

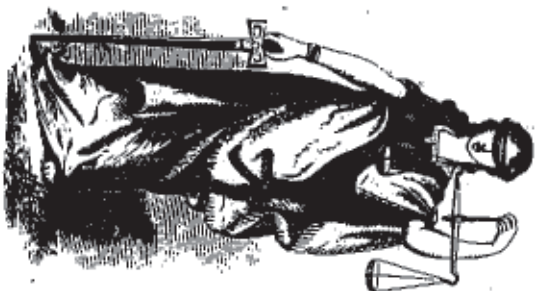
CONTINUING LEGAL EDUCATION

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LITIGATING THE FALSE CONFESSION DEFENSE

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LITIGATING THE
FALSE
CONFESSION
CASE



PROSECUTING THE BOGUS
FALSE CONFESSION CASE

ALMOST FAMOUS OR
INFAMOUS





US v. McGINNIS Facts

- CLIENT CHARGED WITH REACTURING TEEN OF A MONTH OLD STEW-SON AND FRACTURING LEG OF 2 YEAR OLD STEP DAUGHTER
- CLIENT GAVE WRITTEN CONFESSION TO ARMY CRIMINAL INVESTIGATIONS DIVISION ADMITTING TO INJURING 8 MONTH OLD BUT NOT 3 YEAR OLD
- CLIENT PLEA OFFER
- CLIENT SAYS I DID NOT HURT MY KIDS
- POLICE WOULD NOT ACCEPT MY DENIALS SO I TOLD THEM I DID IT TO STOP THE INTERROGATION



THE FALSE CONFESSION GUYS

- 15-20 EXPERTS ON THE CIRCUIT
- RICHARD OFSHE, RICHARD LEO, SAUL KASSIN, SOL FULERO, ALAN HERSCH
- OFSHE SPENT HOURS WITH ME ON PHONE BUT CRITICAL QUESTION?
- OFSHE REALLY GOT ME UP TO SPEED ON HIS FIELD
- OFSHE CORRECTED ME THAT HE IS NOT A FALSE CONFESSION EXPERT INSTEAD HE VIEWS HIMSELF AS AN EXPERT IN THE FIELD OF PSYCHOLOGICAL COERCIVE POLICE INTERROGATION TECHNIQUES WHICH MAY LEAD TO THE PHENOMENA OF A FALSE CONFESSION
- SEE REID TECHNIQUE OF INTERROGATION



THE FALSE CONFESSION GUYS

- EXCERPTS FROM JOHN E. REED & ASSOCIATES, INC. WISCONSIN
BRZDZEWIANSKI CONSULTATIONAL LABORATORIES/INVESTIGATIONS
- Over the last several years police interrogation tactics and techniques have come and gone and the use of the Reid technique has been a major focus of police training and education. The expert that sets of the guidelines take on the their criteria of police interrogation techniques was Professor Oleson, a social psychologist with the University of Oklahoma, Oklahoma.
- In the past several years Dr. Oleson has been criticized by hundreds of students and professors of police training and education, and of law enforcement officers what he describes as "The Reid Technique". We have had the opportunity to meet with Dr. Oleson on a number of occasions, and of our office is regularly contacted by law enforcement agencies and police departments for information on the Reid technique. As a result of these experiences we agreed on our own the Oleson (2002) several years ago. A note called "The Oleson Critique" in which we describe a number of Dr. Oleson's criticisms and offer our perspective.



ADMISSIBILITY OF EXPERT NEW YORK AND FRYE

Frye test, or general acceptance test is a test to determine the admissibility of scientific evidence. It provides that expert opinion based on a scientific technique is admissible only where the technique is generally accepted as reliable in the relevant scientific community.



ADMISSIBILITY OF EXPERT NEW YORK AND FRYE

• Prior to 2012-With one exception (*People v. Kogut*, 10 Misc. 3d 305 (Sup. Ct. Nassau Cty. 2005), NY Courts consistently found false confession expert testimony is inadmissible.

