

**SCHLUP CLAIM DRAFT**

Legal Standard to get through the gateway: House v. Bell "reasonable doubt as to prisoner's guilt" based on new evidence – the science of false confessions is new? – cite articles after December 2005 ?????? – new witness interviews\* What else?

**LAW ENFORCEMENT KNEW THE CONDITION AND LOCATION OF THE BODIES OF JAMES ADAM STOTLER AND JEREMY RICHARDSON PRIOR TO PERRY'S STATEMENT**

At approximately 9:30 a.m., Friday October 26<sup>th</sup> 2001, Montgomery County Deputy Monte Morast<sup>1</sup> attempted to stop a Camaro after witnessing the driver commit several traffic violations.<sup>2</sup> After a brief pursuit, the driver ran off the road, exited the vehicle, and took off on foot. The passenger surrendered. When questioned by Morast as to the identity of the driver of the car, passenger Jonathan Kohut identified the driver of the car as Mike Perry.<sup>3</sup>

Morast located Perry some distance away and detained him. The State misrepresents the facts when it alleges Perry identified himself at this time as James Adam Stotler.<sup>4</sup> Perry remained silent upon apprehension. Arresting officer Monte Morast retrieved James Adam Stotler's wallet from the console of the Camaro and began addressing Perry as "James."<sup>5</sup> Perry's middle name is in fact James.

Even disregarding passenger Jonathan Kohut's explicit identification of the driver as Mike Perry, merely a cursory examination of the photo on Stotler's driver's license would have put any competent officer on notice that something was amiss.<sup>6</sup> Perry, with dark eyes and short, dark hair, bore absolutely no resemblance to the blue-eyed, shoulder-length blonde James Adam Stotler.

Monte Morast arrested Perry for misdemeanor evading arrest and booked Perry into jail under the name of James Adam Stotler.<sup>7</sup> Michael Perry was an adult at nineteen years old. However, according to the driver's license, James Adam Stotler was only sixteen years old. Yet, Morast booked Perry – who he claimed to believe was juvenile James Adam Stotler – into jail as an adult.

Monte Morast was well aware that he had Michael Perry in custody and not James Adam Stotler. October 26<sup>th</sup> 2001 was not Morast's first encounter with Perry. Morast questioned Perry in an unrelated incident at Wal-Mart just weeks prior to the 26th.<sup>8</sup> Moreover, on October 26<sup>th</sup>, Morast submitted a Property Inventory and Laboratory Report on the evading arrest.<sup>9</sup> On the

<sup>1</sup> Morast was recently indicted on \_\_\_\_ charges for improper conduct on the job, etc. – cite

<sup>2</sup> Tr. Vol. 15 at 218

<sup>3</sup> Tr. Vol. 15 at 227-28

<sup>4</sup> See Tr. Vol. 15 at 228-230

<sup>5</sup> Morast admits this in trial testimony - cite

<sup>6</sup> See Exhibit \_\_\_\_ [photo of James Adam Stotler]

<sup>7</sup> Tr. Vol. 15 at 230-31

<sup>8</sup> Insert proof of this

<sup>9</sup> See Exhibit \_\_ [police report]

'Suspect/Defendant' line Morast wrote – not James Adam Stotler – but '**Michael Perry.**' Morast not only listed Michael Perry as the suspect/defendant, but filled out the date of birth as Michael Perry's date of birth (4-9-82) and the address as Michael Perry's address (10674 Royal Magnolia, Conroe TX, 77303). Additionally, under the 'origin of evidence submitted' Morast lists '**person of Michael Perry.**' Morast claims law enforcement did not become aware that the person they booked as James Adam Stotler was in fact Michael Perry until after Perry bonded out of jail on Saturday October 27<sup>th</sup> and the computer Interstate Identification Index system matched his fingerprints to Michael Perry on October 28<sup>th</sup> 2001.<sup>10</sup> Any credence this claim of ignorance may have held is rendered obsolete by the black and white proof to the contrary written by Morast's own hand on Friday October 26th.

The Camaro was registered to Sandra Stotler.<sup>11</sup> Detective Morris called Stotler's home in the early morning on Friday October 26th and left the following message on the answering machine<sup>12</sup>:

This is Detective Morris, Montgomery County Sheriff's Department. I was calling you in reference to a 1997 Camaro, red, white over, convertible. If you could give me a call please. My number is 936-520-0095. That vehicle's been involved in a high speed pursuit and has been wrecked and being towed at this time. I'll give you the details if you'll give me a call. Thank you.

At 10:39am on that same morning, Montgomery County again attempted to contact Stotler:

This is Lieutenant Morrow, Montgomery County Sheriff's Office, trying to reach Sandra Stotler. It's Friday morning, 10:39am. My cell number is 713-826-7096. Thank you.

At the time they left these messages, law enforcement was allegedly still operating under the mistaken assumption that they had juvenile James Adam Stotler in custody. Law enforcement informs Sandra Stotler that her car is in custody, but, astonishingly, at no time does any officer ever mention that they have her **minor child in jail**. They didn't mention James Adam Stotler was in jail because they already knew the true identity of the person they arrested – Michael Perry. Police knew Perry was not James Adam Stotler because police knew James Adam Stotler was dead.

Saturday October 27<sup>th</sup>, law enforcement call the Stotler residence and leave another message:

Yeah, Sandra, this is Sergeant Begman, Montgomery County Sheriff's Department. Just want to check and see if you still own a 99 Izuzu Utility vehicle. We've been kind of chasing it around or trying to find it. **Somebody told us it was stolen with some bad guys in it.** If you can call me, I work night shift, but if you can call, my dispatcher's at 760-5800, they can page me and let me know to give you a call, or something like that. I'll answer the call whenever they give it to me. Thank you very much. Bye.

<sup>10</sup> See Exhibit \_\_\_\_

<sup>11</sup> Tr. Vol. 15 at 229

<sup>12</sup> See Exhibit \_\_\_\_ [answering machine transcript]

(emphasis added).

Sandra Stotler's body was not recovered until 4:30pm on October 27<sup>th</sup>. Her body was not identified until Sunday October 28<sup>th</sup>. Law enforcement allegedly did not discover their mistake of booking Perry as James Adam Stotler until Sunday October 28<sup>th</sup>. No one reported her vehicles stolen and police had no reason to suspect Stotler had been the victim of any crime. Yet, as Sergeant Begman states, by Saturday October 27<sup>th</sup>, "somebody" told law enforcement that Stotler's vehicles were stolen with "bad guys" in them. That someone was Kristin Willis.

