitches formulate tales and crime details that misguide prosecutors and contribute to a serious miscarriage of justice. They find willing corroborators in the prosecutors. According to a recent report, the Orange County District Attorney's office which knew the credibility of a jailhouse informant to be in serious doubt, continued to rely on the informant's testimony for years in the prosecution of defendants.<sup>63</sup>

It was reported that reliance on jailhouse informants in prosecuting offences is a leading cause of wrongful convictions in cases of capital offences.<sup>64</sup> Most of

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<sup>60</sup> *Utteb v State* (1972) 1 SC SCNJ (Pt. 1) 189.

<sup>61</sup> Rohrlich T, 'Review of murder cases is ordered: Jail-house informant casts doubt on convictions based on confessions' *Los Angeles Times*, 29 October 1988 — <<https://www.latimes.com/archives/la-xpm-1988-10-29-mn-329-story.html>> accessed on 9 August, 2023.

<sup>62</sup> *Time Magazine*, 'A snitch's story', 12 December 1988, 32.

<sup>63</sup> Ferner M, 'California prosecutor's office thought serial snitch was a liar, but used him anyway' *Huffpost*, 6 May, 2017 — <[https://www.huffpost.com/entry/mark-cleveland-orange-county-informant\\_n\\_5934f469e4b0c242ca2554e3](https://www.huffpost.com/entry/mark-cleveland-orange-county-informant_n_5934f469e4b0c242ca2554e3)> accessed on 9 August, 2023.

<sup>64</sup> Center on Wrongful Conviction, 'The snitch system: How snitch testimony sent Randy Steidl and other Americans to death row' — <<http://www.law.northwestern.edu/w.cs/documents/snitch-systemBooklet.pdf>> accessed on 5 November, 2023.

the cases which required exoneration by DNA test in the USA revealed that in more than twenty per cent of those cases, jailhouse snitches gave testimonies against the defendants.<sup>65</sup> Many informants testify against others by giving out implicating evidence against their prison cell inmates in order to either get a favourable plea, lesser charge, lesser sentence, obtain amnesty, *nolle prosequi*, or bargain charge(s). The desperation to get a sentence reduction may incentivise some jailhouse informants to fabricate incriminating evidence against a defendant.

There is always inherent unreliability of jailhouse snitches' testimonies which always gives rise to miscarriage of justice. In one case, a US prosecutor greatly relied on the evidence of a jailhouse informant to get a successful rape conviction of Wilton Dedge even when he was not the actual offender. Dedge was incarcerated for twenty-two years before he regained his freedom and exoneration from the crime. The exercise of precaution could have stopped the injustice meted out to Wilton Dedge.

Nigeria has had its fair share of unreliable jailhouse testimony. In May 2007, it was announced that one Mr Moshood Enifeni, a drug baron, while in prison custody, had told fellow inmates that he assassinated Chief Bola Ige, who was the Attorney General of the Federation. Sunday Ehindero, the Inspector General of Police, interrogated Enifeni and some hood-wearing persons purported to be his cell mates in a publicly aired television programme. The aftermath of the interrogation was the declaration of guilt. However, the family members of Enifeni described the whole scenario as a sham. They stated in a press release that the said illicit drug case was amicably settled by plea bargain in August 2001 after which he was released. As such, there was no way their son could have harboured any resentment for Chief Bola Ige as of December 2001 when the victim was killed.<sup>66</sup>

There have been serious concerns about the problems caused by the jailhouse testimony of the defendant in a criminal case. There are processes which the state can adopt to make sure that the use of corroborating witness testimonies does not dent the objectivity and accuracy of findings in criminal trials. Informants' testimonies should require corroboration to mitigate the inherent risks an incentivised witness testimony portends. Courts should adopt rules requiring a mandatory pre-trial determination of the reliability of a jailhouse snitch's testimony in instances where the prosecution anticipates adopting the

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<sup>65</sup> Innocent Project, 'Informants/snitches' — <<http://innocenceproject.org/understand/snitches-informants.php>> accessed on 5 November, 2023.