• *People v. Bedessie*, 19 N.Y. 3d 147 (2012)-Court of Appeals



ADMISSIBILITY OF EXPERT NEW YORK AND FRYE

• *People v. Bedessie*, 19 N.Y. 3d 147 (2012)-Court of Appeals

• False confessions that precipitate a wrongful conviction are deeply harmful to defendant, the crime victim, society and the criminal justice system. And there is no doubt that experts in the disciplines of psychology and psychology or the social sciences may be able to assist the jury to educate a jury about those factors of personal, situational, that the relevant scientific community considers to be associated with false confessions. While the expert may not testify as to whether a particular defendant's confession was or was not reliable, the expert's proffer must be relevant to the defendant and interrogation before the court. Dr. Olsberg's proffer does not meet this standard, and therefore the trial judge did not abuse his discretion when he excluded the proposed testimony, even assuming that the confession was not corroborated.



FEDERAL RULES AND DAUBERT

- *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993), the Supreme Court held that the Federal Rules of Evidence superseded *Frye* as the standard for admissibility of expert evidence in federal courts.
- NY and handful of states still follow *Frye* general acceptance test



FEDERAL RULE EVIDENCE 702

- If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify therein in the form of an opinion or otherwise, if:
 - (1) the testimony is based upon sufficient facts or data,
 - (2) the testimony is the product of reliable principles and methods, and
 - (3) the witness has applied the principles and methods reliably to the facts of the case.

• JUDGE IS THE GATEKEEPER



FEDERAL RULE EVIDENCE 702

- *United States v. Hall*, 7th Circuit found "Dr. Orsina is qualified as an expert in the field of coercive police interrogation techniques which may lead to false confessions. The Court further finds that the science of social psychology, and specifically the field involving the use of coercion in interrogations, is sufficiently developed in its methods to constitute a reliable body of specialized knowledge under Rule 702. While Dr. Orsina and his peers utilize observational, as opposed to experimental, techniques, this is wholly acceptable in the established field of social psychology." 83 F.3d 1337, 1345 (7th Cir. 1996), *cert denied*, 974 F. Supp. 1199, 1205 (C.D. Ill. 1997)



US v. McGINNIS

- MCGINNIS TO HAVE DR. OFSHE APPOINTED AS DEFENSE EXPERT IN THE TRIAL. MCGINNIS TO REQUEST POLICE INTERVIEW FROM TECHNOLOGIES WHICH COULD LEAD TO THE PHENOMENON OF FALSE CONFESSIONS
- OFSHE HELPED ME WRITE IT AND EDIT
- JUDGE PREVIOUS BACKGROUNDED COMPLAINT THAT MY MOTIONS WERE TYPICALLY SPARSE AND DIVIDED OF FACTS TO THROW THE GUY OFF AS TO WHAT THE ISSUES ARE
- SO DRAFTED 40 PLUS PAGE „BEST LEGAL“ WRITTEN WORK PRODUCT THAT I CAN FORGOT LATER THAT I HAD TO EXPLAIN IN DRIVING REQUEST MATT BOURNEMAN THAT I WAS „SPECIAL“ ESPECIALLY WITH EXPERIENCED COUNSEL (VAM, SENATORS OF GAME SWANSHIPS”
- JUDGE FOUND OFSHE’S TESTIMONY INADMISSIBLE UNDER FEDERAL RULE OF EVIDENCE 702-COORS NOT PASS ZALBERN!



