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Tracy Eichhorn-Hicks  
1660 South Highway 100, Suite 500  
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**In re: State of Minnesota v. Clarence M. Burcham (Court File No. 14-CR-09-2584)**

Dear Mr. Eichhorn-Hicks:

This report is in response to your request that I examine various documents and recordings (listed later) in order to cast some light on statements made to the police by Clarence Burcham and the possibility of a false confession. Before giving my report, I should describe my qualifications. I earned a Ph.D. in social psychology at the University of California, Santa Cruz, in 1984. I have been a professor of psychology and legal studies at Beloit College in Wisconsin since 1984. I regularly teach courses on forensic psychology, social psychology, statistics, and research methods. I have also taught an advanced seminar on “The Psychology of Interrogation and Confession.” I have conducted research, published research reports in refereed journals and edited books, and made professional presentations on several psycholegal topics including interrogation and confession (see vita for details). Since 2005, I have testified on five occasions in Wisconsin courts as an expert on police interrogations and the problem of false confessions.

As you know, I am neither able nor willing to offer an opinion about the truthfulness of Mr. Burcham’s statements. Instead, in this report I will summarize what social scientists have learned about social influence processes, individual vulnerabilities, and interrogation techniques that can lead to unreliable statements and false confessions. (Please forgive me for the length of the summary; the false confession phenomenon is a complex one and not easily understood by lay persons.) I will also identify specific risk factors in Mr. Burcham’s case that, in a general sense, are associated with unreliable statements and false confessions. The body of knowledge that serves as the basis for this report is the product of more than 100 scientific studies published in peer-reviewed journals, most of them within the past 20 years.

## 1. The Incidence of False Confession Cases

Innocent defendants are sometimes convicted of crimes they did not commit—and sometimes the cause of the wrongful conviction is a false confession. Indeed, Drizin and Leo (2004) have documented 125 cases of false confession that occurred between 1971 and 2002.

Although the precise incidence rate is not known, research suggests that false confessions and admissions are present in 15–20% of all DNA exonerations (Garrett, 2008; Scheck, Neufeld, & Dwyer, 2000; <http://www.innocenceproject.org/>). Moreover, the cases that have been discovered surely represent the tip of an iceberg because the group of DNA exoneration cases does not include cases in which a false confession was disproved before trial, cases that result in guilty pleas, cases in which DNA evidence is not available, cases (e.g., minor crimes) that do not receive post-conviction scrutiny, and juvenile proceedings that contain confidentiality provisions (Kassin et al., 2010)

## 2. Types of False Confessions

There are three distinct psychological types of false confession (Kassin & Wrightsman, 1985). This report focuses on the second type of false confession, as most contested confessions fall into this category.

- A. In a voluntary confession, an innocent person makes self-incriminating statements without external pressure from the police. Sometimes the confessor wishes to protect a relative or friend; sometimes the confessor has a pathological need for attention, notoriety, or self-punishment.
- B. In a pressured-compliant confession, an innocent person makes self-incriminating statements in order to achieve some immediate gain or benefit (e.g., alleviation of conflict, an end to persistent questioning, a desire to sleep or go home).
- C. In a pressured-internalized confession, an innocent person comes to distrust his own memory and makes self-incriminating statements because he (mistakenly) concludes that he committed the crime. In these cases, the person usually realizes his error after talking with relatives or an attorney.

## 3. Origins of False Statements and False Confessions

Broadly speaking, all behavior is produced by the interaction between a person and a situation. That is, individual characteristics and situational forces combine to produce human behavior. When situational forces are extremely powerful, they are likely to overwhelm an individual's capacity to resist such forces (Ross & Nisbett, 1991).

This general model helps us understand why a suspect might make false admissions or confess to committing a crime he did not commit. First, the suspect may be psychologically vulnerable. That is, he may possess one or more characteristics (e.g., youth, low intelligence, mental illness) that cause him to be easily confused, unusually compliant, or especially suggestible. He may confess because he comes to doubt his own version of events, because he believes the legal system would not harm an innocent person, or because he wishes to avoid interpersonal conflict.

Second, the suspect may be pressured by police investigators who believe the suspect is guilty. Police investigators may employ specific interrogation tactics (e.g., social isolation, vigorous confrontation, minimization of culpability) to increase psychological stress, suggestibility to leading questions, and compliance to the requests of authority figures. As a result, the suspect may confess because he wishes to remove himself from a psychologically stressful situation or because he mistakenly believes that the costs of maintaining his innocence are greater than the costs of telling the police what they seemingly want to hear.

In short, false statements can be produced by either factor alone but are especially likely when a vulnerable individual is subjected to psychological pressure by police investigators (Gudjonsson, 2003).

#### 4. Vulnerable Individuals

Some individuals are more likely than others to capitulate to interrogation pressures and make false admissions. Risk factors internal to the person include youth, low intelligence, poor memory, drug addiction, mental illness, compliance and suggestibility, low self-esteem, and sleep deprivation.