Kristin Willis is the step-daughter of Montgomery County Deputy Lloyd Reynolds. Willis was given complete transactional immunity in regard to her participation in the murders.<sup>13</sup> Willis made at least three false statements to police regarding the murders. Willis admitted on the stand during Perry's trial that she repeatedly lied to law enforcement about the murders.<sup>14</sup> DNA testing of blood recovered from Willis's truck was positively identified as that of Sandra Stotler.<sup>15</sup> After learning Willis's vehicle was involved in a murder, police admit to allowing Willis at least twelve hours to clean out her truck and voluntarily relinquish it to police custody.<sup>16</sup> During this time, Willis admits to removing evidence from the truck including her own bloody clothes and ammunition.<sup>17</sup>

Kristin Willis's alibi for Sandra Stotler's murder is that Willis was working at Big Dog Outlet when the state alleges the crime occurred.<sup>18</sup> Willis's timesheet from Bog Dog Outlet does reflect that she was clocked in and out on October 24<sup>th</sup>.<sup>19</sup> However, Kristin Willis was not in fact at work as she claims. A call was placed from Willis's work to Willis's cell phone at \_\_\_\_\_. Willis claims Burkett was in possession of her cell phone in an attempt to explain the call.<sup>20</sup> However, despite Willis's assertion that she was at work, witnesses place Willis at associate Justin Ramage's house on October 24<sup>th</sup>.<sup>21</sup>

The only bloody clothing recovered in connection with the murders belonged to Kristin Willis. Two shirts of Willis's contained high velocity back spatter.<sup>22</sup> Perry's defense is unable to test the shirts to determine whose blood it was because the state suppressed and conveniently destroyed the evidence.<sup>23</sup> Perry was ruled out as a match to numerous latent fingerprints at Sandra Stotler's murder scene, as was Jason Burkett and the known occupants of the Stotler residence.<sup>24</sup> There is no evidence on the record that those fingerprints were ever compared to Kristin Willis's prints. Those fingerprints remain unidentified. Perry was additionally ruled out as a match to bloody shoeprints at the Stotler residence.<sup>25</sup> Police noted bloody drag marks on the garage floor of the

<sup>13</sup> Perry record \_\_\_\_

<sup>14</sup> Perry record \_\_\_\_

<sup>15</sup> Perry record \_\_\_\_

<sup>16</sup> Insert proof of this

<sup>17</sup> Police statements

<sup>18</sup> Perry record/police statements

<sup>19</sup> See Exhibit \_\_\_\_ [Willis timesheet]

<sup>20</sup> Burkett record \_\_\_\_

<sup>21</sup> See Exhibit \_\_\_\_ [police statement]

<sup>22</sup> Burkett record \_\_\_\_

<sup>23</sup> Burkett record \_\_\_\_

<sup>24</sup> Perry record \_\_\_\_

<sup>25</sup> Burkett record \_\_\_\_

Stotler residence.<sup>26</sup> These marks indicate whoever assisted Burkett in loading Stotler's body into Willis's truck was too weak to help Burkett lift her.

Police claim Michael Perry became a suspect in Stotler's murder after Stotler's body was identified and the Interstate Identification Index revealed Perry had been arrested in Stotler's Camaro. Law enforcement at that time began searching for Perry and associate Burkett in connection with Stotler's homicide. At that time, Stotler's son, James Adam Stotler, was merely missing. Police allege that law enforcement did not know James Adam Stotler and Jeremy Richardson were homicide victims, nor did they know the location of the boys' bodies, until police obtained the statement from Perry after his arrest at approximately 7:00am the morning of October 30<sup>th</sup>. However, at 2:30am on October 30<sup>th</sup>, police questioned witness Megan Lazrine at her apartment and told her they were investigating a *triple homicide*.<sup>27</sup> Thus, police knew James Adam Stotler and Jeremy Richardson were dead a minimum of four and a half hours prior to Perry's statement. Only someone with direct knowledge of the murders could have informed police of the deaths – the perpetrator or an accomplice. Kristin Willis admits her presence at the scene of James Adam Stotler and Jeremy Richardson's murders.<sup>28</sup> Therefore, Willis knew the location of their bodies.

Police never issued any BOLO (be on the look-out) for James Adam Stotler or Jeremy Richardson. After recovering Sandra Stotler's body from the lake on the 27<sup>th</sup> and identifying her body after the welfare check of her home on the Sunday October 28<sup>th</sup>, police knew:

- o A murder had occurred in the house
- o The murder victim's son was missing
- o The murder victim's car and the son's car were missing

Most murder victims are killed by someone they know (cite statistics). James Adam Stotler's disappearance combined with Arlene Gibson's (who instigated the welfare check) concern over Adam asking his mother for money and his mother's refusal to give it to him<sup>29</sup>, James Adam Stotler should have been a suspect. Yet police never took any steps to locate him. Police never took steps to locate James Adam Stotler because they already knew where he was – deceased in the woods.

Sergeant Begman's message on Stotler's answering machine proves someone told police that Stotler's vehicles were stolen prior to the events that allegedly put police on notice of that fact. Detectives' comments to Megan Lazrine regarding a "triple murder" prove police knew the boys were dead before Perry's statement. The only person who could have informed police of these facts was Kristin Willis. Willis knew the vehicles were stolen. Willis knew the condition and location of the bodies. Willis had daily contact with her step-father, a police officer. If Willis in fact told police of her involvement in the murders, it would not be the first time that police may have attempted to construct events so as to minimize a cohort's participation and "protect one of their own."<sup>30</sup> Police certainly gave Willis special treatment no other murder suspect would have

<sup>26</sup> Perry record \_\_\_\_

<sup>27</sup> Perry Tr. Vol. 16 at 29

<sup>28</sup> Perry record \_\_\_\_

<sup>29</sup> Perry record \_\_\_\_

<sup>30</sup> Insert that case of police conspiracy that just happened

been given. Pursuing an investigation of the murders or recovering the bodies prior to their "natural" discovery would have required police to admit Willis's involvement. Sandra Stotler's body was discovered by a fisherman in the natural course of events. However, the boys' bodies remained undiscovered. Armed with the information provided by Willis and with Perry and Burkett in custody on October 30<sup>th</sup>, police attempted to speed up the process of discovery. Burkett, a savvy and experienced criminal, refused to cooperate with police. Perry, however, in his state of intoxication, injury, and mental illness, and with his history of forced submission to authority, was an easy target.

Perry's interrogation itself was not recorded. Police made no attempt to audiotape or videotape Perry's interrogation inside the ambulance despite police having access to such equipment. The ambulance ride from the scene of Perry's arrest to the hospital – approximately ten miles – took *fifty three minutes*.<sup>31</sup> Fifty three minutes is ample time for police to indoctrinate Perry by providing him with leading and suggestive information, including the location of the boys' bodies. However, the detective's first attempt at coaching Perry to provide directions to the bodies was unsuccessful.<sup>32</sup> Detective \_\_\_ testified that the first directions Perry gave "didn't work." Upon further coaching by law enforcement, Perry eventually got it right.

### **PERRY'S STATEMENT TO POLICE WAS FALSE**

#### **The trajectory of Stotler's wounds renders Perry's statement materially inaccurate**

Perry's statement asserts the following:

[...] I shot her one time in the side near her back with the shotgun. She fell to the floor, and I dropped the shotgun. She then moved or tried to get up or something, and I grabbed the shotgun and shot her one more time.