<sup>66</sup> Osinbajo YO, 'The state of criminal justice in University of Benin' Tenth Justice Idigbe Memorial Lecture, Benin, 2009, 13.

same. In the dependability of pre-trial hearings, the court is expected to perform a 'gatekeeper' task in ensuring only credible jailhouse snitches' testimony are admitted. Standards are to be raised by the Court which the testimony must surpass before it is admitted. By so doing, the state can increase the worth of evidence relied upon at criminal trials.<sup>67</sup> In essence, if informant testimony is to be used as evidence in criminal trials, it should be carefully regulated to make sure that there are no hidden deals and that prior statements are carefully documented. Judges could also assess the reliability of informants before permitting them to testify. Prosecutors can adopt guidelines requiring the careful use of informants and careful documentation of their statements and consideration offered in exchange for their cooperation.<sup>68</sup>

### *E. Flawed Forensic Evidence*

This occurs in situations where forensic experts place reliance on evidence which is either founded on defective or unverified techniques or embellished with misleading assurance and deceitful reports. Evidence shows that the misapplication of forensic science is the second most contributing factor to wrongful conviction as highlighted by the Innocence Project.<sup>69</sup> The misapplication of forensic science is so rampant that it is cited in more than half per cent of cases in which DNA evidence later exonerated victims. Some forensic evidence has proved to be an unreliable, inaccurate and inefficient way to determine who committed a crime. For example, bite marks and shoeprint comparisons may be highly unreliable.<sup>70</sup>

Some evidence by forensic experts in criminal cases may either be overstated or understated, with the expert withholding evidence or opinion that might support the defendant's case; or exaggerating or twisting the important evidence pointing to the guilt of the suspect. Unintentional errors and some purposeful misconduct are common with forensic analysis, and when these happen, a person's life could be significantly and unjustly affected by a wrongful conviction of such a person. The lack of technical ability of law enforcement officers to

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<sup>67</sup> The Justice Project 'Jailhouse snitch testimony: A policy review' — <[www.thejusticeproject.org](http://www.thejusticeproject.org)> accessed on 5 November, 2023.

<sup>68</sup> The Justice Project 'Jailhouse snitch testimony: A policy review' — <[www.thejusticeproject.org](http://www.thejusticeproject.org)> accessed on 5 November, 2023.

<sup>69</sup> Mahajan S, 'Flawed forensics: The Innocence Project's 25th anniversary' *Columbia Science Review*, 2017, — <<https://columbiasciencereview.com/2017/11/12/flawed-forensics-the-innocence-projects-25th-anniversary/>> accessed on 5 November, 2023.

<sup>70</sup> Shkolni NK, 'Forensic science mistakes and wrongful convictions' — <<https://www.napolilaw.com/article/forensic-science-mistakes-wrongful-convictions/>> accessed on 25 September, 2023.

effectively employ forensic science in criminal investigation and prosecution is instrumental to the flawed outcome of the criminal justice process. This is one of the challenges that have been associated with the Nigerian Police.<sup>71</sup>

Although forensic evidence is not popularly used in criminal investigation and trial in Nigeria compared to the United States of America and Europe, there are reported criminal cases which were decided based on forensic evidence in Nigerian Courts.<sup>72</sup> In the case of *State v. Ejiofor & 5 Ors*,<sup>73</sup> the forensic evidence of a handwriting expert was used to ground the conviction of the sixth defendant for theft, and forgery, while the five others were exculpated. Forensic evidence was used to exculpate the defendant of murder in the case of *Nafiu Rabinu v. State*.<sup>74</sup> There are a couple of other cases that have been decided on the basis of forensic evidence.<sup>75</sup> This demonstrates the recognition and application of forensics in criminal justice dispensation. It therefore suggests the need to employ necessary precautions to forestall unjust outcomes and wrongful convictions occasioned by flawed forensic application in the criminal justice dispensation in Nigeria.

The application of forensic evidence in criminal cases has solved many crime puzzles. However, when forensic evidence is erroneously evaluated, the result will amount to misleading the court and conviction of an innocent person. A classic example is an American case of murder and rape of Nancy De Priest in Pizza Hut Restaurant in Austin Texas. Chris Ochoa, a co-worker of Richard Danziger, pleaded guilty to the murder while implicating Danziger of the rape in a confessional statement obtained by coercion. The only forensic evidence against Danziger was a hair found in the restaurant which is identical to that of Danziger. The semen sample found at the crime scene was not tested. Both men were sentenced to life imprisonment. Twelve years later, one of Achim Marino's correspondence from prison disclosed that he was the actual perpetrator of the crime. The DNA samples were finally analysed, and they matched with that of Marino.<sup>76</sup>

<sup>71</sup> Otu N and Elechi O, 'The Nigerian Police forensic investigation failures', 9(1) *Journal of Forensic Sciences and Criminal Investigation*, 2018.