- A. Juvenile suspects generally confess more readily than adult suspects because juveniles are less likely to have prior experience with law enforcement, more likely to waive their Miranda rights, and more likely to comply with the demands of authority figures (Grisso, 1999; Medford, Gudjonsson, & Pearse, 2003). In the Drizin and Leo (2004) sample of proven false confessions, 32% of the false confessors were under the age of 18, and 63% were under the age of 25.
- B. Intellectually impaired individuals are more easily pressured into giving unreliable statements and false confessions.<sup>1</sup> Drizin and Leo (2004) identified at least 28 mentally retarded defendants in their sample of 125 false confessors—and this figure probably is an underestimate because intelligence test scores were not available in most cases. Mentally retarded persons are less likely to understand their Miranda rights (Fulero & Everington, 1995) and often exhibit a strong tendency to say “yes” to even absurd questions (Finlay & Lyons, 2002). The latter phenomenon is known as acquiescent response bias.
- C. Individuals who have poor memories or who distrust their memory capabilities are generally more suggestible. As a result, they are more likely to make unreliable statements (Gudjonsson, 2003). When persons doubt their own memories of an event, they often rely on cues from others to help them construct a plausible account of what actually happened.
- D. Individuals who are in a state of alcohol withdrawal are vulnerable because they are cognitively impaired, unusually anxious, and less able to cope with interrogative pressure

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<sup>1</sup> In its 2002 *Atkins v. Virginia* ruling, the U.S. Supreme Court stated that mentally retarded capital defendants, as a group, face a special risk of wrongful execution because of the possibility that they will unwittingly confess to crimes they did not commit and because their demeanor may create an unwarranted impression of lack of remorse for their crimes.

(Gudjonsson, Hannesdottir, Petursson, & Tyrfingsson, 2000; Gudjonsson, Hannesdottir, Petursson, & Bjornsson, 2002). In several cases in Great Britain, drug addicts became highly compliant because they hoped to be released from custody and then feed their drug habit (Gudjonsson, 2003).

- E. Individuals who suffer from a diagnosable psychiatric disorder (e.g., schizophrenia, depressive illness) are often vulnerable because a breakdown in “reality monitoring,” when present, impairs the individual’s ability to differentiate fact from fantasy. As a result, some mentally ill persons come to believe they have committed crimes that, in fact, they have not (Gudjonsson, 2003). An important type of psychopathology in relation to false confessions is attention deficit hyperactivity disorder (ADHD), which consists of three primary symptoms: inattention, hyperactivity, and impulsivity (American Psychiatric Association, 1994). Research shows that persons with ADHD answer a disproportionate number of questions with “don’t know” replies, which may lead police to be suspicious of their answers (Gudjonsson, Young, & Bramham, 2007). They may also exhibit high levels of compliance. In one study, the rate of self-reported false confessions was substantially higher among prisoners with ADHD (41%) than among other prisoners (18%) (Gudjonsson et al., 2008).
- F. Several studies indicate that highly compliant individuals are more likely to confess to police (Gudjonsson, 2003). In this context, compliance refers to “an eagerness to please ... and a desire to avoid confrontation and conflict with others, particularly those in positions of perceived authority” (Kassin & Gudjonsson, 2004, p. 51).
- G. Sleep deprivation impairs one’s ability to cope with interrogative pressure (Blagrove, 1996). The longer the sleep deprivation, the greater the effects on suggestibility. Even one night’s sleep deprivation can impair executive functioning in the part of the brain called the prefrontal cortex (Nilsson, Söderström, Karlsson, Lekander, Åkerstedt, Lindroth, & Axelsson, 2005). Executive functioning refers to the brain’s ability to absorb information, interpret the information, and make decisions based upon the information. In short, sleep-deprived individuals are more suggestible and less able to make good decisions.

## 5. Techniques that Increase Compliance

Police investigators can employ specific techniques that are designed to (1) create a psychologically stressful situation and (2) increase suggestibility and compliance to the demands of authority figures. These techniques include social isolation, lengthy questioning, and repeated questioning. These techniques are associated with high rates of confession and a heightened risk of false confession. (Other techniques include specific interrogation tactics commonly used by police investigators; these will be discussed in a separate section.)

- A. Military interrogators isolate suspected terrorists for questioning. Religious cults often isolate their members to heighten suggestibility and instill the cult’s teachings. Prison officials sometimes isolate prisoners to indoctrinate and interrogate (Suedfeld, 1974). When the police isolate a suspect within unfamiliar surroundings, the suspect often is anxious and is motivated to remove himself from the uncomfortable situation and reunite with family and friends. From a social psychological perspective, the single suspect who is isolated and confronted by investigators is being pulled in one direction (toward a

confession) while there are no other forces (e.g., his attorney) pulling him in the opposite direction. In this kind of situation, individuals comply to a degree that surprises most people (e.g., Asch, 1956).

- B. In the United States, the vast majority (90%) of police interrogations are completed within 2 hours (Leo, 1996). The authors of a widely-used interrogation manual believe that most interrogations can be completed within 3-4 hours (Inbau, Reid, Buckley, & Jayne, 2004). These statistics stand in sharp contrast to a recent analysis of proven false confession cases in which 34% of interrogations lasted 6–12 hours, 39% lasted 12–24 hours, and the average length was 16.3 hours (Drizin & Leo, 2004). In a lengthy interrogation, an innocent suspect's resistance is worn down and police investigators, frustrated by their inability to secure a confession, are likely to apply more pressure.
- C. When investigators repeatedly ask closed-ended questions within a single interview, witnesses (and presumably suspects) change their answers with surprising frequency (Poole & White, 1995). The repetition of closed-ended questions (e.g., yes/no questions) creates conflict within an interpersonal situation; the conflict is eliminated when a suspect changes his answer because the investigator is satisfied and ends questioning on that subject.

