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Contents -

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US police misconduct- coerced confession from suspect pgs 2-7

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US police misconduct- coerced confession from suspect

Sally Ramage

The final review of Clemens case found that evidence of the injuries imposed on the prisoner by the police during interview 22 years ago, had been suppressed from Clemens' Defence in violation of the prisoner's constitutional rights.

The finding in August 2013 by Justice Michael Manners, at the Missouri Supreme gives Clemons his greatest hope of avoiding death by lethal injection since he was sent to death row in February 1993, 20 years ago. Justice Manners wrote an exhaustive report, the product of four years' research, and concluded that the prisoner had his constitutional rights violated because state prosecutors failed to disclose evidence of his police-inflicted injuries.

Justice Manners finding was made in his 102-page report in which he clearly stated that Clemons had failed to make a convincing case of his innocence. The judge points out that defendants at a criminal trial are entitled to decline to answer questions without any negative inferences being drawn- the right to remain silent and at the time of the murder Clemens did refuse to answer some question during his police interrogation. He remained silent when asked whether he raped one or both girls; whether he was the one who ripped the clothes off the girls; and whether he told his accomplices "we threw them off" – a reference to the Chain of Rocks Bridge over the Mississippi where the two sisters died in April 1991.

The murders of Julie and Robin Kerry in April 1991

Julie and Robin Kerry, aged 20 and 19 respectively, drowned in the Mississippi river on the night of 4-5 April 1991 after they were pushed from the bridge. Their cousin, Thomas Cummins, was with them but he survived. Four men had been on the bridge that night. They were charged with the women's murders. Reggie Clemons and Marlin Gray were charged, tried and sentenced. Marlin Gray was executed in 2005. Antonio Richardson and Daniel

Winfrey were also charged, tried and sentenced for the murder of the two women. Antonio Richardson is serving a life sentence. Caucasian Daniel Winfrey became state witness and was released on parole in 2007.

Report sent to Missouri Supreme Court

Justice Manners report on the final review has been sent to the Missouri Supreme Court which will make a final decision on whether Reggie Clemons should die by lethal injection; or have a retrial, or have his sentence commuted to life with no parole. Clemens was represented *pro bono* by Defence attorneys Simpson, Thacher & Bartlett.

St Louis police department of the 1990s

The police coerced Reggie Clemons to confess. The finding of the constitutional violation was based on the evidence of a bond investigator, Warren Weeks, who came forward and testified in March, 2013 – some 20 years after Clemons was sent to death row. Warren Weeks, bond investigator, had examined Clemons a few hours after he was brought in on suspicion of the Kerry murders in April 1991. Weeks said that he had seen a large lump the size of a golf ball or baseball on the then 19-year-old's face and had marked the bail form with the word 'bump' or 'bruise'. That word was later erased (without the defence being aware of it) by someone acting on behalf of the state, Justice Manners concluded. In his report Justice Manners found that the Defence had not been given information about the bruising that Warren Weeks found and this amounted to a violation of the prisoner's constitutional rights.

New evidence 22 years later

The Missouri Prosecutor had questioned why it had taken 22 years for a state official to come forward with new evidence in this ‘death row’ case. This final review of the capital case of convicted prisoner Reggie Clemens heard this new testimony by way of a video played in court to judge Michael Manners in Independence, Missouri, in which a bail investigator, Warren Weeks, described what he recalled about interviewing the prisoner some 22 years ago. The testimony has never been heard before and came to light when Warren Weeks contacted Clemons's Defence lawyers after he had read a newspaper report of the review of the Warren Clemens case. Weeks stated that he vividly remembers seeing Clemons with injury marks on his face. This is the most important single new piece of evidence to be presented to the special hearing. In his deposition, Weeks said that he met Clemons in April 1991, after the then-19-year-old was arrested for suspected rape and murder of the two sisters, Julie and Robin Kerry, who were pushed over the Chain of Rocks Bridge over the Mississippi River.

Weeks was processing Clemons's bail application and came into contact with him very soon after the teenager had been questioned at length by detectives from St Louis. Warren Weeks testified that he had been sitting just three or four feet away from Clemons and noticed ‘a rather large bump on the side of his head, face’ which he described as a ‘golf-ball-sized welt’. He recalled writing ‘bump’ or ‘bruise’ on the bail form to note his observation. The court was then showed a copy of the same form, which appeared to have had the words scratched out with black ink. Weeks said that he had not scratched the words out himself – they must have been covered over by somebody else. He went on to recall that several months after he interviewed Clemons, he was called in to seek a supervisor in the probation service called

Ben Coleman, who said he wanted to talk to Weeks on behalf of the chief prosecutor in the case, Nels Moss. Warren Weeks stated in his deposition on video:

'He (Ben Coleman) challenged me on my ability to even see an injury or how/ what an injury is.'

