

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS



THE PEOPLE OF THE STATE OF ILLINOIS,)
)
) Plaintiff,)
)
 v.) NO. 90-CF-328
)
 THOMAS MCMILLEN,)
)
) Defendant.)

Affidavit of Richard Leo

Richard Leo, being first duly sworn on oath according to law, deposes and states the following:

1. *I am an Associate Professor of Law at the University of San Francisco and formerly an Associate Professor of Criminology and an Associate Professor of Psychology at the University of California, Irvine. I am an expert in the area of police interrogation practices, the psychology of police interrogation and suspect decision-making, psychological coercion, false confessions, and wrongful convictions. For almost two decades, I have been conducting empirical research and writing peer-reviewed articles and books on these topics. In this time, I have analyzed more than 2,000 real world interrogations. I am the author of several books, including *Police Interrogation and American Justice* (Harvard University Press, 2008), and more than 50 articles and book chapters, many in leading legal and social science journals. I have won many awards for my publications, and my scholarship has often been featured in the news media and cited by appellate courts, including the United States Supreme Court. To date, I have consulted*

with criminal and civil attorneys on more than one-thousand (1,000) cases involving disputed interrogations and/or confessions, and I have testified as an expert witness one-hundred eighty-two (182) times at pre-trial suppressions hearings, jury and bench trials, and post-conviction proceedings in state, federal and military courts in twenty six (26) states. I have testified for the defense, for the prosecution, and in civil cases. I have given numerous lectures to judges, defense attorneys, prosecutors, and other criminal justice professionals. I have also taught interrogation training courses and/or given lectures to police departments in the United States, China, and the Republic of Cyprus. I attach a current curriculum vitae.

2. I have conducted extensive social science research on the phenomenon of false confessions. My studies have been cited by commissions and legislative committees in an effort to enact reforms in several of the states, including Illinois, to require the video-taping of custodial interrogations by police. My work was cited by the Illinois Governor's Commission on Capital Punishment in the recommendation they made to require all custodial interrogations of suspects in a homicide investigation to be video-taped.
3. An examination of the nation's 205 DNA exonerations by the National Innocence Project reveal that almost 25 percent of those cases involved a person who had falsely confessed to the crime. This makes false confessions the second leading cause of wrongful convictions, behind mistaken eye-witness identification.
4. I have reviewed the relevant statements, transcripts and video taped confessions of Donald "Goose" Johnston in which he claimed to be a participant in the

abduction and murder of Melissa Koontz during the original homicide investigation twenty years ago.

5. I have also reviewed the video taped recantation that Donald "Goose" Johnston gave on July 20, 2008, to UIS students Sara Wellard, Priyanka Deo and investigator Bill Clutter from the Downstate Illinois Innocence Project.
6. I have also reviewed the mental health records of Donald "Goose" Johnston from *the McFarland Mental Health Center. Mr. Johnston signed an authorization for the release of confidential mental health records during his video Interrogation on July 20, 2008.*
7. In addition to reviewing the above materials, I traveled to Carlinville, Illinois on Nov. 11, 2008, and conducted a video-taped Interrogation of Donald "Goose" Johnston. The Interrogation took approximately one hour to conduct. Mr. Johnston repeated his recantation and maintained that he did not participate as a witness to the abduction and murder of Melissa Koontz. (See attached CD and transcript)
8. If called as a witness at an evidentiary hearing or re-trial, it is my opinion that Donald "Goose" Johnston almost certainly falsely confessed to police about being a witness and a participant in the abduction and murder of Melissa Koontz.
9. In support of my opinion, I relate the following facts that support the basis of my *opinion, set forth in the paragraphs below.*
10. Social science research indicates that the mentally retarded are especially vulnerable to making false confessions. Donald "Goose" Johnston's mental health records indicate that he was diagnosed as fitting the criteria of mental

retardation based on his low IQ score. He is an individual who is especially vulnerable to coercive interrogation tactics by police. However, because of his mental handicap he is also someone who would provide police with false information without coercive interrogation tactics being applied in an effort to please an authority figure.

11. The McFarland Mental Health Center records of Donald "Goose" Johnston reveal a full scale IQ of 54 "suggesting moderate to mild retardation," according to these records. Doctors noted: "He showed signs of strong dependency and vulnerability to suggestion. He formed strong relationships with male authority figures but remained towards the bottom of the social hierarchy." Psychologist Peter W. Tracy reported: "His level of perceptual accuracy indicates poor reality testing. Several responses were indicative of a tendency to jump to unwarranted conclusions by sizing up a situation on insufficient evidence. . . Reality testing appears to be impaired. There appears to be a tendency for 'accidental' thinking, that is to say arriving at conclusions that are based on insufficient evidence." (See McFarland Mental Health Center records of Donald Johnston).