## 6. The Nature of Interrogations

An interrogation is not an investigative interview. The primary goal of an investigative interview is to question a witness or suspect, in a non-leading way, to determine what happened. The primary goal of an interrogation, however, is to extract a confession or admissions of guilt from a suspect.

Most police investigators who conduct interrogations on a regular basis have been trained in the so-called Reid School Technique or a variant of the Reid Technique. The Reid Technique is fully described in a widely-used manual titled *Criminal Interrogation and Confessions* (Inbau, Reid, Buckley, & Jayne, 2004). According to the manual's authors, an interrogation is accusatory and involves active persuasion; the investigator attempts to dominate the conversation by making statements, not asking questions. In social psychological terms, interrogation is "a guilt-presumptive process, a theory-driven social interaction led by an authority figure who holds a strong a priori belief about the target and who measures success by the ability to extract an admission from that target" (Kassin & Gudjonsson, 2004, p. 41).

## 7. The Detection of Deception

Before conducting an interrogation, Reid-trained investigators are encouraged to determine if the suspect is guilty or innocent (because only guilty suspects should be interrogated). Sometimes this judgment is based on physical evidence, information provided by witnesses, or a prior criminal history. At other times, however, "the judgment is based on nothing more than a hunch, a behavioral impression that investigators form during a preinterrogation interview" (Kassin & Gudjonsson, 2004, p. 37).

According to advocates of the Reid Technique, investigators can be trained to judge truth and deception with 85% accuracy (Inbau, Reid, Buckley, & Jayne, 2004, p. 123). This level of accuracy, however, substantially exceeds human lie-detection performance obtained by

independent researchers. In fact, most experiments have found that law enforcement officials, judges, and psychiatrists perform only slightly better than chance, if at all (Bull, 1989; Ekman & O'Sullivan, 1991; Garrido & Masip, 1999). In a recent meta-analysis (a statistical procedure that combines results across multiple studies), police investigators trained in the Reid Technique detected lies at chance levels only—and untrained students did slightly better (Meissner & Kassin, 2002). Many of these same studies have found that law enforcement officials tend to be more confident of their “lie-catching” abilities than can be justified on the basis of their actual performance.

## **8. Confirmation Bias**

At this point, police investigators begin to question a suspect who they believe is guilty. Can a presumption of guilt affect the questioning process and its outcome? Yes. Dozens of controlled studies indicate that once people form an impression, they unwittingly seek and interpret information in a way that validates their original hypothesis or belief. This phenomenon is known in the scientific community as “confirmation bias” or the “interpersonal expectancy effect.” (The police sometimes refer to the same phenomenon as “tunnel vision.”)

In short, a perceiver forms a belief about a target person and then behaves toward the target in a way that conforms to the belief. The target responds in turn, often behaving in ways that support the perceiver’s belief (Snyder & Stukas, 1999). Confirmation bias in an interrogation context has been demonstrated in a controlled study of mock investigators and suspects. When investigators were led to believe that a suspect was guilty, they asked more guilt-presumptive questions and exerted more pressure to get a confession. When innocent suspects were interrogated by investigators who thought they were guilty, suspects were more anxious, more defensive, and more likely to appear guilty, according to observers who listened to the taped interrogations (Kassin, Goldstein, & Savitsky, 2003).

## **9. Interrogation Tactics Commonly Used by Police Investigators**

The Reid School Technique itself is a 9-step process designed to extract confessions from criminal suspects. The nine steps can be reduced to three fundamental strategies: custody and isolation, confrontation, and minimization (Kassin & Gudjonsson, 2004).

The first strategy—custody and isolation—intensifies the suspect’s feelings of stress and desire to extricate himself from the situation.

The second strategy—confrontation—allows the interrogator to accuse the suspect of the crime, express certainty in the suspect’s guilt, cite real or manufactured incriminating evidence, and prevent the suspect from making denials. The goal is to shift the suspect’s mental state from confident to hopeless (Kassin et al., 2010). To achieve this goal, interrogators often communicate, implicitly or explicitly, a threat of harsher consequences if the suspect persists in his denials (Leo & Ofshe, 2001).

The third strategy—minimization—allows the interrogator to offer sympathy and understanding, suggest that he or she would have behaved similarly, permit the suspect to infer that he will be treated leniently if he confesses, and lead the suspect to believe that confession is the best or only way to “escape” the immediate, unpleasant situation. Minimization tactics are designed to

provide the suspect with moral justification and face-saving excuses for having committed the crime in question. Research has shown that these tactics communicate by implication that leniency in punishment will be forthcoming if the suspect confesses (Kassin et al., 2010).

There is widespread agreement among social scientists that modern interrogation techniques are remarkably effective in eliciting true confessions from guilty suspects. Unfortunately, these techniques are so powerful that they can sometimes induce innocent suspects to make false admissions or even confess to crimes they did not commit (Kassin et al., 2010).

A 2005 study by Melissa Russano and her colleagues demonstrated the effectiveness of psychologically-based interrogation techniques. As noted in the study's abstract:

The primary goal of the current study was to develop a novel experimental paradigm with which to study the influence of psychologically-based interrogation techniques on the likelihood of true and false confessions. The paradigm involves guilty and innocent participants being accused of intentionally breaking an experimental rule, or "cheating." In the first demonstration of this paradigm we explored the influence of two common police interrogation tactics: minimization and an explicit offer of leniency, or a "deal." Results indicated that guilty persons were more likely to confess than innocent persons, and that the use of minimization and the offer of a deal increased the rate of both true and false confessions. (Russano, Meissner, Narchet, & Kassin, 2005, p. 481)

The table below shows the percentages of "factually guilty" and "factually innocent" subjects who confessed to cheating in the Russano study. Note that the participants in this study—university students—were not especially vulnerable individuals and were not subjected to lengthy interrogation or questionable tactics (e.g., fabricated evidence of guilt).