US v. McGINNIS Theory of case

- DEFENSE THEORY: MCGINNIS IS GOMER PYLE. HE IS A GREAT KID THAT MARRIED A WOMAN THAT HE DID NOT REALLY KNOW AND DID NOT KNOW OF THE PREVIOUS HISTORY OF CHILD NEGLECT. HE DID NOT HURT HIS KIDS AND TOLD THAT TO POLICE FOR HOURS.
- B/C OF HIS BELOW AVERAGE INTELLIGENCE, AND EXTREMELY COMPLAINT PERSONALITY, HE CONFESSED TO A CRIME THAT IT WAS MEDICALLY IMPOSSIBLE FOR HIM TO HAVE COMMITTED.
- VOIR DIRE: SEWING THE SEEDS
- HEART CONDITION-CO SEE A DENTIST
- MECHANISM OF INJURY HOW THE BONE WAS BROKEN
- ORTHOPEDIST VS. PEDIATRICIAN



US v. McGINNIS DIRECT EXAM OF COPS

- AKA COFFEE TALK, YADA YADA YADA, THORNTON MELTON SCHOOL OF INTERROGATION:
- ALL THARTY COPS Testifies regarding the warm, friendly conditions of the COPS Office
- Pinedas vs. McGinnis: During the interview, McGinnis sits, we had coffee, he took smoke breaks, we talked some more, the more coffee and yada yada yada, McGinnis told me next ready I was going to get him to calm down, then he started ranting over history's records to get him to calm down, then he started ranting over history's records to get him to calm down, then he started ranting that he had been, when he started to rant, he told me the same story about what he had done. We shook hands, hugged and are now OFF!



**US v. McGINNIS
X-EXAM**

- CROSS EXAM OF CID AGENT
- Q: Referred to as interview of McGinnis?
- Called it interview 17 times during direct, correct?
- Go to MILITARY COP School? Block of instruction for 21 days on conducting interrogation?
- Taught difference between Interview and Interrogation?
- In fact DE A are slide materials from your school?
- This is actual slides from school?



US v. McGINNIS



**INTERVIEW v.
INTERROGATION**



- | | |
|----------------------------|---------------------------------|
| ■ Non-accusatory | ■ Accusatory |
| ■ Lack of re evidence | ■ Testimonial/physical evidence |
| ■ Information gained | ■ Standard |
| ■ Limited structure | ■ Privately established |
| ■ Variable environments | ■ Multi-sitting with students |
| ■ Role-playing recommended | ■ Time is not limited |
| ■ Time may be restricted | |
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US v. McGINNIS

- AGENT V, LET'S STOP CALLING THIS AN INTERVIEW, OKAY?
- THIS WAS AN INTERROGATION?



US v. McGINNIS

- INTERROGATED FROM 1:00-2:05-TRANS LATE 7 PM TO 1:30 AM FOR CIVILIANS?
- MORE THAN SIX HOURS?
- MCGINNIS INITIALLY DENIED?
- TOLD YOU NOT HURT HIS KIDS?
- TOLD YOU THAT FOR MORE THAN 2 HOURS? I don't know how long he denied.
- No notes? Not recorded? Nothing to memorialize how long he denied? But he did deny? And it was for some time?



US v. McGINNIS

- When Suspect denies, you are taught to apply REID technique of interrogation?
- At MILITARY COP SCHOOL, called 7 elements of interrogation?
- 7 elements designed to get denying suspect to tell you the truth (as you see fit)?
- You applied this technique on McGinnis?



US v. McGINNIS



THE 7 ELEMENTS OF AN INTERROGATION



- Initial Confrontation
- Theme Development
- Controlling Denials
- Controlling Objections
- Approaching the Breaking Point
- The Comparative Question
- Obtaining the Truth



US v. McGINNIS
INITIAL CONFRONTATION

- Suspect is told with absolute certainty that they committed the offense in question?
- You tell suspect not a question if committed offense but rather why?
- You did that with McGinnis?
- ANSWER: I may have, sir
- You do not remember? No notes? No video?