12. The Illinois Governor's Commission on Capital Punishment, in making their recommendation to video-tape all police custodial interrogation interrogations with a suspect, recognized the vulnerability of the mentally handicapped to falsely confess to crimes they didn't commit. The Commission report cited the following passage from a Harvard law review article authored by Professor Welsh S. White: "It is common for mentally retarded suspects to succumb to coercive attempts to elicit confessions. It is not only that a retarded suspect may be abnormally

"susceptible to coercion and pressure." Even when no pressure is exerted, a retarded suspect "may be inclined to give a false confession out of a desire to please someone perceived to be an authority figure." Mental health experts have long been aware of the risk that a mentally retarded suspect's eagerness to please authority figures will lead him to confess falsely." (See Governor's Commission on Capital Punishment, 2002, at p. 31)

13. Mr. Johnston's first contact with police occurred on June 28, 1989; four days after Melissa Koontz disappeared. Johnston was found wandering late at night by a Macoupin County Sheriff Deputy. Deputy Gary Ewin offered Johnston a ride home. While in the squad car, Johnston noticed a missing person poster. Johnston, who reportedly could not read or write, asked Deputy Ewin about the picture of a young woman displayed on the missing person poster. The deputy explained to Johnston that the picture was that of Melissa Koontz. Deputy Ewin was unaware that she had been murdered. Several days later, the body of Melissa Koontz was found lying in a cornfield 2.5 miles west of Cub Foods, where she was last seen alive leaving work. Her body had not been discovered at that point in time when Deputy Ewin explained the missing person poster to Donald Johnston. Mr. Johnston did not offer any information about the fact that he was a witness to her abduction or that he witnessed her being stabbed to death.

14. Characteristic of Johnston's interaction with police throughout the course of this investigation, he volunteered false information to Deputy Ewin. According to the officer's report: "Goose told this RO that [he] knew the girl in the picture and that

he had seen her in Carlinville on 06-28-1989 at 12:00 noon at a Bob Conlee (sic) house & that she was with another girl by the name of Sissy and that they were driving a small black car." The lead investigating agency, the Sangamon County Sheriff's Department was notified, according to Deputy Ewin's report. However, there is no evidence of any follow-up report. This unsolicited information that Johnston provided to Deputy Ewin, is an example of Johnston wanting please an authority figure. With no interrogation methods being used, Johnston volunteered false information in response to his interaction with police.

15. *The next contact with police occurred late in the evening on July 8, 1989.*

Johnston was placed under arrest on charges that were unrelated to the murder of Melissa Koontz. While at the Carlinville Police Department, Johnston noticed Deputy Ewin and called out to him. According to Deputy Ewin's report: "At 11:49 p/m This RO was at the Carlinville City Police Department. . . when Sgt. Watermeier, came in . . . with Donald R. Johnston and as Donald Johnston walked past this RO He said 'Hay' JR I want to talk to you about something important Big Boy. . . [Deputy Ewin was then called in to the interrogation room by Sgt. Watermeier to] witness Donald Johnston's verbal statement in regards to a theft of money from a girl's purse . . . Then all of a sudden Donald (Goose) Johnston looked over at this RO and said 'Hay' JR I am a thiven son of a bitch and started to cry, that's when he told this RO and Sgt. Watermeir that he knew who had killed the girl from Waverly. This RO asked Goose, what did he mean and he said you know the girl from Waverly, the one in the picture you showed me when you picked me up . . . Tom [McMillen] was the one who killed the girl in

the picture. This RO asked Goose how did he know that Tom was the one who killed the girl and he said because I was there and I watched."

16. This utterance by Johnston may have been an attempt by Johnston to exchange information for leniency regarding his pending arrest by police.

17. However, when Deputy Ewin pressed Johnston for details, Johnston provided details that conflicted with the known facts of the crime. Melissa Koontz's body was found with multiple stab wounds to her chest. According to Deputy Ewin's report, Johnston declared that "Tom choked her to death." According to the autopsy, there was no evidence of manual strangulation.

18. When Deputy Ewin asked, "Where was the girl killed," Johnston replied, on Madison Street in Springfield. Again, this evidence conflicted with the known facts of the case. Mellissa Koontz's body was found 2.5 miles west of Cub Foods in a cornfield. There was no evidence of a crime scene on Madison Street in Springfield.

19. According to Deputy Ewin's report, "Goose also told this RO that he had known Melissa Koontz for about thirteen years and that he knew her mother, too." Like his false statements regarding the location and manner of death, this statement too, is a provable false statement that he made to police.

20. *In evaluating whether a witness is providing police with reliable information, a person who claims to have witnessed a murder should be able to accurately relate details to police that match up with crime scene evidence. They should be able to provide facts of the crime that would not be generally known to the public.*

Based on my review of all available statements, Donald Johnston was never able to provide accurate details to police.