According to the state and to Perry's statement, Perry shot Stotler once while she was standing up, she fell to the floor, he dropped the gun, picked it up, shot her again as she lie on the floor, and managed to shoot her in exactly the same place with the same trajectory. Such a sequence of events is next to impossible. Police made the reasonable assumption that Stotler was shot twice because the autopsy done on Oct 28<sup>th</sup> - two days prior to Perry's arrest and statement – noted the recovery of two caps. However, Dr. Paul Shrode testified for the state that it is possible for one shotgun blast to produce two caps. Given the placement and trajectory of her wounds, it is highly probable that Stotler was shot only once. Perry – not being the actual perpetrator – did not know how many times Stotler was shot and could only rely on the information provided to him by the arresting officers, who in turn were relying on a mistaken assumption drawn from the autopsy of her body.

#### **The timeline established in Perry's statement is virtually impossible**

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<sup>31</sup> Perry record \_\_\_

<sup>32</sup> Perry record \_\_\_

Witness Jonathan Kohut reports seeing Perry at Justin Ramage's house on Rolling Hills Rd. at 6:30pm on October 24<sup>th</sup>, 2001.<sup>33</sup> State's witness Shane Atkinson testified Perry arrived at his tattoo shop Live Wire in Conroe "between 6:30 and 7:00" on October 24<sup>th</sup>, 2001. However in Jason Burkett's trial, Mr. Atkinson states Perry time of arrival 7:00 – 7:30. Witnesses also put the length of time Mr. Perry was at the shop for was 45-60 minutes, minimum. Mr. Perry admitted, on stand, to being at Mr. Atkinson's shop to sell some guns he and Jason had stolen. Shane bought a Glock .40 with a laser site, for cash, and a piercing, which Mr. Atkinson did that night, placing Mr. Perry's departure at 8:00pm. Kristin Willis testified Perry and Burkett picked her up from her work at Big Dog Outlet at 8:15-8:20pm. Therefore, taking into consideration the amount of time it took Perry and Burkett to drive from the tattoo shop, to the outlet mall, it gives Perry *NO* time, to have committed the events recounted in Perry's statement.

Perry's statement asserts the following:

"We went to Adam's house at about 7:00 pm on Wednesday 10-24-01" and that Perry and Burkett picked up Kristin at 8:20-8:30pm.<sup>37</sup>

Taking into account trial testimony by the state's witnesses, the events must have occurred as follows:

- At 7:15pm Perry leaves Live Wire and drives to Highland Ranch neighborhood, a distance of 9.4 miles (16 minutes 53 seconds)
- Perry travels from the Highland Ranch entrance to 4019 Highland Pass, a distance of .6 miles (1 minute 50 seconds)
- They go to the door and speak to Stotler.
- They return to the truck
- They drive toward the entrance to the neighborhood
- They turn around and park the truck
- They discuss and plan the murder
- They return to Stotler's house on foot
- Perry enters the house through the garage
- Perry waits in the laundry room
- Perry shoots Stotler twice
- They take the sheets off the bed
- Jason runs to get the truck from down the road
- Jason backs the truck into the garage
- They drag the body into the garage
- They load the body into the truck
- Perry searches for the keys to the Camaro

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<sup>33</sup>See Exhibit\_\_ [police statement]

<sup>37</sup>Cite Perry statement

- They drive from 4019 Highland Ranch entrance .6 miles (1 minute 50 seconds)
- They drive from Highland Ranch to Crater Hill Rd. 10 miles (15 minutes)
- They make two failed attempts to slide body out of truck
- They remove the body and roll it to the lake
- They collect debris
- They attempt to obscure the body with debris
- They drive from Crater Hill Rd. to Big Dog Outlet 10 miles (16 minutes and 6 seconds)
- They pick up Kristin at 8:20pm.

The driving time of the above events totals 51 minutes and 39 seconds. That leaves Perry a meager 13 minutes and 19 seconds at the most (8 minutes and 19 seconds at the least) to do all of the following:

- Go to the door and speak to Stotler.
- Go back to the truck
- Drive toward the exit to the neighborhood
- Formulate and discuss a plan to murder Stotler
- Turn around after driving toward the front of the neighborhood
- Park the truck
- Return to the Stotler house on foot
- Enter house through the garage
- Wait in the laundry room
- Shoot Stotler twice
- Take the sheets off the bed
- Run to get the truck from where it was parked down the road
- Back the truck into the garage
- Drag Stotler's body into the garage
- Load the body into the truck
- Look for the keys to the Camaro
- Make two failed attempts to slide the body out of the truck
- Remove the body and roll it to lake
- Gather debris
- Attempt to obscure the body with debris

8-13 Minutes is simply not enough time to formulate a murder plot, commit murder, dispose of a body, and complete all of the above actions in between. When considered in light of the material inaccuracy in Perry's story regarding the actual shooting of Stotler, Perry's statement does not comport with the evidence or even with the law of physics. The above does not even take into consideration, the testimony from Burkett's trial, or the 45-60 minute stay, while Atkinson haggled over price, then pierced Mr. Perry's tongue. When taking all that into consideration those 8-13 minutes, turns into 0. Taking the evidence in light most favorable to prosecution, or defense, the crime simply could not of happened, as the state clairus it did.

## THE SCIENCE OF FALSE CONFESSIONS

“Increasingly, psychologists are being called to serve as consultants and expert witnesses in criminal cases involving coerced – and possibly false– confessions. In some instances, the main purpose is to assess a defendant’s competence or vulnerability, an inquiry that brings into focus individual characteristics such as age, intelligence, mental health, criminal justice experience, and personality traits such as interrogative compliance and suggestibility.” CITE “Depending on the fact pattern of a particular case involving a disputed confession, there are numerous basic phenomena that may prove relevant – for example, pertaining to the effects of isolation, stress, alcohol, childhood and adolescence, false evidence, and the processing of pragmatic implications (as when leniency in exchange for confession is implied by minimization tactics).” Kassin at 201. (2007\*)

Although Perry’s IQ places him within the normal range, Perry is severely bipolar, a condition undiagnosed and untreated at the time of his arrest. Perry was nineteen years old. Brain development not complete until age 21 (CITE STUDY)(CITE Kessner testimony about impulsivity etc.) Perry was highly susceptible to tactics of forced submission to authority due to his experience at Mexican behavior modification compound Casa by the Sea (Explain.)