<sup>72</sup> Oniha OM and Oniha BE, 'Forensic evidence: A panacea for exoneration in criminal justice administration in Nigeria' 3 *Crescent University Law Journal*, 2018, 83.

<sup>73</sup> 1983 (1) NCR 86.

<sup>74</sup> 1980 (2) NCR 117.

<sup>75</sup> See, *Bosah v. State* 1980 (1) NCR 204, *Ugwuanyi v. FRN* (2012) LPELR-SC.190/2010; *Shonubi v. People of Lagos* (2015) All FWLR (Pt. 801) 1424.

<sup>76</sup> Momodu B, *Preparing for the trials in murder and rape cases in Nigeria: What detectives left undone*, Evergreen Overseas Publications, Lagos, 2013, vii.

Even science has its imperfections. The government should address key concerns such as the accreditation of forensic laboratories, carrying out training programmes, the establishment of testing standards, ensuring the independence of scientific testing techniques, and the collection and preservation of long-chain exhibit safekeeping. There should be a rigorous examination of forensic experts by the prosecutors and defence attorneys regarding their testing technique and expert opinion.<sup>77</sup> Lawyers, courts, prosecutors and police need to maintain close tabs on emerging techniques in forensic science.

#### *F. Improper Evaluation of Evidence by Trial Judges*

The judicial power of government is conferred on the courts by Section 6 of the Nigerian Constitution (1999). This section states that judicial powers are bestowed on courts established by law in accordance with the Constitution for the federation and the various states. The courts so created by Section 6(5) (a) to (1) of the Constitution are referred to as courts that can exercise powers of superior courts of record in Nigeria. Apart from the judicial powers of the courts, they also have inherent power to ventilate justice by virtue of Section 6(6) 1999 Constitution.<sup>78</sup> Justice is in three ways: justice to the victim, the accused, and the society at large. Justice must be done to avoid the conviction of an innocent person. Wrongful conviction entails a long chain of misconduct from various quarters in the criminal justice process. The court is the last authority that sanctions it. Those various misconducts can never amount to wrongful conviction until it has been sanctioned by the court upon pronouncement of the guilt of the defendant. Thus, the court is best positioned to correct the wrongs of other authorities that would have otherwise given rise to wrong convictions.

Most wrongful conviction cases arising from the action or inaction of the court are usually due to improper evaluation of evidence by the trial judge. This may be a function of factors including judicial bias, caseloads, poor presentation of evidence by counsel, and limited resources, among others. Criminal adjudication deals with proofs and proofs are a function of evidence placed before the court and the evaluation thereof. Nigeria operates an adversarial system of adjudication. This requires the judge to assume an officious position to evaluate the evidence and proofs canvassed by parties and reach its decision

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<sup>77</sup> Northwestern 'Center on wrongful conviction, flawed forensic science' — <[www.law.northwestern.edu/legalclinic/wrongfulconvictions/](http://www.law.northwestern.edu/legalclinic/wrongfulconvictions/)> accessed on 8 August, 2023.

<sup>78</sup> Obutte PC, 'Corruption, administration of justice and the judiciary in Nigeria' Social Science Research Network, 2016 — <<http://ssrn.com/abstract=2727319>> accessed on 3 September, 2023.

thereto. The court ought not to delve into the arena of dispute.<sup>79</sup> Sometimes this could be a limitation on the part of the court to do substantial justice, especially when there are weaknesses in the case of the defence, which has been noticed by the court *suo motu*.

It is submitted that the court should take advantage of its discretionary powers to point out certain substantial issues even when it is not canvassed before the court by parties. For instance, nothing limits the court to *suo motu* require the prosecution to prove that confessional statements are obtained voluntarily.<sup>80</sup> The court can also take advantage of powers conferred on it by Section 246 Evidence Act 2011 by eliciting answers from witnesses or the accused to elicit facts to help the court make a decision that will serve the ends of justice. However, the power of the court to ask such questions under the provision is not unlimited. Such power is limited by the implications of the adversarial system and the impartiality and fair hearing principles enshrined in the Constitution.<sup>81</sup>

In a criminal trial in Nigeria, the general burden of proof is on the prosecution at a standard of proof beyond reasonable doubt.<sup>82</sup> The judges must always be conscious of this in their evaluation of evidence. Courts have, however, in recent times, held in plethora of authorities, that proof beyond reasonable doubt cannot be regarded as proof ‘beyond shadow of doubt’.<sup>83</sup> It is proposed that this principle must be exercised with great caution by the court. This risks the court effectively assisting the prosecution in fulfilling its heavy burden of proof by overlooking or rationalizing inconsistencies and gaps in the prosecution’s case. The challenge lies in determining where and how courts should draw the line between ‘shadow’ and ‘real’ doubt. Without caution, the consistent application of this approach could gradually erode the standard of proof in criminal cases—from ‘beyond reasonable doubt’ to a mere preponderance of evidence—contrary to legal requirements.

