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US police misconduct- coerced confession from suspect

Sally Ramage



Reggie Clemons

After an appeal before a judge a 102-page report was written which condemned the behaviour of the St Louis police.

Reggie Clemons had been convicted in 1993 for a Missouri double murder and was held at Death Row, his date of execution decided for 2011. When Reggie Clemons was arraigned, the judge sent him to the hospital because of his injured appearance following a bout of police interrogation. When he was sentenced to death, it was as an accomplice. The prosecution conceded that he neither killed the victims nor planned the crime. He was convicted on the basis of testimony of two witnesses (both white) – one who received a plea bargain, and the other who received a six figure police brutality settlement.¹

The finding in 2012 gave Reggie Clemons (who had been on death row since 1993 for this alleged double murder) hope of avoiding lethal injection. He was facing execution for the murder of two young sisters in the infamous ‘Chain of Rocks Bridge’ case, and this late

¹ Brian Evans, ‘Reggie Clemons: Death Row Inmate Getting Another Chance,’ *Amnesty International*, 21 August 2012. See <http://blog.amnestyusa.org/us/reggie-clemons-death-row-inmate-getting-another-chance/>

investigation of the file revealed that Reggie Clemons had been coerced by St Louis Police to confess to murder.

The final review in 2012 of the Reggie Clemons case found that evidence of the injuries imposed on the prisoner by the police during interview 22 years ago had been suppressed from Clemons' Defence Attorney in violation of Clemons' constitutional rights. The finding was published in August 2013 by Justice Michael Manners, at the Missouri Supreme Court and gives Reggie Clemons his greatest hope of avoiding death by lethal injection since he was sent to death row in February 1993, over 20 years ago.

Missouri Supreme Court

Justice Manners wrote an exhaustive report- a review of the case- the product of four years' research and of hearing the new evidence and he concluded that the police had violated the prisoner's constitutional rights by failing to disclose evidence of his police-inflicted injuries which beating coerced him into a false confession. Justice Manners report was 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. Reggie Clemons was represented *pro bono* by law firm Simpson, Thacher & Bartlett. Justice Manners pointed 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 in 1991, Reggie Clemons 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. Justice Manners' finding was made in his 102-page report.²



Reggie Clemons, Marlin Gray, Antonio Richardson and Daniel Winfrey- 1991 charges

All four men listed above were charged with the murders of Julie and Robin Kerry in April 1991. The facts of the case are that Julie and Robin Kerry aged 20 and 19 respectively, and their cousin Thomas Cummins were on the Chain of Rocks Bridge which spanned the Mississippi River. There were also four men on the bridge, who pushed these three persons over the bridge into the river where the two Kerry girls drowned and died in the Mississippi River on the night of 4-5 April 1991 but their cousin, Thomas Cummins, survived. The four men were charged with murdering the two Kerry girls pushed from the bridge that night. 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.

² Brian Evans, 'Reggie Clemons: Death Row Inmate Getting Another Chance,' *Amnesty International*, 21 August 2012. See <http://blog.amnestyusa.org/us/reggie-clemons-death-row-inmate-getting-another-chance/>

Antonio Richardson is serving a life sentence.

Daniel Winfrey, state witness in a plea bargain, served 15 years in prison, and released on parole since 2007.

The police coerced Reggie Clemons to confess.

New evidence which gave grounds for appeal

The new testimony was presented to the court in a video played in court to judge Michael Manners in Independence, Missouri. In the video, 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 Clemons case.

The police had beaten up Reggie Clemons in order to get a confession and as such they had breached the law and Reggie Clemons constitutional rights. 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 Reggie Clemons was sent to Death Row. Warren Weeks, bond investigator, had examined Reggie Clemons a few hours after he was brought in on suspicion of the Kerry murders in April 1991. Warren Weeks said that he had seen a large lump the size of a golf ball or baseball on the then 19-year-old Reggie Clemons' face and had marked the bail form with the word '*bump*' or '*bruise*'. That word had been 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, bond investigator, found, and this amounted to a violation of the prisoner's constitutional rights and procedural rules of the criminal court.

Bond investigator Warren 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 this special review hearing. In his deposition, Warren Weeks said that he met Reggie 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 across the Mississippi River.

The witness who came forward after 20 years when he saw the case in the media

Warren Weeks had at the time in 1991, been processing Reggie 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 under oath 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 see a supervisor in the probation service called Ben Coleman, who said he wanted to talk to Warren 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.'

Warren Weeks told the hearing in his deposed video that he had felt pressure to not say anything about the injury that he had seen. Soon after that, Warren Weeks stated that he was

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 Reggie Clemons which were taken around the same time as the interview and these photographs showed no signs of physical marks. Nels Moss said he doubted that Weeks had described Reggie Clemons' appearance accurately. Warren Weeks told the judge by way of his video: '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.' Warren Weeks recalled telling his wife: 'I think there's something unusual going on – nobody wants to talk about what happened to this gentleman when he was being interviewed by the police.'