Kassin and Wrightsman (1985) identified two types of false confessions relevant to Perry:

*Voluntary* false confessions are self-incriminating statements offered without external pressure. *Coerced-compliant* false confessions are those in which a suspect confesses in order to escape an aversive interrogation, avoid an explicit or implied threat, or gain a promised or implied reward. This confession is a mere act of public compliance by a suspect who knows that he or she is truly innocent. P 200-201

Kassin at 200-201

Kassin elaborates on research explaining the causes of false confessions:

In very general terms, it is reasonable to identify three broad, well-established sets of principles that are ripe for expert testimony on confessions – all of which are beyond dispute in the scientific community (this is by no means an exhaustive list). The first core principle, dating back to Thorndike’s (1911) law of effect, is that people are highly responsive to reinforcement and subject to the laws of conditioning, and that behavior is influenced *more by perceptions of short-term than long-term consequences, which are strategically manipulated by trained police investigators*. [...] A voluminous body of research has shown that people make choices believed to maximize their wellbeing given the constraints they face, making the best of the situation they are in – what Herrnstein has called the *matching law* (Herrnstein, Rachlin & Laibson, 1997). With respect to a suspect’s response to interrogation, studies on the discounting of rewards and costs show that people tend to be myopic and impulsive in their orientation, *preferring outcomes that are immediate rather than delayed*... Rooted in the observation that people are inherently social beings, a second set of core principles is that individuals are highly vulnerable to influence from change agents who seek their compliance. Of direct relevance to an analysis of interrogation are the extensive literatures on attitudes and



persuasion (Petty & Cacioppo, 1986), informational 203 and normative influences (e.g., Asch, 1956), the use of sequential request strategies, as in the foot-in-the-door effect (Cialdini, 2001), and the gradual escalation of commands, issued by figures of authority, to effectively obtain self- and other-defeating acts of obedience (Milgram, 1974). Conceptually, Latane's (1981) social impact theory provides a coherent predictive model that can account for the influence of police interrogators – who bring *power, proximity,* and *number* to bear on their exchange with suspects (for a range of social psychological perspectives on interrogation, see Bem, 1966; Zimbardo, 1967; Davis & O'Donohue, 2003).

Kassin at 202-203 (emphasis added)

At trial, Perry described some of the events leading up to his statement:

At the time I had had - I had previous encounters with the law like a misdemeanor drug possession or something that I missed a court date on and I knew I had a warrant for it. The night of October 24th, 2001, I had been drinking heavily on quite – quite a few amount of pills and we ended up sleeping in a white Rodeo as a result of not being able to drive, neither - any of the occupants in the car. We didn't feel safe driving because of our influence. We pulled over and slept. Shortly after I continued to drink in the car. I must have passed out. I might have been asleep ten minutes. I couldn't tell you the exact amount of time, but a patrolman woke us up telling us to freeze, put our hands up. At the time when he pulled his - he had a gun out. He told us to freeze. I tried to attempt [*sic*] to get on the ground, exit the car and get on the ground. I was kind of scared and nervous at this point. [Jason] Burkett was talking about balls to the walls or some statement along that effect. He had a shotgun, so I - and from what Kristin - from what people had told me, what I had heard him say, I knew that he was capable of doing almost anything now. We ended up wrecking through a glass building. I witnessed Jason get shot. I was cut pretty badly. He kind of assisted me to some apartments. And at the time of arrest - I will jump to that - the door was not kicked in, but forced open and ***many officers - I couldn't tell you how many. Three or four with dogs came in the apartment. I was stood up against the wall by [Blair]. I had a gun shoved in my face. Told to the best of my recollection how would you - he [one of the victims of the triple homicide] was my friend or she was my friend or how could you do something like that. You are damn well going to tell me - tell me what happened and I was put on the ground and the knee in the back of my head and cuffed.*** Then put on the pavement for a pretty long amount of time. They asked to put me in the ambulance. I wasn't put in there because we were waiting for [Mace] and finally Ms. Connie [a paramedic] or whoever the supervisor was at the time - I now know her name to be Connie – had asked to put me in there. At the time there was quite a bit of excitement. I was under the influence. My arms hurt pretty bad and I was real scared. I was just totally – I was being a suspect. I wasn't charged yet, but I was a suspect in a triple homicide or capital murder. ***At the time of bringing me to the hospital, my condition in my mind state was that I am going to tell [Mace] anything he wants to hear to get him away from me, to get me out of this situation and that's what I did.*** I was hungry, tired and just fed up[.]

Tr. Vol. 18 at 83-85. (emphasis added)

{APPLY TO FACTS}

Police interrogations can be broken down into three processes<sup>38</sup>:

- (1) *isolation*, often in a special interrogation room, which increases anxiety and the incentive to escape
- (2) *confrontation*, in which the suspect is accused of the crime, presented with evidence, real or manufactured, and blocked from denial, and
- (3) *minimization*, in which the crime is morally excused by a sympathetic interrogator, leading suspects to see confession as a possible means of gaining leniency<sup>39</sup>

Kassin at 207

Crime suspects report that their perception of the strength of the evidence was their primary reason for confession or denial.<sup>40</sup> From Perry's impaired perspective at the time, the evidence against him likely appeared insurmountable. Perry was caught with Burkett who had confessed participation in the murders in front of Perry and who Perry knew possessed the murder weapon - a weapon Perry had previously handled in passing and therefore might contain his fingerprints; Burkett had just opened fire on police and attempted to run over an officer; Perry's flight from police appeared highly incriminating; Perry had no solid alibi for the murders. Combined with detectives' forceful insistence that Perry was guilty<sup>41</sup>, Perry felt trapped and helpless.

Promises of leniency need not be explicit, but can be implied. One such tactic utilized by police is minimization. "Once interrogators have thrust a suspect into feeling trapped by evidence, they begin to suggest that the crime was spontaneous, accidental, provoked, drug-induced, or otherwise justified by circumstances." Kassin at \_\_\_\_\_. Kassin explains how minimization can lead to an inference by suspects of leniency:

In one study, readers of an interrogation transcript in which the interrogator made minimizing remarks inferred by pragmatic implication that leniency in sentencing would follow from confession, even without an explicit promise (Kassin & McNall, 1991). In a second study, a laboratory paradigm was used to assess the behavioral effects of minimization on the elicitation of true and false confessions (Russano et al., 2005). Participants were paired with a confederate for a problem-solving study and half were induced by that confederate to cheat by collaborating on a problem that was supposed to be solved alone. The experimenter "discovered" the similarity in the solutions, accused the participant of cheating, and tried to extract a signed confession by promising leniency, making minimizing remarks, 209 using both tactics, or using no tactics. Overall, the confession rate was higher among guilty than innocent when leniency was promised than when it was not, and when minimization was used than when it was not. On calculations of diagnosticity (as measured by the ratio of true to false confessions),

<sup>38</sup> See Leo, 1996a; Leo et al., 2006

<sup>39</sup> See Kassin, 1997, 2005

<sup>40</sup> Kassin \_\_\_\_\_ citing Moston et al., 1992

<sup>41</sup> Tr. Vol. 18 at 83-85

the results showed that diagnosticity was highest in the no-tactics cell (where 46% of guilty suspects confessed vs. only 6% of innocents) and that minimization – just like an explicit offer of leniency – reduced diagnosticity by tripling the rate of false confessions (81% vs. 18%). In short, minimization serves as the implicit functional equivalent to a promise of leniency, putting innocents at risk to make false confessions.