<i>Condition</i>	<i>Guilty</i>	<i>Innocent</i>
No tactic	46%	6%
Deal	72%	14%
Minimization	81%	18%
Minimiz + Deal	87%	43%

To understand why psychologically-based interrogation techniques are so effective, it is helpful to have an understanding of social influence and decision making. Social psychologists have demonstrated that an authority figure can persuade ordinary people to administer apparently lethal shocks to an innocent subject (Milgram, 1974), and an experimenter can induce volunteer subjects to behave in ways that are seemingly self-injurious such as plunging their hand into concentrated acid (Orne & Evans, 1965). In these studies, experimenters repeatedly prompt subjects to comply with their dubious requests. In addition, they lead subjects to believe that they will not be morally responsible for their behavior. Similarly, police interrogators are typically unrelenting and imply that the suspect is not morally blameworthy by minimizing the

moral seriousness of the offense, blaming the victim, or suggesting a noncriminal intent behind the act (see Inbau, Reid, Buckley, & Jayne, 2004, pp. 244, 254, 285). In short, when individuals are placed in a powerful social situation that shapes their psychological reality for them, they can be led to act in ways that are counter to their best interests or the interests of others.

## **10. Distinguishing between True and False Confessions**

The police sometimes target innocent suspects and subject them to psychologically powerful situations that are designed to increase compliance. As a result, innocent persons will sometimes confess to crimes they did not commit. Such a state of affairs is clearly undesirable, yet the problem of false confessions may not be a crucial problem if false confessions can be detected and corrected by law enforcement or judicial authorities. Essential to this presumed safeguard is the commonsense assumption that “I’d know a false confession if I saw one” (Kassin, 2005).

Can individuals (e.g., police officers, judges, jurors) distinguish between true and false confessions? The available evidence suggests the answer is no. In a recent experiment, students performed no better than chance when they attempted to distinguish the confessions of guilty and innocent mock suspects (Lassiter, Clark, Daniels, & Soinski, 2004). In a similar experiment, police officers and students performed no better than chance when they attempted to distinguish the true and false confessions of prison inmates, although the police were more confident in their performance (Kassin, Meissner, & Norwick, 2005). In this study, police officers who were specially trained in interrogation techniques exhibited a false alarm bias. That is, they were more likely than other officers to identify a false confession as true than to make the opposite kind of error (i.e., identify a true confession as false).

Saul Kassin, America’s leading expert on the psychology of confessions, wrote in 2005:

Recent research suggests that actual innocence does not protect people across a sequence of pivotal decisions: (a) In preinterrogation interviews, investigators commit false-positive errors, presuming innocent suspects guilty; (b) naively believing in the transparency of their innocence, innocent suspects waive their rights; (c) despite or because of their denials, innocent suspects elicit highly confrontational interrogations; (d) certain commonly used techniques lead suspects to confess to crimes they did not commit; and (e) police and others cannot distinguish between uncorroborated true and false confessions. It appears that innocence put innocents at risk. (Kassin, 2005, p. 215)

## **11. Documents and Recordings Reviewed in the Clarence Burcham Case**

I reviewed the recordings and documents listed below, all of which were provided to me by your office.

- A. Recording and transcript of first interview of Clarence Burcham by Detective David Miller and Officer Eric Jaeche (November 2, 1993)
- B. Recording and transcript of second interview of Clarence Burcham by Detective David Miller and Officer Eric Jaeche (also on November 2, 1993)

- C. Recording and transcript of interview of Clarence Burcham by Detective Ryan Nelson, with Agent Phil Pfenning present (March 6, 2009)
- D. Recording and transcript of interview of Clarence Burcham by Detective Ryan Nelson, with Agent Phil Pfenning present (June 2, 2009)
- E. Indictment (September 2, 2009) and Complaint (June 11, 2009) regarding Clarence M. Burcham
- F. Defendant's Memorandum in Response to State's Motion Regarding Competency of Defendant (which includes as exhibits the initial evaluation of Clarence Burcham by Dr. Nancy Hein-Kolo and the evaluation of Dr. Robin Ballina)
- G. Findings of Fact, Conclusions of Law, and Order from Judge Galen Vaa, in which the Court summarized Dr. Rosemary Linderman's evaluation of Mr. Burcham and found Mr. Burcham competent to stand trial (May 11, 2010)
- H. Findings of Fact, Conclusions of Law, Order, and Memorandum from Judge Galen Vaa, in which the Court denied the defendant's motion to suppress Mr. Burcham's statements (December 28, 2010)
- I. Findings of Facts, Conclusions of Law, Order, and Memorandum from Judge Galen Vaa concerning the State's motion to preclude expert testimony in the area of false confessions (filed February 25, 2011)

## **12. Clarence Burcham's Vulnerability**

A. According to Dr. Hein-Kolo's evaluation, Mr. Burcham obtained a Full Scale IQ score of 58 on the WAIS-IV, a widely-used test of intelligence. A score of 58 places Mr. Burcham in the extremely low range of overall functioning (p. 4). Dr. Hein-Kolo also reported the results of a test called the Validity Indicator Profile (VIP), which suggested that Burcham's IQ test results may have been invalid. Dr. Hein-Kolo noted, however, that Burcham's performance on the VIP could reflect "a complete lack of capacity to comprehend items which can sometimes be found in individuals with mental retardation" (p. 4).