<sup>79</sup> *Akinfe v The State* (1988) 3 PLR 35.

<sup>80</sup> See, Sections 29(3), Evidence Act 2011.

<sup>81</sup> See, *Akinfe v The State* (1988) 3 NWLR (Pt. 85) 729, 741.

<sup>82</sup> Sections 132 and 135, Evidence Act 2011.

<sup>83</sup> See, *Usman v The State* (2014) All FWLR (Pt. 713) 1928; *State v John* (2013) All FWLR (Pt. 696) 532; *Usen v The State* (2013) All FWLR (Pt. 689) 1131; *Babarinde v The State* (2013) All FWLR (Pt. 662) 1731; *Oyebode v Gabriel* (2013) All FWLR (Pt. 669) 1162. In *Osetola v The State* (2012) All FWLR (Pt. 647) 1044, the Court is quoted as saying: “By the provision of S. 138 Evidence Act, the standard of proof is required in criminal trial is proof beyond reasonable doubt. The law would fail to protect the community if it admitted to fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice”.

Although judges are supposed to discharge their judicial functions devoid of fear or favour, bias or prejudice, there are other external factors which could, one way or the other, influence the decision of judges. Judges may be influenced by powerful political officeholders; financial, personal and ideological considerations may also be influential.<sup>84</sup> Judges could be involved in all manner of political manoeuvrings and pressures as they are the product of political orchestration.<sup>85</sup> The impact could be felt in their judgments and rulings. Judiciary independence in Nigeria is questionable given the lack of autonomy of the judiciary. This may result in partiality, especially with respect to matters which are of interest to the political actors.

Wrong evaluation of evidence sometimes arises from a situation where judges have already formed a preconceived impression or opinion about the defendant or the case. Such impressions are always difficult to alter, erase or convince the court of the innocence of the defendant. In *Al Mustapha v The State*, the Court of Appeal held that the lower court was bent on securing conviction at all costs despite contradictory evidence by the two major witnesses. The court, per Pemu JCA, stated that:

‘No matter the suspicion and its degree, no matter the grievance or grouse, no matter the height of conjecture, no matter the depth of hatred, even the strongest SUSPICION can never found a conviction in law. There is the duty, not discretion of the prosecution to prove its case beyond reasonable doubt’.<sup>86</sup>

Psychological, sociological, religious and even environmental experiences of a judge could also influence or prejudice the mind of the court. They are preconceptions and biases which inevitably lead to the wrong path.<sup>87</sup> A judge must rise above all these limitations in order to maintain and enhance the confidence of the public, the legal profession which they represent, and the litigants.<sup>88</sup> The reverse would lead to the erroneous conviction of innocent persons.

### III. Conclusion

It is noted that in criminal cases, a prosecutor is expected to prove its case beyond a reasonable doubt. Thus, a prosecutor’s case succeeds or fails depending

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<sup>84</sup> Sherrer H, ‘The complicity of judges in the generation of Wrongful Convictions’ 30 *Kentucky Law Journal*, 2003.

<sup>85</sup> Sherrer H, ‘The complicity of judges in the generation of Wrongful Convictions’.

<sup>86</sup> (2013) 17 NWLR (Pt. 1383) 351.

<sup>87</sup> Clive SS, *Bad Men: Guantanamo Bay and the secret prison*, Orion Publishing Group, London, 2007, 158.

<sup>88</sup> Onwubiko E, ‘Nigeria broken judicial system’ *The Nigerian Voice*, 10 January, 2017 —<<https://www.thenigerianvoice.com/news/242266/nigerias-broken-judicial-system.html>> accessed on 9 August, 2023.

on the evidence tendered before the court. Whereas the evidence tendered before the court in grounding conviction does not comply with the adjectival laws which are established to preserve the integrity of the criminal justice process, the chances of wrongful conviction occurrence are quite high. This paper therefore identifies the various causes of wrongful conviction in Nigeria. It pays particular attention to those forms of wrongful conviction that are evidence-based. Hence, this study examined how improper handling or wrong application of legal principles on evidence leads to wrongful convictions. When, these lapses are identified, it becomes easy to set measures targeted at addressing the challenges of wrongful conviction.