Kassin, \_\_\_\_\_

Detectives claim that once inside the ambulance, Perry spontaneously stated "I know it's the needle and I want to save everybody the trouble and just confess."<sup>42</sup> However, because detectives failed to make any recording of Perry's interrogation, it remains unknown what Perry said – or more importantly, what prompted Perry to make whatever statements he may have made. The state does not attempt to offer an explanation as to why a suspect who had just made substantial efforts to avoid arrest would suddenly become concerned with saving law enforcement trouble. The only corroboration of Perry's alleged "needle" statement comes from the detectives themselves, and a paramedic.<sup>43</sup> The self-serving nature of such corroboration is apparent. Had the state conceded that Perry attempted to assert his Miranda rights or that law enforcement had coerced, intimidated, or coached him, Perry's statement would likely have been excluded. Considering the absence of direct evidence linking Perry to the crime, without Perry's confession, the state's case against him would have been seriously undermined if not completely destroyed. The court noted that Perry "did not sound intimidated or coerced" in the tape-recorded recitation of his statement made after arriving at the hospital.<sup>44</sup> The court fails, however, to offer a basis for comparison – an example of what a "coerced person" sounds like.

{The court talks about how detailed the confession is}

Kassin describes the startling degree of detail that can be present in false confessions:

In most documented false confessions, the statements ultimately presented in court are compelling, often containing vivid and accurate details about the crime. Sometimes these details had become known to the innocent suspect through leading questions, photographs, visits to the crime scene, and other secondhand sources of information. To further obfuscate matters, many false confessions contain statements of motivation, apologies and expressions of remorse, and even physical reenactments. In some cases, innocent suspects correct minor errors that appear in the statements, corrections that interrogators are trained to insert and get corrected for tactical purposes. Hence, to the naïve juror, false confessions often appear to be voluntary, textured with detail, and the product of personal experience – not staged, rehearsed, and enacted, as they are, like a Hollywood drama (Kassin, 2002). This point is clearly illustrated in the case of John Kogut, who was exonerated by DNA after 17 years in prison, retried on his original confession, and acquitted. The confession Kogut had signed contained a striking degree of colorful detail, not only on central aspects of the murder, but on peripheral details as well – such as a description of the victim's "gold colored chain with what looked like a double heart on it with a piece broken off of it." The statement Kogut signed also

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<sup>42</sup> Tr. Vol. 16 at 95

<sup>43</sup> Tr. Vol. 15 at 309; Tr. Vol. 16 at 60

<sup>44</sup> Finding of fact number 135; Federal Habeas Ruling at 50.

contained errors that he presumably corrected and initialed. Yet at trial, his interrogator admitted that he inserted the errors, made the corrections, and directed Kogut to initial these corrections.

Kassin at 212 (internal citations omitted)

When read as a whole, Perry's statement likewise appears highly detailed and incriminating. However, when examined point by point, the statement does not contain any material information not already known by law enforcement at the time Perry made the statement. The statement as a whole is as follows:

Last week, the week of October 22-26, my friend, Jason Burkett, and I decided we needed to get a vehicle, or two vehicles. We both know a younger white male, known to us as Adam Stotler whose parents have a lot of money. They also have a newer Camaro and Isuzu Rodeo. On Wednesday 10-24-01 Jason and I made a plan that we were going to ask to spend the night with Adam at his house, and we were going to take the Camaro in the middle of the night while Adam and his mom was [sic] sleeping. We went to Adam's house at about 7 pm on Wednesday 10-24-01. Jason was driving his girlfriend, Kristen [Willis'], blue Chevy truck, and I was riding in the passenger seat. We had a 12 gauge shotgun with us. Jason and I got to Adams [sic] house, and his mom told us that Adam was not home, that he was at the skate park and would be home around 9 pm. Jason and I left in the truck, but before we got out of the subdivision, Jason said that it would be easier to get the car with only one person home. Jason and I then made a plan that Jason would knock on the front door, and I would sneak in the back door, through the garage with the shotgun. We went to Adam's house on foot and left Kristen's truck down the road. I walked around to the side of the house through the garage, and Jason knocked on the front door and asked to use the phone. When I heard Jason talking on the phone, I went into the house through the back door in the garage. Once in the house, I hid in the laundry room between the kitchen and garage. I then knocked on the back door, and when Adam's mom came to the back door, I shot her one time in the side near her back with the shotgun. She fell to the floor, and I dropped the shotgun. She then moved or tried to get up or something, and I grabbed the shotgun and shot her one more time. She fell to the floor in front of the laundry room and garage, back door. Jason freaked out and ran to the front door and opened the door. We calmed down a little and grabbed the blankets and sheet off of the bed in the bedroom near the kitchen and put the blankets and sheet over her because we did not want to look at her. Jason ran and got Kristen's truck and brought it back to Adam's house. Jason backed the truck into the garage, and we dragged Adam's mom's body and the blankets out into the garage, where we loaded her into the back of the truck with the blankets and sheet. I could not find the keys to the Camaro, and I remembered that the inspection sticker was expired, and Adam's mom never drove it. Jason then got into the drivers [sic] side of the truck and I got in the passenger seat, and Jason drove to an area he called Crater Lake. I did not know where Crater Lake was, but I remember driving down a dirt road, then going across a big bump and seeing some type of pipeline or something. We then drove down a cleared road and saw an old stripped out truck blocking the road. The road to what Jason called Crater Lake was off to the left of the stripped truck. Jason turned the truck around and first tried

to open the tailgate, speed backwards toward the pond, and try to slam on the brakes to get the body to slide out. He did that I think twice, but it would not work so we grabbed her body, and we rolled her down into the water. Jason and I then threw sheets into the water on top of her and covered her up with some sticks and brush we found near by. It was about 8:20-8:30 pm by that time, and we drove to pick up Kristen, where she works at Big Dog Sports at the Outlet Mall in Conroe. We picked up Kristen [Willis] and drove back to Adam's subdivision. Jason drove, Kristen sat in the middle, and I sat on the passenger's side. We still had the shotgun with us. When we got to the subdivision, we could not get in, because we did not know the gate code. We knew that Adam would be home soon so we waited at the gate, and Adam pulled up in the white Isuzu Rodeo with another guy I know as Jeremy in the passenger seat. While Jason, Kristen, and I waited at the gate for Adam, we agreed on a story to tell Adam. Jason and I told Adam and Jeremy that a friend of ours had shot himself while we were all hunting squirrels, and we needed their help to get him. We left the front of the subdivision and turned right onto the road in front of the subdivision. We were still in the truck, and Adam and Jeremy followed us in the Isuzu Rodeo. We then came to a stop sign and turned right. We then took the first left off that road and crossed the railroad tracks. We drove down a dark, winding road and stopped at I think was the first dirt road on the left. We all parked there, and Jason, Jeremy, Adam, and I started walking back into the woods off the dirt road. Kristen sat in her truck. After we walked awhile, Adam realized where we were and said that he knew an easier way to get to our friend. Adam and I went back to Adams [sic] Isuzu, and Jason and Jeremy stayed in the woods. Adam drove me in his Isuzu to the 1st subdivision on the left off of the same road we were on. Adam said that there was a road that went into the area we had earlier walked to. I think we turned onto the first road on the left in that subdivision and stopped at a cul-de-sac. Adam and I got out of the Isuzu and we saw Jason walking toward us with the shotgun. Jason asked if we heard the gunshots and said that he was trying to let us know where he was. I told him that I had heard two to three shots. Adam then walked toward Jason, who did not have Jeremy with him, and Jason told him that he (Jason) would take Adam to where the others supposedly were. I walked back to get my cigarettes, and I saw Jason shoot Adam in the left side. I then covered my eyes. I heard a second gunshot and uncovered my eyes. I then saw Jason lean in close to Adam and fire a third shot at close range. I walked over to Adams [sic] body and got his car keys out of his pocket. Jason and I then went to the Isuzu, and Adam [sic] got in the drivers [sic] side with me in the passenger side. We went back to where Kristin [sic] was waiting, and Kristen asked Jason, "What happened" and then said, "Never mind I don't want to know." Jason then said, "You're right, you don't want to know." Kristen's sister called, and Kristen was upset and said she was going home. Kristen left in her truck, and Jason drove me back to Adam's subdivision. I took the keys to the Camaro off of Adam's key ring for the Isuzu, and I jumped the fence and ran to Adam's house. I got in the Camaro, which was parked in the garage and drove it out of the garage. I pressed the button to close the garage door, but it would not close so I drove off. I drove out of the gate, met Jason, and we left to go to our trailer. Jason drove the white Isuzu with the shotgun in it, and I drove the red Camaro. We went home, smoked several cigarettes, and then got cleaned up and went to Nite Life. The shotgun we used came from a burglary that Jason and I did on Ave. E by the Salvation Army. Jason and I both know the homeowner, and he drives a green Ford Ranger. We took a Clock .40 and a 12 gauge