According to Dr. Ballina's report, Burcham has a very limited employment history (p. 3) and has worked primarily as a dishwasher and carnival worker (i.e., jobs that are not intellectually demanding). Burcham did not finish high school and has been on SSI since the age of 19 or 20 (pp. 3-4). Dr. Ballina also reported that Burcham's ability to appreciate the situation is poor and his judgment is impaired for important decision making (p. 5). Moreover, he demonstrated no ability to reason among several possibilities (p.8).

According to the Court's Findings of Fact, Conclusions of Law, and Order (May 11, 2010), Dr. Linderman found insufficient evidence to support a diagnosis of mild mental retardation in light of the absence of clear evidence of adaptive behavior deficits. Dr. Linderman also concluded, however, that Burcham has a learning disorder (p. 10), based on Burcham's report that he participated in special education programs since kindergarten. This claim was confirmed by Mr. Burcham's sister, as noted in Dr. Hein-Kolo's report (p. 3).

In sum, there is some question as to whether Mr. Burcham meets the strict criteria for mental retardation, but there is evidence that Mr. Burcham possesses low intelligence. *Low intelligence is a documented risk factor for false confession.*

**B.** According to Dr. Hein-Kolo's evaluation, Mr. Burcham admitted to a history of alcohol use problems (p. 5) and stated he "was drinking on a daily basis at the time of his arrest" (p. 3). Mr. Burcham told Hein-Kolo that he has participated in chemical dependency treatment numerous times (p. 5).

According to Dr. Ballina's evaluation, Mr. Burcham reported a lengthy history of alcohol use dating back to at least the 10th grade (p. 4). He drinks beer, wine, and whiskey. At times, he drinks up to three gallons of wine or two cases of beer in a single day. Mr. Burcham also reported that he has experienced withdrawal symptoms in the past.

According to the Court's Findings of Fact, Conclusions of Law, and Order (May 11, 2010), Dr. Linderman diagnosed the defendant as meeting the criteria for Alcohol Dependence (p. 9).

In sum, there is widespread agreement that Mr. Burcham is dependent on alcohol. *Alcohol dependence—accompanied by withdrawal symptoms—is a documented risk factor for false confession.*

### **13. The Police Interviews of Mr. Burcham on November 2, 1993**

Clarence Burcham (CB) was interviewed twice on November 2, 1993. Detective David Miller conducted most of the questioning. The first interview was 29 minutes long. In my opinion, Miller conducted an investigative interview and used appropriate interviewing technique (i.e., he asked open-ended questions and did not ask leading questions).

The second interview was 15 minutes long. Like the first interview, this interview was an investigative interview, not an interrogation. On page 8, Detective Miller said: "You mentioned the first time though that you had removed the cord." CB replied "Yah." It is important to note that, in the first interview, CB did NOT say he had removed the cord. CB simply said he SAW a stereo cord around Debbie's neck. CB's agreement with Detective Miller's characterization may have been an instance of automatic, unthinking acquiescence. This mischaracterization of CB's original statement played an important role in Detective Ryan Nelson's interviews of CB 15 years later (see below)

### **14. The Police Interview of Mr. Burcham on March 6, 2009**

This interview took place at the police station and was approximately 3.5 hours in length. The interview was conducted by Detective Ryan Nelson. Agent Phil Pfenning was also present.

Prior to the formal interview, when Ryan Nelson (RN) spoke to Clarence Burcham (CB) at CB's home, RN told CB "you are not in trouble" and twice said "I am not going to arrest you." (I am not able to cite a page number because, to my knowledge, there is no transcript of the recorded conversation at CB's home.)

At the beginning of the formal interview, RN read the Miranda rights to CB (p. 2) and asked CB if he understood those rights. CB indicated he did. RN did not fully test CB's genuine understanding of the meaning of those rights, although he could have by asking CB to paraphrase the rights in his own words. As noted earlier in this report, studies have found that mentally retarded persons and young people often do not fully understand Miranda rights. Moreover, mentally retarded persons often exhibit a strong tendency to say "yes" to questions, even absurd questions.

On pages 21 and 22, RN asked CB, "Do you remember taking anything off her neck? ... Nothing? ... You ABSOLUTELY didn't take anything off her neck? ... You're one hundred percent sure about that? ... And everything you told me here is the truth so far?" Although CB said he did not take anything off the victim's neck and is telling the truth, it appears RN did not believe CB, perhaps because RN had read the transcript of the November 2, 1993, interview in which Detective Miller mischaracterized what CB had said about the cord (see above). In short, RN may have concluded that CB was actively lying when, in fact, CB merely said "yah" to a misstatement by Detective Miller.

CB repeatedly asserted his innocence.

- "I'm not lying. I never did nothing. I never touched her." (p. 24)
- "I never put nothing around her neck, nothing like that." (p. 60)
- "I never hit her." (p. 60)
- "I know I never did nothing." (p. 75)

RN repeatedly cutoff denials made by CB. This Reid School technique is designed to communicate to a guilty suspect that asserting one's innocence is futile. Unfortunately, the technique communicates the same message to an innocent suspect, who may then come to believe that asserting his innocence is no longer a viable option, that admissions of guilt—and only admissions of guilt—are acceptable.