US v. McGINNIS



THE 7 ELEMENTS OF AN INTERROGATION



- **THEME DEVELOPMENT:**
 - Reasons & Excuses
 - Transfer of blame
 - Self-Respect
 - Minimizing the moral seriousness
 - Minimizing the consequences



US v. McGINNIS
THEME DEVELOPMENT

- Q: Told him he is young?
- Q: Told him Never been dad before?
- A: Possibly Don't remember what told him no notes
- Q: Told him You changed diapers last night? I may have told him no notes
- Q: Never cared for baby before?
- Q: Told him baby crying middle of night? Could not get baby to stop crying? Told him that he became frustrated?
- A: I may have told him this -no notes

US v. McGINNIS

THE 7 ELEMENTS OF AN INTERROGATION

■ CONTROLLING OBJECTIONS:

- An objection is a reason or argument presented by the suspect as to why the question is illegal
- Use the objection to develop more themes
- Examples of objections
 - "Why would I need her money when I have \$1,000.00 in my checking account?"
 - Objection: Counterintelligence
 - "Are you objecting based on the suspect"
 - "The suspect is that person who had question, illegal and all illegal in the DC"

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15

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US v. McGINNIS

- And you used the techniques with McGinnis? Oh, I don't know, no really, no video
- Are there any techniques designed to get McGinnis to the breaking point?

Answer: Well, Sir, I am not sure if breaking point is the way to get him to get the confession with leading the train. What has been your indication of higher ranking police like US Army CID school teaches you (DE A, page 21, slide 22) so attention to interrogation is approaching breaking point?

THE 7 ELEMENTS OF AN INTERROGATION

- Thematic Development
- Controlling Objections
- Reiteration of the Accusing Facts
- The Compelling Question
- Confronting the Truth

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GOOD COP/BAD COP

- **Q ONE WAY TO CONTROL OBJECTIONS AND DENIALS IS GOOD COP/BAD COP?**
- **A: I HAVE NEVER HEARD OF THAT SIR**
- **Q: How likely to have one cop be unfriendly/mean to suspect and other have other cop be nice to suspect to appear to be on the side to get him to admit his wrong doing**
- **A: Yes, that is what you have used before.**
- **Q: How likely is that you had telling him I know you did, stop denying it, I just want to know why?**
- **A: Basically, Sir**
- **Q: You gave him amanda break? At that point was AGENT M in interrogation room? No?**
- **Q: Are AGENT M took him on break? Seated with him? Made anal talk with him? Saided things to comment? Just being friendly?**
- **Q: Are when interrogation resumed AGENT M went in room with you and Madams? And at that point time of you began questioning him?**
- **Q: And you did not use good cop/bad cop here?**



LIES, TRICKS AND DECEIT OH MY!

- Q: You told McGinnis that his wife already had given him up as causing injury to child?
- A: Yes, sir
- Q: You had wife's statement? You did not read it to McGinnis?
- Q: Did not tell McGinnis that his wife said he grabbed baby really hard by legs to prevent him from falling?
- Q: Just told him that wife said he was responsible?
- A: Yes
- Q: Taught at MILITARY POLICE school You are allowed to lie to suspects? Allowed to deceive suspects? Allowed to trick suspects? You have lied before to suspects? Deceived? Tricked?



US v. McGINNIS

- Comparative question - the suspect is presented with two possible alternatives by the commission of the crime. Both alternatives are highly incriminating, but they are worded in such a way that one side is a lesser evading device and the other implies some reprieve or culpa
- Q: Was this technique only when suspect in elevated stage?
- A: I would not call it that sir?



THE ELEMENTS OF AN INTERROGATION

• A suspect present in the room with two

— A witness and that witness is the state witness, verbal a
— One witness the time of crime
— Follow up with a repeating statement
— REPEATING STATEMENT
— REPEATED OFFENSE
— REPEATED OFFENSE





COMPARATIVE QUESTION? BEATING UP LITTLE OLD LADIES FOR FUN VS. FEED KIDS

- You used comparative question here?
- Present McGinnis with 2 alternatives? Both legally are wrong? But one is more morally wrong than other?
- First choice-person that goes around intentionally breaking little baby's legs?
- And the person that gets frustrated? Never been a dad before? Not know own strength? Just pulled too hard on baby's legs?



GETTING TO TRUTH
THE WRITTEN STATEMENT

- Obtaining the truth-7th element
- This is purpose of 7 steps. Get suspect to feel comfortable enough to tell truth? Yes
- McGinnis exhibiting signs of truthfulness? Crying? Upset? Remorseful?
- Once obtain truth, get statement in writing?