Defender out of the house. The 12 gauge defender is the shotgun we used to kill Adam's mom, Adam Stotler, and Jeremy. I also took Adam's wallet out of his Isuzu with his driver's license.

### **PERRY'S STATEMENT POINT BY POINT:**

Last week, the week of October 22-26, my friend, Jason Burkett, and I decided we needed to get a vehicle, or two vehicles. We both know a younger white male, known to us as Adam Stotler whose parents have a lot of money. They also have a newer Camaro and Isuzu Rodeo.

Police already knew Sandra Stotler had a son (grandson) named Adam Stotler from interviews they did with Arlene Gibson on \_\_\_\_\_. (Cite police report and trial testimony.) Police already knew Sandra Stotler owned a Camaro and Rodeo. Both were registered in her name. Both were missing from her residence when police arrived on \_\_\_\_\_. (Cite police report and trial testimony.)

On Wednesday 10-24-2001 Jason and I made a plan that we were going to ask to spend the night with Adam at his house, and we were going to take the Camaro in the middle of the night while Adam and his mom was *[sic]* sleeping.

Police already knew Sandra Stotler did not show up for work on the Thurs. October 25<sup>th</sup> from interview with Arlene Gibson on \_\_\_\_\_. (Cite report and testimony.)

We went to Adam's house at about 7pm on Wednesday 10-24-2001

Cite where cops came up with the 7:00pm time. I think that was when she was supposed to be at work. If so, she is home, not dressed for work, cooking. So obviously she wasn't planning on going to work even if the confession was true. Follow up on this, I never noticed it before. Find out the time she was supposed to be at work on the 24<sup>th</sup>. Or wait, was I the 25<sup>th</sup>? Look at trial testimony.

Jason was driving his girlfriend, Kristen [Willis'], blue Chevy truck, and I was riding in the passenger seat. We had a 12 gauge shotgun with us.

Police already knew Sandra Stotler was shot with a 12 gauge shotgun because they already found her body on \_\_\_\_\_. (Cite police report.)

Jason and I got to Adams *[sic]* house, and his mom told us that Adam was not home, that he was at the state park and would be home around 9 pm.

Police spoke with several of their friends, who were at the park and told police when they left. Don't know what to say about this, it seems like an irrelevant detail except for the time.

Jason and I left in the truck but before we got out of the subdivision, Jason said that it would be easier to get the car with only one person home. Jason and I then made a plan that Jason would knock on the front door, and I would sneak in the back door, through the garage with the shotgun. We went to Adam's house on foot and left Kristen's truck down the road. I walked around to the side of the house through the garage, and Jason knocked on the front door and asked to use the phone. When I heard Jason talking on the phone, I went into the house through the back door in the garage.

Police already knew the killer had likely entered through the garage back door based on the location of the blood splatter in the house. (Cite police report.)

Once in the house, I hid in the laundry room between the kitchen and garage. I then knocked on the back door, and when Adam's mom came to the back door, I shot her one time in the side near her back with the shotgun. She fell to the floor, and I dropped the shotgun. She then moved or tried to get up or something and I grabbed the shotgun and shot her one more time. She fell to the floor in front of the laundry room and garage, back door.

Police already knew the killer likely hid in the laundry room. (Cite trial testimony.)  
Police already knew Stotler was shot in the back. Police already knew she lie on the floor in front of the laundry room and garage based on blood pooling and spattering in that area of the house. (Cite trial testimony.)

Jason freaked out and ran to the front door and opened the door. We calmed down a little and grabbed the blankets and sheet off of the bed in the bedroom near the kitchen and put the blankets and sheet over her because we did not want to look at her.

Police already knew the killer removed the sheets and blankets from Stotler's bed based on their observations at the Stotler home on \_\_\_\_\_. (Cite police reports and trial testimony.)

Jason ran and got Kristen's truck and brought it back to Adam's house. Jason backed the truck into the garage, and we dragged Adam's mom's body and the blankets out onto the garage, where we loaded her into the back of the truck with the blankets and sheet.

Police already knew Stotler's body had been dragged through the garage based on the bloody drag marks at the scene. (Cite police reports and trial testimony.)

I could not find the keys to the Camaro, and I remembered that the inspection sticker was expired, and Adam's mom never drove it.

Police already knew the inspection sticker was expired because police impounded the Camaro on \_\_\_\_\_. (Cite police report.) [Note---why would Michael mention this? Seems very odd that he would say this.]

Jason then got into the drivers *[sic]* side of the truck and I got into the passenger seat, and Jason drove to an area he called Crater Lake. I did not know where Crater Lake was, but I remembered driving down a dirt road, then going across a big bump and seeing some type of pipeline or something. We then drove down a cleared road and saw an old stripped out truck blocking the road. The road to what Jason called Crater Lake was off to the left of the stripped truck.

Police already knew Stotler's body was deposited in Crater Lake. That is where they found her remains on \_\_\_\_\_. (Cite police reports.) Police also already knew the distinguishing landmarks at Crater Lake because they had been there processing the scene.

Jason turned the truck around and first tried to open the tailgate, speed backwards toward the pond, and try to slam on the breaks to get the body to slide out. He did that I think twice, but it would not work so we grabbed her body, and rolled her down into the water.

Police already knew the killers sped backwards and slammed on the brakes based on the skid marks at the scene which had already been processed on \_\_\_\_\_.