Weeks told the hearing in his deposed video. So Warren Weeks felt pressure to not say anything about the injury that he had seen. Soon after that, Warren Weeks stated that he was then summoned to see the Prosecutor in his prosecutor's office in the St Louis courthouse. Moss showed Warren Weeks some photographs that had been taken of Clemons that he said were captured around the same time as the interview that showed no signs of physical marks, and said he doubted that Weeks had described Clemons' appearance accurately. Warren Weeks said that he had refused to back down. He said:

'I said I saw what I saw. Moss seemed irritated that I said I saw what I saw and I wrote what I wrote, I was standing by it.'

Weeks recalled telling his wife:

'I think there's something unusual going on – nobody wants to talk about what happened to this gentlemen when he was being interviewed by the police.'

Attorney Joshua Levine representing Mr Reggie Clemens

Reggie Clemons Defence lawyer, Joshua Levine, said that the discovery of the Weeks evidence was a major development in the case because it provided the most powerful proof yet that the prisoner's confession had been coerced out of him. (In the confession, Reggie Clemons had allegedly stated that he raped one of the Kerry sisters and that he was underneath the bridge at the time they were pushed into the river to their deaths). Attorney Levine said that 'confession' was the only piece of evidence that positively put Clemons underneath the bridge. During the murder trial Reggie Clemons' confession had

been the centre-piece of the State's case and Prosecutor Nels Moss had referred to this confession *at least 10 times* in his final arguments at trial and it was the last piece of evidence that the jury heard before returning their guilty verdict. It therefore became a crucial piece of evidence. Attorney Levine said that it was part of a package of new evidence that had been assembled that pointed to 'police and prosecutorial misconduct that merits a retrial'.

Attorney Susan Boresi for the state

Susan Boresi of the Missouri Attorney General's office cast doubt on Warren Weeks' testimony. She said the bail investigator had waited 22 years since the events he described to come forward with this evidence and had only done so recently. She stressed that evidence provided by other witnesses at the time of the original trial had been conflicting: some had reported injuries on Clemons's face; others had not. According to Susan Boresi, the trial judge had ruled that the matter was immaterial in any case as there was no evidence that directly implicated the police officers in causing the injuries. Susan Boresi made an impassioned appeal to the judge making the final review of the case against Reggie Clemons to throw out the claims of Clemons and his defence team, and to return him to prison to await execution. She said that even without the Clemons confession, there was plenty of evidence of his guilt including the testimony of Daniel Winfrey, a white teenager who was with him on the bridge that night and who reported that Clemons said:

'Let's go! We threw them off the bridge.'

But Attorney Levine countered that Daniel Winfrey was a 'co-operator who had cut a deal with the state' in which he acted as prosecution witness in return for a lesser sentence. He had been released on parole six years ago.

Justice Manners' 2013 report on final review of case against Reggie Clemons

Justice Manners produced his final recommendations on 1 June, 2013 to the Missouri Supreme Court which will ultimately seal Clemons's fate. Judge Manners was highly engaged during the four-hour hearing, regularly interrupting counsel on both sides to ask questions or to give his opinion. He expressed his shock at some of the police tactics used during the Clemons investigation in 1991 and 1992.

Justice Manners said:

'There was shoddy police work almost beyond comprehension...when I said shoddy I meant they took a path of least resistance, closing an investigation early as it was the easiest thing to do.'

Justice Manners asked both the defence and the state attorneys what they thought would be the implications were he, Justice Manners, to recommend to the Missouri Supreme Court that the Clemons confession should have been deemed inadmissible at trial because of evidence of coercion. The question of whether Reggie Clemons's death sentence was proportionate would be left to be decided by the Supreme Court.

Reference

Ed Pilkington, 'Reggie Clemons judge finds police suppressed evidence in death row case', Guardian, 7 August, 2013.

Ed Pilkington, 'New witness in Reggie Clemons case says he saw injury after confession', Guardian, 18 March, 2013.



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