US v. McGINNIS
Getting to yank


- Once obtain truth (is you see #1-6) it is writing
- Get reduce to writing form and interview - are four hours? No more? No. When?
- Question? Double the hours? No. What?
- Q: And McGinnis told you maybe happened when changing diaper?
- A: Yes told me he yanked on baby's leg during diaper change.
- Q: How long ago was your first conversation? And it was a process to get truth? That is correct. I was trying to get the truth out of him. I was trying to get the truth out of him.
- Q: Then told you that your process of interrogating that maybe happened during diaper change?
- Q: Did not come right out and tell you happened when he yanked on baby's leg?
- A: He came and he was crying. He yanked on his own verbal cue. We all discussed that it appeared he yanked and he agreed?
- Q: Again, my question AGENT V, McGinnis did not use word pain killing? No. It
- Q: You suggested it to him? I do not recall how it came into conversation who said it first.



US v. McGINNIS

Speaking of Yanked: THESE QUESTIONS ON THE WRITTEN STATEMENT? Your questions AGENT V?

- How hard did you yank on baby's leg?
 - Why zank on baby's legs?
 - Do you often yank on his legs when change diaper?
 - How feel after yanked on his legs?
- And again YANKED was McGinnis words not yours?

 **US v. McGINNIS**

- False Confessions
- Q: Have block of instructions at CID school on false confessions? Probably sir but do not remember it.
- (See judge want to reconsider your ruling that I do not need an expert to talk about this stuff)

 **US v. McGINNIS**

FALSE CONFESSIONS

■ Despite the long held contention of police interrogators and society as a whole, people have been subjected to sufficient psychological pressure to break their spirit, causing them to render false confessions

 **US v. McGINNIS**

FALSE CONFESSIONS

■ TYPES: Coerced-Compliant

- To change environment or end distraction
- Brown v. Mississippi - 1956
- 3 Black men confessed to murder after being whipped with a tear-gassed rubber bat

US v. McGINNIS



FALSE CONFESSIONS



- TYPES: Coerced-Internalized
- In response to a demand for a confession
 - Young
 - Blind
 - Easily susceptible
- Peter Reilly - 18 years old
 - Investigators told him he failed a polygraph
 - Many hours later, he confessed to murder

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US v. McGINNIS



FALSE CONFESSIONS



- CASE STUDY: Central Park Jogger
- Case - 1989
 - Young
 - Tired
 - Promised change of environment

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COP IS NOT OF THIS WORLD



- Answer: Sir I never heard of Central Park Jogger case
- Q: Never heard three individuals spent 15 years in jail for raping woman in Central Park? Absolved by DNA?
- A: Never heard of case sir
- ANOTHER REASON TO HAVE DR. OFSHE, JUDGE SAID I COULD CROSS CID ALL I WANT ABOUT FALSE CONFESSIONS, BUT COP NEVER HEARD OF CASE WHERE OFSHE COULD EDUCATE JURY ABOUT THIS CASE AS JUST ONE EXAMPLE WHERE YOU JUDGING AMOUNT OF RESEARCH DONE IN THIS CASE WHERE PSYCHOLOGICAL COERCION AND HOW IT MAY RESULT IN A FALSE CONFESSION

US v. McGINNIS



FALSE CONFESSIONS



■ PREVENTING FALSE CONFESSIONS:

- Do not rely on statement alone to provide a confession
 - Statements should be corroborated with other evidence or physical evidence
- Give all witnesses provided details beyond what could otherwise be known
- Recommend videotaping (audio confession)
- All evidence in support of confession is reviewed, including any statements and notes of recording

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US v. McGINNIS



• Don't just rely on confession:

- If a suspect confesses to a shooting and you later found out that gun had blanks, there would be a problem with your confession?
- And if you found out that not medically possible for the injuries to have occurred in the way its detailed in McGinnis' statement, that would be a problem as well?