Jason and I then threw sheets into the water on top of her and covered her up with some sticks and brush we found near by.

Police already knew the killers threw sheets on top of the body and covered it with brush because that was how it was found on \_\_\_\_\_.

It was about 8:20-8:30pm by that time, and we drove to pick up Kristen, where she works at Big Dog Sports at the Outlet Mall in Conroe. We picked up Kristen [Willis] and drove back to Adam's subdivision. Jason drove, Kristen sat in the middle, and I sat on the passenger's side. We still had the shotgun with us. When we got to the subdivision, we could not get in, because we did not know the gate code.

Police already knew Stotler lived in a gated community because police had already processed the scene at her home on \_\_\_\_\_.

We knew that Adam would be home soon so we waited at the gate, and Adam pulled up in the white Isuzu rodeo with another guy I know as Jeremy in the passenger seat. While Jason, Kristen, and I waited at the gate for Adam, we agreed on a story to tell Adam. Jason and I told Adam and Jeremy that a friend of ours had shot himself while we were all hunting squirrels, and we needed their help to get him.



Kristen Willis had already given \_\_\_ statements to police by this time. (Cite reports.)

We left the front of the subdivision and turned right onto the road in front of the subdivision. We were still in the truck, and Adam and Jeremy followed us in the Isuzu Rodeo. We then came to a stop sign and turned right. We then took the first left off that road and crossed the railroad tracks. We drove down a dark, winding road and stopped at I think was the first dirt road on the left. We all parked there, and Jason, Jeremy, Adam, and I started walking back into the woods off the dirt road. Kristen sat in her truck. After we walked awhile, Adam realized where we were and said that he knew an easier way to get to our friend. Adam and I went back to Adams [sic] Isuzu, and Jason and Jeremy stayed in the woods. Adam drove me in his Isuzu to the 1<sup>st</sup> subdivision on the left off of the same road we were on. Adam said that there was a road that went into the area we had earlier walked to. I think we turned onto the first road on the left in that subdivision and stopped at a cul-de-sac.

Police already knew the location and stat of Adam and Jeremy's bodies. [See section below.] Police further admitted the directions Michael provided were "wrong." Trial testimony. Kristen told them. [Back this up]

Adam and I got out of the Isuzu and we saw Jason walking toward us with the shotgun. Jason asked if we heard the gunshots and said that he was trying to let us know where he was. I told him that I had heard two to three shots. Adam then walked toward Jason, who did not have Jeremy with him, and told him that he (Jason) would take Adam to where the others supposedly were. I walked back to get my cigarettes, and I saw Jason shoot Adam in the left side. I then covered my eyes. I heard a second gunshot and uncovered my eyes. I then saw Jason lean in lose to Adam and fire a third shot at close range. I walked over to Adams [sic] body and got his car keys out of his pocket.

???Same as above

Jason and I then went to the Isuzu, and Adam [sic] got in the drivers [sic] side with me in the passenger side. We went back to where Kristin [sic] was waiting, and Kristin asked Jason, "What happened" and then said, "Never mind I don't want to know." Jason then said, "You're right, you don't want to know." Kristin's sister called, and Kristin was upset and said she was going home. Kristin left in her truck, and Jason drove me back to Adam's subdivision.

Not material

I took the keys to the Camaro off of Adam's key ring for the Isuzu, and I jumped the fence and ran to Adam's house. I got in the Camaro, which was parked in the garage and drove it out of the garage. I pressed the button to close the garage door, but it would not close so I drove off. I drove out of the gate, met Jason, and

we left to go to our trailer. Jason drove the white Isuzu with the shotgun in it, and I drove the red Camaro. We went home, smoked several cigarettes, and then got cleaned up and went to Nite Life.

Police already knew Stotler lived in a gated community and that the gate would have been closed after 7:00pm, requiring the killer to jump the fence in order to gain entry after 7:00pm. Police already knew the garage was left open because they processed the scene on \_\_\_\_\_.

The shotgun we used came from a burglary that Jason and I did on Ave. E by the Salvation Army. Jason and I both know the homeowner, and he drives a green Ford Ranger. We took a Glock .40 and a 12 gauge defender out of the house. The 12 gauge defender is the shotgun we used to kill Adam's mom, Adam Stotler, and Jeremy. I also took Adam's wallet out of his Isuzu with his driver's license.

Police knew Perry possessed Adam's wallet and drivers license because it was found in the Camaro when Perry was arrested on October 26<sup>th</sup>. Police already knew Stotler was killed with a shotgun. Police already knew the shotgun was stolen along with a Glock .40 from a residence on Ave E because the owner made a police report on \_\_\_\_\_.

#### **EVIDENCE OF PERRY'S GUILT IS NOT OVERWHELMING FINDINGS OF FACT AND CONCLUSIONS OF LAW #116:**

**Given the overwhelming evidence of Perry's guilt, Perry fails to prove that he, like some of the students who attended Casa by the Sea, gave a false confession.**

#### **Circumstantial evidence allegedly corroborating the confession according to Judge Hittner:**

"Physical evidence, taken from the Stotler homes and Crater Lake corroborated Perry's detailed account of the murder." Hittner Ruling P 12 – no citation to anything specific!

"Circumstantial evidence also inculpated Perry." Id.

"Police recovered a copy of a newspaper story about Ms. Stotler's death from the Isuzu Tr. Vol. 16 at 155.

- Burkett drove the Isuzu, not Perry. See trial transcript. CITE
- Lazrine did not testify that Perry said he "made the paper." Lazrine actually testified that she couldn't remember who made the comment – that it was either Perry *or* Burkett. See trial transcript. CITE

"Blood samples taken from Kristin Willis's truck matched Stotler's DNA." Tr. Vol. 16 at 156, 298.

- Stotler's blood in Kristin's truck does not inculpate Perry any more than it inculpates Kristin Willis and Jason Burkett. Burkett confessed the murder to

Perry, so Perry knew the truck had been used. [Cadillac also witnessed Burkett confess. Perry has been unable to locate or secure an interview of Cadillac.]

“The title to Mrs. Stotler’s Camaro was found inside the Isuzu, but Perry had written on it that the vehicle had been transferred to him for \$4,000.00” Tr. Vol. 16 at 301

- Perry denies signing the Camaro title. However, even if Perry did sign the title over to himself, although that is evidence inculpatory to Perry in receiving stolen property, fraud, or car theft, it is not evidence inculpatory to Perry in murder. Burkett gave Perry the car. Possession of a stolen car is not in and of itself evidence of participation in murder.
- Handwriting on title is obviously not Perry’s.

“Adam Stotler’s wallet was in the Isuzu.” Tr. Vol. 16 at 301

- Inculpatory to Burkett

“Police found shotgun shells in the Isuzu.” Tr. Vol. 16 at 302

- Inculpatory to Burkett

“Perry and Burkett’s fingerprints were found inside Mrs. Stotler’s Camaro and Isuzu.” Tr. Vol. 16 at 306-08

- Perry never denied possessing stolen cars. Thus, his fingerprints would naturally be found in the cars. Again, possessing a stolen car is not evidence of Perry’s involvement in the murder itself.