- On page 26, RN said to CB, "They [your stories] changed several times. They even changed today. And that has me concerned." When CB tried to respond to this accusation, RN immediately cut him off by saying, "Hang, hang on. Just hear me out for a little bit though, okay?"
- RN also interrupted CB's assertions of innocence on pages 27, 29, 30, 31, 36, 39, and 60.

RN isolated and confronted CB. These Reid School techniques are designed to intimidate the suspect and make him think no one will believe his claims of innocence.

- "That lie detector test you took [and passed] doesn't mean anything. It isn't even admissible in court." (p. 29)
- RN implied that CB would receive lenient treatment if he confessed now but receive harsh treatment if he did not confess (pp. 31-32, 38)
- "There's some big problems ... and I'm gonna be meeting Monday morning with the prosecutor about the case." (p. 38)
- "I know you had something to do with this, okay?" (p. 42)
- "I am the only one on your side right now ... there isn't anybody else out there that is gonna be on your side" (p. 42)

- “I told you I know. I’m not gonna say I think. I’m telling you I know, okay?” (p. 43)
- RN strongly implied that the suspect who was the last person to be with a victim and the first person to find the victim is the perpetrator 90-95% of the time (p. 48)
- “I don’t believe yah ... I don’t believe yah ...I don’t believe yah” (p. 51)
- “I’m your only help at this point” (p. 55)
- “I know what happened. I know what happened.” (p. 66)

Detective Nelson sometimes misled CB about the nature of the evidence against him. This is potentially problematic because, in most documented false confession cases, the police fabricated evidence of the suspect’s guilt. When an innocent suspect believes the police have evidence that makes him look guilty, the suspect is more likely to consider a false confession as the best option within a set of bad options.

- “We got a DNA profile of a male inside that trailer ... on some of Sharon’s clothes and on some bloody rags.” (p. 23)
- “There’s fingerprints there. We got photographs. We got witnesses.” (p. 56)
- RN implied he had additional incriminating evidence but could not reveal the evidence because it would be unprofessional. (p. 51)
- RN implied he had eliminated all other suspects via DNA testing. (pp. 56-57)

(It should be noted that Officer Pfenning was present in the room during the interview. The presence of another law enforcement officer, sitting silently and failing to contradict anything said by RN, serves to reinforce RN’s authority and apparent trustworthiness.)

RN repeatedly implied that CB would face no legal consequences for what he said during the interview.

- “I’m not going to arrest you” (p. 23)
- “The conversation here today, Clarence, is amongst us” (p. 27)
- “I don’t think you’re a bad guy. Nobody does. Okay?” (p. 27)
- “You’re still gonna get to go home today, man. This is between us. Not anybody else.” (p. 40)
- “And I’ve told you that you’re not under arrest and I wasn’t arresting you” (p. 58)
- “You’re going home today. I told you that and that’s my guarantee. You’re going home today.” (p. 74)
- “And I told you that you weren’t going to be placed under arrest after we get done talking here today?” (p. 78)
- “I’m not going to arrest you or anything like that. Okay? I just want to talk to you.” (p. 105)

RN repeatedly assured CB that he would not play games with him, deceive him, or lie to him. If an innocent suspect believes the police are being truthful, believes the police have found physical evidence that links the suspect to the crime, and believes there will be no legal implications for confessing, an innocent person might reasonably conclude that giving a false confession is the best way to remedy a bad situation.

- “I’m not gonna play games or tricks with you. Or lie to you.” (p. 36)
- “There’s no lies, deceit, trickery, anything.” (p. 53)

- “Clarence, you guys were fooling around that night. It’s okay. I’m not lying to you, Clarence. You gotta trust me.” (p. 55)

RN repeatedly introduced and developed thematic elements (i.e., parts of a story) that would minimize the moral gravity of the offense or justify the offender’s conduct. Theme development is a widely-used Reid School technique (Inbau et al., 2004).

- “I think there was a little relationship between you and Sharon” (p. 26)
- “Sharon [the victim] was a little flirtatious.” “She was a prostitute” (p. 30)
- “Hey, she was a prostitute. She was very flirtatious. She came onto a lot of guys.” (p. 43)
- “She liked to be kinda choked out [during sex]” (p. 31)
- “It’s a possibility that it went too far” (p. 31)
- “Let’s say you were having sex with Sharon and it went too far” (p. 31)
- “If I had some girl at a party that wanted to have sex with me ... I can damn well guarantee I’m gonna be having sex with her. Okay? I don’t know many guys that wouldn’t.” (p. 43)
- “Once you tell me the story, Clarence, I don’t think any less of you ... but you need to tell me the story today. Okay?” (p. 55)

RN repeatedly pressured CB to confess.

- “We need to take that leap today.” (p. 42)
- “Take it off your shoulders now. Take it off your shoulders and move forward.” (p. 50)
- “I know that you had something to do with this ... And I’ll sit here all day if I have to, to help you figure this out, okay?” (p. 53)
- “You need to realize today is the day ... so this is very limited if, probably no opportunity for you to change your mind after today ... today is the day, okay?” (p. 56)
- “Clarence, we need to now the truth today. This morning. Okay?” (p. 57)
- “Let’s do this now, okay?” (p. 62)

RN provided CB with information about crime scene evidence. These crime scene details had not been mentioned previously, and CB may not have been aware of these details until RN mentioned them. When the police feed crime scene information to a suspect, an innocent suspect may incorporate that information into a false confession, which then makes the confession appear valid because it contains information that would be known by the actual perpetrator but presumably not known by an innocent person.