US v. McGINNIS



AUDIO/VIDEO TAPING INTERROGATIONS



- More and more, courts, defense attorneys, and the public, are questioning how voluntary confessions are
- A remedy is audio and video taping interviews and interrogations

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US v. McGINNIS



**AUDIO/VIDEO TAPING
INTERROGATIONS**



- Determine if audio/video taping an interview/interrogation is feasible and practical.
- If so, what are the benefits?

THE BIG RED TAPE



- AGENT V, ever been to BEST BUY at mall down the street?
- They sell video cameras there?
- So your testimony not feasible or practical?
- I am not in charge of budgeting sir.

**I AM SO MUCH MORE THAN A
PEDIATRICIAN**



- Government Dr. - Director of Armed Forces Center for Child Protection
- Pediatrician dealing with child abuse cases for twenty five years-seen hundreds of cases of abuse-Her opinion it was medically impossible for injury to be accidental-this was non-accidental trauma
- Injury could have absolutely occurred the way described in McGinnis statement
- Cross-exam
 - Dr. not an orthopedist.
 - Disagreed that not qualified to determine mechanism of injury
 - Dr. never consulted ortho because not necessary
 - "if anything the orthopedist would come to me for my opinion"

US v. McGINNIS



- Defense Expert: Orthopedic surgeon sees hundreds of patients a year 1/2 of which are children-large percentage of toddlers, infants, etc etc
- Reviewed finding with a top pediatric orthopedic surgeon
- Possible fall from height in other words cant rule out ACCIDENT
- But what can rule out that this injury could not have occurred from yanking on baby's leg the way described in McGinnis's statement
- Find it mind boggling that GOVT EXPERT would not consult with orthopedist to discuss mechanism of injury

US v. McGINNIS Summation



- Confessed to doing something that medically impossible
- All factors set up—young, tired, lack of common senses, compliant by nature submissive
- Cops-psychological coercive techniques
- 7 steps of interrogation

THE VIDEO STATEMENT



- People v. Bazemore
- Co-Derf LOVELY gives names location of
 - Terry Bazemore-1485 Grand Concourse
 - Roy Gray-Bazemore's 1/2 brother in North Carolina
 - Darren Gunter-Lovely's cousin



BAZEMORE
Cross of DET

- THE STATEMENT
- TRAINING IN INTERROGATION TECHNIQUES
- MOSTLY LEARN IN FIELD FROM OTHER DETECTIVES
- FEW DEFENDANTS EVER ADMIT WRONGDOING IMMEDIATELY
- PROCESS OF INTERROGATION
- NOT THE SAME EVERY TIME
- NOT LET SUSPECT DENY -was INITIAL CONFRONTATION
- PRESENT REASONS FOR WHY COMMITTED CRIME-AAA
- Theme Development
- PRESENT SCENARIOS ONE MORE SERIOUS THAN OTHER-AAA
- AAA Comparative question-standing up for woman who claims to have been raped vs could be made father
- ALLOWED TO LIE, DECEIVE, TRICK SUSPECTS



BAZEMORE
Cross of DET

- INTERROGATION LASTED FOR HOURS
- NOTHING DOCUMENTING HOW LONG ORAL INTERVIEW WAS AFTER MIRANDA-NO NOTES, NO RECORDING
- DETECTIVE CAN'T REMEMBER IF BAZEMORE EVER DENIED INVOLVEMENT IT WAS FOUR YEARS AGO
- NO INTERVIEW TECHNIQUES IF USED ANY SPECIFIC RECORDING
- MEN LIED BUT HAVE DONE IT BEFORE-NO NOTES NO RECORDING
- NO INTERDEPENDENT RECOLLECTION IF BAZEMORE DENIED CRIME BUT REMEMBER NOT LIE OR DECEIVE
- NO GOOD COP/PAID COP-EMIN THROUGH OTHER DETECTIVE IN ROOM DURING INTERROGATION