21. Donald Johnston was unable to provide accurate details of the crime that had been widely reported in the media. The location where the body was found was widely reported in the media. However, Donald Johnston's initial statement places the scene of the crime on the opposite end of Springfield's eastside, in the middle of the city, rather than the rural farm fields outside of the city's west side where her body was found.
22. These false statements that Donald Johnston made to Deputy Ewin on July 8, 1989, led him to become a suspect in the homicide investigation that was conducted by the Sangamon County Sheriff's Department.
23. It is significant to point out that Det. James Mitchell of the Sangamon County Sheriff's Department noted in his report that Donald Johnston was so intoxicated at the time he made his statements to Deputy Ewin, Det. Mitchell had to wait until he sobered up to interrogate him. According to Det. Mitchell's report, "Sgt. Johnson advised me that Deputy Ewin stated that Mr. Johnston was very intoxicated and appeared to be a little 10-96 [code for crazy]. . . "I advised Dep. Ewin that R/D would be down to talk to Mr. Johnston later during the day after Mr. Johnston had sobered up." (See July 9, 1989 report of Det. James Mitchell p. 1).
24. The fact the Donald Johnston was "very intoxicated" when he made his first statement identifying Tom McMillen as the person who allegedly killed Melissa

Koontz is significant. Individuals who are intoxicated often make false declarations to police.

25. By the time Johnston sobered up, he had apparently had forgotten what he had told Deputy Ewin the night before. The next morning, Det. Mitchell came to Interrogation Johnston, who was now incarcerated at the Macoupin County jail. According to Det. Mitchell's report, "I then asked Mr. Johnston if he was familiar with any of the statements that he had told Dep. Ewin when he was arrested earlier this morning. . . I asked Mr. Johnston if he would tell me what he knows about the murder that he was talking about. Mr. Johnston stated that all he knows is the fact the Tom McMillan (sic) had shown him a poster of Melissa Koontz and stated something about murder...he said ...it was posted at the Shell Gas Station in Girard." Det. Mitchell concluded the interrogation on July 9, 1989, without eliciting any statements from Johnston regarding his earlier claim to Deputy Ewin that he was an eye-witness to Melissa Koontz's murder. (See July 9, 1989 report of Det. James Mitchell p. 3).

26. Two days later, on July 11, 1989, Det. Mitchell re-Interrogated Donald Johnston, accompanied by Det. Leonard. Johnston provided a series of inconsistent statements during this Interrogation.

27. On July 13, 1989, Det. Mitchell and Leonard again Interrogation Johnston. Johnston again gives conflicting accounts during hours of interrogation, first identifying an unknown male as the person who killed Melissa Koontz. Toward the end of this Interrogation police got him to identify the killer as a man by the name of Gary Angelo. Police get him to admit that it was his pocket knife that

Gary Angelo used to stab Melissa Koontz. He was asked if he was holding the knife, and he said he was. He was asked if Melissa Koontz might have been accidentally stabbed by him. To each one of these questions, Donald Johnston agreed with the various scenarios that were suggested by detectives. (See *July 13, 1989 report of Det. Leonard*)

28. The transcript of the Interrogation on July 13, 1989 provides a short glimpse into this Interrogation process:

Det. Leonard: Now then let me ask you this. Is it possible that you might of accidentally stuck a knife into her by accident?

Johnston: Maybe. Maybe.

Q: You know, maybe she was comin' at you excited and maybe she walked into the knife or something.

A: Yeah.

Q: Did you, did you have a knife in your hand at all Don.

A: I had uh, I had a pocket, a knife in my hand. . . I didn't stab her or nothin'. . . I stuck the girl, stuck the girl.

Q: Okay.

A: I might of stuck the girl, you know,

[*Transcript July 13, 1989 Interrogation of Donald Johnston, pp. 59-60*].

29. On July 14, 1989, police detectives again Interrogation Johnston. Part of this Interrogation was also video and audio recorded. According to the transcript, Johnston begins the Interrogation by repeating that Gary Angelo was the person who stopped Melissa Koontz's car: "Gary Angelo was holdin' his hands out, and

I was holdin' my hands out and I had a knife in my hands. . . Danny [Pocklington] he stayed in the road takin' a leak, and then he, Gary stabbed this girl three times and I don't now if I stabbed the girl, I had the knife in my hands, she was fightin' a little, I must have stabbed the girl." (See transcript of July 14, 1989 interrogation of Donald Johnston p. 5).

30. Detectives had interrogated Gary Angelo on July 13, 1989, and apparently doubted his involvement in the murder. Detectives then confront Johnston. The transcript shows how easily Johnston changes his story:

Det. Leonard: Are you sure its Gary Angelo. Are you sure its Gary Angelo Don, Don look at me and tell me its Gary Angelo. Was it Gary Angelo or wasn't it. It was a Gary wasn't it.

Johnston: Yeah

Q: His first name was Gary wasn't it.

A: Yeah.

Q: Now tell me what his last name really is Don, Don tell me what Gary's last name really is, you know, come on buddy.

A: Edgington

31. Based on these contradictory and conflicting statements with the known facts of the crime scene evidence, Donald Johnston was arrested on Capital Murder charges, and subsequently testified at the trial of Thomas McMillen as a key witness for the state in exchange for leniency.

32. I submit this affidavit in support of further forensic testing that will utilize DNA technology to identify the killer of Melissa Koontz.

Your affiant sayeth not

Richard Leo

Richard Leo

SUBSCRIBED AND SWORN to before me

this 12th day of September, 2009,

Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Jon Garrett Foose

NOTARY PUBLIC