- RN told CB that the victim “had a cut on the back of her head that she was bleeding from” (p. 15)
- RN asked CB if the table in the kitchen was turned upside down (p. 21)
- “She was strangled, she had an electrical cord ... that cord was used to strangle her” (p. 38)
- “That’s why she had some ribbons around her neck too, for padding” (p. 50)
- “We need to know about the bruise on the back of the head” (p. 60)
- “Do you remember seeing the doll that was up on the wall above her headboard?” (p. 64)
- “Do you remember the doll having anything tied around the neck?” (p. 65)
- “There was some bloody rags in the bathroom.” (p. 69)

CB frequently made statements that were inconsistent with earlier statements. For example, CB said he went over to the victim's trailer about 8:00 or 9:00 the next morning (p. 10). CB later said he went over around 9:30 or 10:00 (p. 20). RN appeared to interpret these inconsistencies as evidence that CB was not being truthful, but inconsistencies of this sort should be expected, given the constructive nature of memory and the problems associated with trying to recall the details of an event that occurred 15 years earlier.

At several points during the interview (e.g., pp. 37, 47, 49, 52, 65), RN presented CB with two options. RN essentially said, "You can be this guy over here [who admits guilt and takes responsibility and feels remorse] or you can be this guy over here [who is guilty but does not confess and does not express remorse]." RN repeatedly encouraged CB to be the first guy. RN said he wants CB to be the first guy. So does the judge and the victim's father and CB's girlfriend. An innocent suspect who believes there are only two viable options will understandably choose to be "the first guy" (i.e., the one who admits guilt), especially when he has been led to believe that an admission of guilt will have no legal consequences.

Near the end, on pages 81-82, RN said he forgot to ask at the beginning about CB's schooling and ability to understand English. RN then learned that CB did not finish high school and was in special education classes. On pages 83-84, CB appeared to need help to spell the words *couch*, *counter*, and *fridge*. In my opinion, a well-trained interrogator should know that low intelligence is a risk factor for false confessions and take special precautions.

In this lengthy interview/interrogation, CB never revealed guilty knowledge, i.e., knowledge that an innocent person could not know. On a few occasions (e.g., pages 69, 83-84, 86, and 89), RN attempted to extract guilty knowledge from CB when he asked about the color of ribbons, the number of ribbons, the location of the toilet, the location of the stove, and the orientation of the victim's head. CB was not able to answer the questions correctly. RN asked, "Do you remember what Sharon looked like?" CB replied, "No clue." Finally, in CB's account of what supposedly happened, CB said he ejaculated on the victim's stomach (p. 63). To my knowledge, this detail is inconsistent with the physical evidence collected at the crime scene.

### **15. The Police Interview of Mr. Burcham on June 2, 2009**

This interview took place at the police station and was approximately 3 hours in length. The interview was conducted by Detective Ryan Nelson. Agent Phil Pfenning also was present.

As in the first interview, CB repeatedly asserted his innocence.

- "I know I never did nothing." (p. 8)
- "I'm telling you the truth." (p. 29)
- "I'm honest with you, I never did nothing." (p. 35)
- "I never pulled that cord." (p. 73)
- "I never killed her." (p. 74)

As in the first interview, RN fabricated evidence or implied that other people had said CB was the perpetrator.

- “What they [medical examiners] are telling me is they don’t believe she is agreeing to have sex with you. That means that you’re forcing her to have sex.” (p. 71)
- “Cause the doctors tell me it’s only you and her in that trailer.” (p. 88)

As in the first interview, RN repeatedly implied that CB would face no legal consequences for what he said during the interview.

- “And you understand that you’re not going to be arrested when we’re done talking here today?” (p. 6)
- “You’re leaving to go camping later this afternoon.” (p. 31)
- “We’re gonna talk here today, okay? And then after we get done talking, I’m not going to be arresting you here today.” (p. 32)
- “If you beat her up, Clarence, we just need to know that. Okay? It’s okay for us to know that because you know what? Clarence? I haven’t arrested you, Clarence. You’re still gonna get to go home today.” (p. 64)
- “It’s okay if she died in the trailer before you left, that’s okay. We just need to know what she was doing and what was going on. So I can bring some answers back to her father. Back to her sister. You know?” (p. 35)
- “You’re gonna get to go home, yeah. When we’re done here.” (p. 58)

As in the first interview, RN provided CB with information about crime scene evidence.

- the location of a table just inside the front door of Sharon’s trailer (p. 13)
- the names of the two men who lived in the small white house (p. 21)
- the autopsy results indicating the victim had had sex (p. 42)
- the little space heater in the trailer (p. 54)
- the purse strap on the bedding below the victim (p. 55)
- the location of the heater in the bathroom (p. 56)
- the blanket wrapped around space heater (p. 56)
- the fact that Sharon was beaten and raped (pp. 63-64)
- the fact that the mattress was not pushed over but was up against the wall (pp. 84-85)

As in the first interview, RN introduced and developed thematic elements (i.e., parts of a story) that minimized the moral gravity of the offense.