BAZEMORE
Cross of DET

- NO THREATS
- NO PROMISES
- NEVER SHOWED PICTURES/CRIME SCENE SKETCH-BUT NO NOTES OR RECORDING
- DON'T RECALL ANY CONVERSATION WITH BAZEMORE THAT DA COMING TO TAKE VIDEO



**BAZEMORE'S
MOMMY TESTIMONY**

- BAZEMORE'S MOM FULL TIME HOME HEALTH AIDE RELIGIOUS WOMAN TESTIFIES THAT CAME HOME FROM WORK THAT LOCK ON APARTMENT DOOR BUSTED EVERY ROOM IN APARTMENT TUNED UPSIDE DOWN
- DESCRIBED TABLE WHERE POLICE OBSERVED BULLETS AND CAN'T SEE IN PLAIN VIEW WITH THE WAY DOOR SWINGS OUT AND THAT SHE LIVES IN APT FULL TIME AND NEVER SEEN AMMUNITION IN APARTMENT FRONT HALLWAY



**BAZEMORE
DIRECT EXAM**

- AT TRIAL BAZEMORE SAID POLICE BREAK LOCK ON DOOR BEAT HIM UP (he is 8'6 285)
- FLIP APARTMENT GOING ROOM TO ROOM ASKING WHERE ARE THE GUNS
- TAKE HIM TO PRECINCT



**BAZEMORE
DIRECT EXAM**

- LEFT IN LOCKED INTERROGATION ROOM ALONE FOR HOURS BEFORE EVEN START INTERVIEW
- NO MIRANDA UNTIL WRITTEN STATEMENT
- BAZEMORE TELLS POLICE LOVELY TOLD THEM SHE WAS RAPED, ROY GRAY FRIENDS WITH LOVELY AND ROY GRAY GOING TO HOUSE TO BEAT UP VICTIM AS WELL AS LOVELY'S COUSIN AND TWO OTHER TALL GUYS THAT NEVER SEEN BEFORE
- BAZEMORE SAID HE WENT ALONG BECAUSE WORRIED ABOUT HIS BROTHER NOT SURE WHAT THE COW CAPABLE
- BUT THAT HE NEVER WENT IN HOUSE HE STAYED OUTSIDE THAT HE HAD JUST BEEN PAROLED AND DID NOT WANT ANY ISSUES
- NO IDEA IF BROTHER ARMED BUT HE HEARD SHOTS AND HE LEFT THE LOCATION



BAZEMORE DIRECT EXAM

- SAVED DET THAT BROKE DOWN DOOR
- THREATENED THAT HOUSEING VIOLATION WOULD LOSE APARTMENT
- GOING TO VIOLATE YOU ON PAROLE
- NOT INTERESTED IN BAZEMORE ONLY ROY GRAY
- JUST NEED WITNESS TO SAY THAT GRAY CAME IN APARTMENT AND THAT HE HAD GUN
- BAZEMORE SAID HE DID NOT KNOW THAT AND DID NOT GO IN HOUSE BUT GET NOT ACCEPT THIS -SOUNDS LIKE INITIAL DET NOT IN A GOOD MENT AND TOLD HIM IF YOU WANT TO TAKE CARE OF YOUR MOM YOU WILL DO THE RIGHT THING WE ALREADY HAVE YOUR BROTHER WITH DNA A LIE AT THE STAYMENT SAYING YOU WENT IN APARTMENT AND ROY STAYED AND SUN AND MOM WILL BE OK AND YOU CAN GO HOME



BAZEMORE DIRECT EXAM

- ONCE BAZEMORE SIGNED STATEMENT DETECTIVE TOLD BAZEMORE THAT A BRONX ADA COMING TO TAKE VIDEO
- TOLD BAZEMORE THAT BRONX ADA HAS NO IDEA ABOUT CONSENT AND THEN DET AND BAZEMORE THAT HE CAN BLOW YOUR CHANCE
- POLICE PULLED OUT CRIME SCENE SKETCH PHOTOS WENT OVER LAYOUT OF HOUSE AND TOLD HIM WHAT TO SAY
- PREPARED HIM ON WHAT TO TELL BRONX ADA FOR A COUPLE OF HOURS TO GET THE STORY STRAIGHT