- Kristin Willis’s testimony

Completely self-serving. She admitted to law enforcement repeatedly about the murders. Her step-father is a police officer in the same county where this crime occurred. She was the jilted ex-fiancé of Burkett. She testified she loaned Perry and Burkett her truck in the morning and that Perry and Burkett returned around 8:15-8:20pm to pick her up. In fact, she offered no testimony placing Perry at the scene of Stotler’s murder when it occurred.  
CITE

- Perry told people they “made the front page.” Tr. Vol. 16 at 25  
Witnesses actually testified that they could not remember who made that statement – Perry *or* Burkett. CITE

- Willis and Neal testified that Perry had previously talked about stealing a car. Again, stealing a car and committing murder is not the same thing.
- Neal’s testimony

Neal was eager to please prosecutors due to the immunity agreement he had been given in exchange for his testimony. Neal embellished and exaggerated the facts. [Read Neal original police statement and see if this crap is even in there about Crater Lake bodies]

- “Witnesses saw Perry and Burkett driving Mrs. Stotler’s vehicles on Wednesday October 24<sup>th</sup> and thereafter.”

Perry never denied being in possession of a stolen car. That does not make him a murderer.

- Perry “bluntly” told a tattoo parlor owner that “he killed someone and took the vehicles.” Tr. Vol. 16 at 212-13

Shane Atkinson is a lying, self-serving criminal who changed his testimony at the urging of the State. CITE

- “Perry was laughing and making jokes when admitted to jail after his arrest for murder.”

If anything this diminishes the likelihood of Perry’s guilt. Perry did not appreciate the magnitude of his situation because he assumed everything would be straightened out and he would be released.

- “Perry told a nurse at the jail that he killed a woman.” Tr. Vol. 17 at 187

Nurse failed to write in her notes that Perry made this alleged confession. In fact, she admits on the stand during trial that she conveniently did not remember Perry making this statement until the *very morning of her testimony* after she had a meeting with the prosecutor. CITE

### **THE INTRODUCTION OF PERRY’S FALSE CONFESSION WAS NOT HARMLESS**

*Consequences of confession evidence in court.* A fourth line of inquiry concerns the credibility and impact of confessions – first on police and prosecutors, but ultimately on judges and juries. In cases involving a disputed confession, a preliminary hearing is held for a judge to determine its voluntariness and admissibility. In American courts, confessions deemed voluntary are then admitted to the jury (with or without special instruction). The question is, with what effect? Research on the impact of confessions throughout the criminal justice system is not encouraging. Mock jury studies have shown that confessions have more impact than eyewitnesses and character testimony, other potent forms of human evidence (Kassin & Neumann, 1997). Moreover, people trust confessions and do not fully discount them even when it is logically and legally appropriate to do so. For example, Kassin and Sukel (1997) presented mock jurors with one of three versions of a murder trial: one that contained a low-pressure confession, a second that contained a high-pressure confession and a third that lacked a confession. Faced with the high-pressure confession, participants appeared to respond in the legally prescribed manner, as assessed by two measures: Relative to those in the low-pressure condition, they judged the statement to be involuntary and said it did not influence their decisions. Yet on the all-important measure of verdicts, these confessions, which should have been discounted, signify cantly boosted the conviction rate. Archival analyses of criminal justice statistics provide real-world corroboration of this disturbing pattern. When proven false-confessors have pled not guilty and proceeded to trial, the jury conviction rates have ranged from 73% (Leo & Ofshe, 1998) to 81% (Drizin & Leo, 2004). These figures led Drizin and Leo (2004) to describe confession evidence as “inherently prejudicial and highly damaging to a defendant, even if it is the product of coercive interrogation, even if it is 210 *Saul M. Kassin B1* supported by no other evidence, and even if it is ultimately proven false beyond any reasonable doubt” (p. 959).

## JASON BURKETT SHOT SANDRA STOTLER

The shotgun used to murder Sandra Stotler, James Adam Stotler, and Jeremy Richardson belonged to Perry's co-defendant Jason Burkett. Burkett was know by the nickname "Gauge" and referred the shotgun as "his baby" and "his new toy."<sup>45</sup> In the days preceding and following the murders, Burkett was in near constant possession of the gun.<sup>46</sup>

Jason Burkett – not Michael Perry – shot Sandra Stotler. Burkett gave associate Jenny Buehler a shotgun shell as a memento<sup>47</sup> and told her that he [Burkett] "killed *a lady*."<sup>48</sup> Additionally, Sarah Buehler gave a statement to police that, according to other witnesses, Buehler later claimed was coerced.<sup>49</sup> Sarah Buehler originally told the state's investigator, Heather Cash, that Burkett told her Burkett shot *the lady*. However, Investigator Cash threatened Sarah with prosecution if she did not change her story from Burkett making this admission to Perry before Perry's trial.<sup>50</sup> Subsequently, right before Burkett's trial, Cash again pressured Sarah to change her story from Perry making the admission to "not remembering who said it."<sup>51</sup> Both Buehler sisters have persistently been reluctant to speak with Perry's defense out of fear, despite numerous attempts by Perry's defense to contact them.<sup>52</sup>

Furthermore, Burkett confessed to shooting Sandra Stotler in the presence of a witness known by the nickname "Cadillac"(legal name unknown) at Burkett's home on Willis-Waukegan Rd. Neither Michael nor Cadillac took Jason seriously at the time. Burkett was known for posturing and had made similar claims in the past that were untrue in misguided attempts to "impress" others. For example, Burkett claimed to \_\_\_ that he killed a police officer and stole the officer's gun, claims that were unfounded. CITE. Perry reasonably assumed Burkett's new claims of murder were similarly contrived.

The statement attributed to Perry at his trial regarding "making the paper" was actually never directly attributed to Perry by any witness. All witnesses said "they" said it, or that they couldn't remember who said it, either Michael *or Jason*. (SEE police statements and trial testimony.)

Perry knew the cars were stolen. Perry knew Burkett did not have money to purchase the cars, so the inference that they were stolen was inevitable. Burkett gave Perry the Camaro and Perry drove it. Perry's actions were wrong and criminal. However, knowingly possessing a stolen car does not prove participation in the murders themselves.

Witness Megan Lazarine told police Jason told her he "*shot a lady*." She gave a police report about it. Jason told her this, a day before the body was found, and while Perry was in Jail.

<sup>45</sup>Insert proof of this—police statements

<sup>46</sup>Insert proof of this—police statements

<sup>47</sup>See Exhibit\_\_ [follow-up report by Det. Overstreet]

<sup>48</sup>Insert proof of this [this is what needs to be substantiated by a new interview]

<sup>49</sup>See Exhibit\_\_ [Declaration of Gina Vitale]

<sup>50</sup>Insert proof of this [this is what needs to be substantiated by a new interview]

<sup>51</sup>Insert proof of this [this is what needs to be substantiated by a new interview]

<sup>52</sup>See Exhibit\_\_ [Declaration of Gina Vitale]