Prosecution retort

On viewing the video evidence, Missouri Prosecutor Nels Moss, questioned why it had taken 22 years for a state official to come forward with new evidence in this 'death row' case.

Attorney L Joshua Levine, representing Reggie Clemons, remarked that the discovery of the Warren 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 this forced and false confession, Reggie Clemons had succumbed to police beatings and gave a statement prompted by police notes given to him to include in his statement, 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). He did not state however that he killed the two sisters.

Psychological tactics

Attorney Joshua Levine said that this confession forced 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 was therefore a crucial piece of evidence. Attorney Joshua 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*'.

Performance and plea to Justice Manners

Susan Boresi³ of the Missouri Attorney General's office tried to 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. 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.⁴ She said that 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.⁵ She gave an *impassioned performance* and pleaded with Justice Manners to throw out the claims of Reggie Clemons and his defence team, and return him to prison to await execution. She said that even without the Reggie Clemons confession, there was plenty of evidence of his guilt consisting of the testimony of Daniel Winfrey (whose plea bargain reduced his prison sentence to just 15 years). Daniel Winfrey was the only white young man of the four men charged with murder. He had been with the three other men charged with murder on the bridge that night and it was he who

³ Boresi was appointed 'Special Prosecutor' in the Ryan Ferguson case' in 2013.

⁴ However, when examined in court in 2012, Reggie Clemons told the court in 2012 that police punched him in many times in his stomach and chest as well as in his face and head. If in court some people did not see any bruises it may be because the swelling on his head may have reduced in size and of course nobody can see the injuries in his stomach.

⁵ This tells that the court had been aware of this defendant's injuries but had made a facetious excuse that there were no witnesses to the beatings. Who could have injured him whilst in police custody?

allegedly told police the damning hearsay that Clemons said ‘Let's go! We threw them off the bridge.’

Attorney Joshua Levine, representing Reggie Clemons at the case review in 2012 before Justice Manners made a counter-argument to Attorney Susan Boreli's pleas. He reminded Justice Manners in 2012 that Daniel Winfrey's statement was probably unreliable due to the fact that Daniel Winfrey, now out of prison, had made a plea agreement with the prosecutor in 1992 and this made him a ‘*co-operator who had cut a deal with the state*’ and agreed to be the chief prosecution witness in return for a lesser sentence (and on parole since 2007). As to police tactics used during the Reggie 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 produced his final recommendations on 1 June, 2013 to the Missouri Supreme Court which will ultimately seal Reggie Clemons's fate.

He 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 is left to be decided by the Missouri Supreme Court.

Conclusion

Although at this point the writer is unclear as to the final findings in the case of Reggie Clemons, the fact of the matter is that it is in the public interest to check and recheck every single piece of forensic evidence collected in 1991. It is an abuse of process that Reggie Clemons was convicted and imprisoned for over 20 years on what one man said about that incident, that one man being white among the other defendants who were black. It is a matter of public interest and social justice that *all the forensic evidence must be scrutinised by independent experts*, preferably outside of the United States of America, lest there be any doubts about those findings. As police has withheld evidence, coerced confessions and other miscarriages of justice, this whole case must be opened up to the glare of expert scrutiny: Were photographs taken? What scientific samples were taken? Where were the bodies found? What was the weather on that day? Where were the defendants found? Where the drowned women really raped? Where is the evidence? Were the women drowned because they went to a place under the bridge where they should not have been? Were all four defendants innocent? Was this one of many miscarriages of justice? Where was the cousin of the drowned women found? Was a photograph taken of him then?

The objective here is not trial by spoon-fed media but a rigorous re-examination of all the materials in this case, which may result in all criminal cases in those decades being reinvestigated for miscarriages of justice. The Missouri Court should provide all public information on this case and others like it, not the media. This is a state where George W. Bush won the general election in the year 2004; a state with a population of 4,486,228 whites

550,000 blacks; and less than 100,000 people of other ethnic minorities. It is a poor place with a high percentage of blacks and other ethnic minorities unemployed and in poverty (Temporary Assistance for Needy Families) according to the economic figures for 1991 and today, where racial tension between police and black people living there is still very high.⁶ The City of St Louis endured bitter disputes between slave-owning and anti-slavery factions, resulting in Missouri becoming a state without the prohibition of slavery –through the Missouri Compromise of 1820 (repealed in 1854 and declared unconstitutional in 1857). Reggie Clemons certainly appeared to have had incompetent representation in 1991-2, as it appears that nobody asked for a review of unlawful police practices at the time. Nobody applied for *habeas corpus*.

Further Reading Material

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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