Wrongful convictions have dire consequences on the innocent victim wrongfully convicted, their family, and the entire society. To the innocent victim, the state has meted out injustice to them; to the innocent victim's family, their breadwinner or kinsman has been denied justice, which has consequential economic and psychological repercussions on dependents; and, to the society, confidence is lost in the entire criminal adjudicatory system. A phenomenon that has far-reaching consequences like this requires concerted measures to stem its tide.

This study notes that wrongful conviction emerges from errors by police or prosecutors during criminal investigation and trial which have resulted in an innocent person becoming a defendant in a criminal trial and finally convicted of such an offence. Gross<sup>89</sup> referred to wrongful conviction as an accident or unintended error in the criminal justice system. The accidental or unintentional error would become a regular occurrence when the court, where the bulk stops, fails to uncover defects in the criminal justice process. The court falls into the same error when it fails to correct prior errors in a faulty criminal investigation process but relies on evidence arising therefrom to enter a guilty verdict against a defendant. This may call for the need to designate certain courts and judges as 'criminal courts and judges' respectively, where judges who are especially knowledgeable in criminal law and procedure will dispense justice.

One way of dealing with this issue, especially regarding confessional statements, is for the courts to insist that the statements of suspects be video recorded in line with provisions of ACJA, which has been replicated in most states of the federation in Nigeria. This is to stress that one of the key ways to avoid wrongful convictions of innocent persons is to comply strictly with the

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<sup>89</sup> Gross SR and O'Brien B, 'Frequency and predictors of false conviction: Why we know so little, and new data on capital cases' 4(4) *Journal of Empirical Legal Studies*, 2008, 927.

adjectival law applicable in the state.<sup>90</sup> This position is in sync with the Police Act which provides that a suspect must at all times be humanely treated.<sup>91</sup>

The State of Illinois in the USA recently enacted a law requiring that custodial interrogations of murder suspects in murder cases be electronically recorded. Recording statements of defendants ultimately serves the benefit of the police, the defendant, the justice system and the truth-seeking function of the judiciary. Despite the requirement of the law on confessional statements, the courts have been reluctant to give it mandatory interpretation. It is about time the Nigerian court started enforcing this law by rejecting the admissibility of any confessional statement that falls short of this condition. This will compel the police and other law enforcement agents to focus on intelligence gathering, rather than its current practice of placing heavy reliance on forcefully obtained confessional statements in the pretext of criminal investigation.

Mechanisms should be put in place to monitor the use of informants in criminal trials. It is clear that the use of informants in criminal trials raises particular and additional trustworthy concerns. Law enforcement officers should be more circumspect in using informants. Prosecutors should demand further investigation of informants' reports. Defence counsel should diligently investigate informants. The courts, through discovery, motions, expert testimony, etc. should ensure that all issues relating to the trustworthiness of informants are properly presented before the courts.

The legal profession must lift the professional standards of lawyers, including legal officers by applying meaningful sanctions for violation of legal requirements, standards and ethical expectations. The Bar Associations, both at Federal and State levels, must take stronger action to restore confidence in the integrity of all qualified lawyers particularly those who represent the state in Nigeria. The highest level of professionalism and ethical standards of seeking the truth must be constantly reinforced in the culture of every prosecutor's office. The laws relating to the rules of professional conduct must be strictly implemented and regularly reviewed by relevant disciplinary bodies. Under Nigeria's rules of professional ethics, both the defence and the prosecution have vital roles to play to ensure that wrongful convictions are obviated.<sup>92</sup> Perverting the course of justice or lack of diligent prosecution or defence, resulting in a wrongful conviction, should attract disciplinary action and criminal liability accordingly.

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<sup>90</sup> Section 18 (1) and (6), *Administration of Criminal Justice Law of Oyo State*, 2016; see also Section 60, *Police Act* (No. 2, 2020).

<sup>91</sup> Section 37, *Police Act* (No. 2, 2020).

<sup>92</sup> Rule 37, Rules of Professional Conduct for lawyers in Nigeria, 2023.