BAZEMORE DIRECT EXAM

- BRONX ADA WAS VERY VERY NICE
- READ MIRANDA WAS VERY POLITE
- WENT OVER STORY THAT DET TOLD HIM
- HOW HE WENT IN HOUSE WITH ROY GRAY
- THAT ROY GRAY PULLED OUT GUN AND BAZEMORE DECIDED HE WANTED NO PART IN THIS AND LEFT



THE WITHERING CROSS EXAM

BAZEMORE

- TRANSCRIBED VIDEO STATEMENT 79 PAGES
- TOOK INDIVIDUAL PIECES OF VIDEO AND PLAYED FOR JURY TO SHOW THE SILENCE OF STORY
- REMEMBER BEING ASKED QUESTION BY BROUX DA A VIDEO
- Said you never opened victim's bedroom door and then he asked you to open it and of four bedrooms (the hallway)
- And do you remember opening the door ADA at 9:50 line 14 of transcript? The line I said before - for the mother came out of her bedroom screaming then my brother kicked opened the door to victim's bedroom and I saw him put a gun
- And your testimony that rehearsed the with DEIT? Rehearsed before you got to court? And you said you were nervous and you said the mother came out of room and then ROT? Okay you down side story
- ARGUE TO JURY THE SILENCE OF THIS THAT DETECTIVE AND BAZEMORE WOULD BE REHEARSING THE MINUTE DETAILS OF WHICH CAME FIRST



THE WITHERING CROSS EXAM

BAZEMORE

- REMEMBER BROUX DA ASKED YOU QUESTION AT PAGE 45 LINE 15 SO AFTER THE MOTHER CAME OUT OF HER BEDROOM YOU WALKED TOWARDS HER TO CALM HER DOWN?
- AND TOLD DA FOLLOWING: "NOT I ALREADY TOLD YOU THAT I NEVER OPENED THE DOOR TO THE ROOM I STATED BY THE VIDEO STATEMENT THAT I NEVER OPENED THE DOOR"
- And your testimony that rehearsed the with DEIT? Rehearsed before you got to court? And you said you were nervous and you said the mother came out of room and then ROT? Okay you down side story
- remember to tell the ADA that that man comes out of room that you try to calm her but that you never walked towards her, then ROT? Okay
- AND AGAIN ARGUE TO JURY THE SILENCE OF THIS THAT DETECTIVE AND BAZEMORE WOULD BE REHEARSING THESE MINUTE DETAILS



DEFENSE SUMMATION

BAZEMORE

- NY DAILY NEWS: JULY 1, 2009

- Defense lawyer Martin Goldberg called the lead detective a "deceitful, duplicitous liar," accusing him of trashing Bazemore's apartment without a warrant, planting a box of bullets and coercing a confession.
- "[He] is an old school cop," Goldberg said. "He is one step removed from the rubber hose and bright light."



**BAZEMORE
INSTRUCTIONS**

- JURY TOLD THAT ISSUE OF THE
LAWFULNESS OF BAZEMORE'S ARREST IS
LEGAL ISSUE NOT MATTER FOR THEM TO
CONSIDER
- HOWEVER, CAN CONSIDER DET ACTIONS
IN EFFECTUATING ARREST AS TO HIS
CREDIBILITY IN DETERMINATION AS TO
VOLUNTARINESS AND RELIABILITY OF
BAZEMORE'S STATEMENTS BYRD
- JURY DELIBERATED MAYBE TWO HOURS



HAPPY ENDING FOR MCGINNIS

U.S. v. McGinnis, 2010 WL 3931494 (Army
Cl. Crim. App.)

- Appellant claims as his sole assignment of
error the military judge abused his discretion in
denying the defense request for expert
assistance "in the area of coercive law
enforcement techniques which may lead to a
false confession." We agree and grant relief.
- Upon consideration of the entire record, the findings
and sentence are set aside.