- “There was an argument between you two ... Did she make fun of you? ... Did you get mad?” (pp. 42-43)
- “He [the killer] was scared just like anybody that gets put in that situation would be scared. And they didn’t know what to do.” (p. 60)
- “You didn’t want that place to burn up, Clarence ... So you did the right thing by calling.” (pp. 85-86)
- “I don’t think this would have ever happened if she wouldn’t have called you retarded.” (pp. 86-87)
- “He [the victim’s father] understands that his daughter was not a princess, was not you know the best girl out there.” (p. 88)

- “I don’t think you went over to the trailer with the intention of killing her. I think you went over there to apologize and she probably called you retarded again. Or did something to get you even more angry. And the fight got worse and she died as a result.” (p. 89)

As in the first interview, RN repeatedly refused to believe CB when CB’s statements did not conform to his theory of the crime or to crime scene evidence. These are instances of the Reid School technique called confrontation.

- “Clarence, I’m gonna call bullshit on you right now, okay?” (p. 41)
- RN: “Was there anything wrapped around it [the heater] when you saw it?” CB: “No.” RN: “Clarence? We need to tell the truth.” CB: “Yeah, there was no --- ” RN (interrupting): “Okay. Stop. Stop. ... When did you put the blanket around the space heater?”
- “I think you hit her more times [than once]. And I think you raped and then I think you killed her. ... It’s obvious there was an argument. And that you got mad and hit her. And you had sex with her. And you killed her.” (p. 72)
- “I think you got mad at her, that you beat her up and that you assaulted her. Then you got mad at her and that you killed her. Okay?” (p. 75)

As in the first interview, RN repeatedly pressured CB.

- “There’s some things that you’re leaving out.” (p. 64)
- “And there’s more to the story than what you’re telling me. And you do remember. You just need to tell me what you do remember.” (p. 65)
- “We need to know the whole truth, Clarence.” (p. 66)
- “Clarence, you need to tell me the truth. Okay? If you’re gonna be a good guy, Clarence, you need to tell me the whole truth.” (p. 73)
- “It’s time just to do it. It’s time to put the whole story out there, Clarence. If you want me on your side to help you out ... And to be frank with you right now, you’re pissing me off. ... You piss me off. ... And I’m pissed off because I believe that you’re not telling me the whole truth.” (p. 76)
- “It’s time Clarence to be a man here today and quit putting on a show and changing the stories and tell me the truth period. That’s it. And then you go home. ... It’s a ten minute conversation about the truth and then we go home. But if you keep throwing lies in there, then it’s longer. Because you know what? I know what happened.” (p. 77)
- “You killed her ... I know what the truth is ... You just need to be a man today and tell us what happened.” (p. 86)
- After this, Clarence, I’m not gonna come out and give you another opportunity ... the opportunity to tell me the truth is today. Your last opportunity.” (p. 88)
- “It’s tough, Clarence. But be a man here today.” (p. 90).

On several occasions, CB appeared to guess at the answers to specific questions about crime scene evidence. (See page 59 for a couple instance when CB appears to be guessing about the colors of objects.)

In my opinion, Detective Nelson experienced tunnel vision in this second interview. That is, he was convinced that CB was the perpetrator and interpreted CB’s behavior within that framework.

RN sought statements to support his hypothesis of guilt but did not fully consider statements by CB that did not support his hypothesis.

- Pages 27-28: RN said to CB: “Do you remember, when we talked last time, you said she had passed away before you left her?” CB: “No, she was still alive.” RN: “That’s not what you told me. Do you remember that?” In fact, CB gave several accounts of what happened, but RN repeatedly asked about the account that was consistent with his hypothesis that CB killed Sharon Stafford.
- Page 48: RN said, “Let’s talk about that comment when you confronted her about why did you call me retarded? I mean cause you were pretty mad about that I assume?” In fact, CB did not say he confronted Sharon. RN had suggested that happened; CB agreed but also said (p. 43) he was “not that mad.”

RN repeatedly told CB that he wanted CB to tell the truth, yet RN also repeatedly implied that only certain accounts were truthful. This is illustrated on page 81: “You know I just want to know the truth. If you didn’t strangle her, then I need to know. But if you strangled her, then I need to know. But I think you got mad at her, you beat her up, you strangled her and you killed her. And the fact is you’re not taking responsibility for it.”

In this interview, CB said many things about what happened that night and the next morning, some of which were implausible and made in response to unintentional “suggestions” made by RN (see page 74). In my opinion, CB’s implausible statements should have alerted RN to the possibility that CB was trying to present an account that would satisfy the detective. In a related vein, it is conceivable that CB did not trust his own memory for what happened that night, given the amount of time that had passed and the fact that he was drunk that night. CB’s attempts to reconstruct what happened may explain, at least in part, why his story changed so many times.

Near the end of this interview (p. 94), RN tested for guilty knowledge by asking CB how the victim sustained injuries to her vagina. CB did not know about the wooden dowel. CB also did not know about the placement of the purse strap on the victim’s belly (p. 95).

## 16. Conclusions

- A. False confessions happen—and they occur more often than most people realize.
- B. Clarence Burcham may be mentally retarded and almost certainly possesses low intelligence. He also is dependent on alcohol and has experienced withdrawal symptoms. These two risk factors leave Mr. Burcham relatively vulnerable to giving a false confession.
- C. Detective Nelson used interrogation techniques associated with the Reid School. These techniques—isolation, confrontation, cutting off denials, relentless questioning, and minimization—are psychologically sophisticated and effective in inducing guilty suspects to confess. Unfortunately, they are so powerful that they sometimes induce innocent suspects to confess falsely. In short, these techniques are associated with an elevated risk of obtaining a false confession.
- D. Detective Nelson interrogated Clarence Burcham for 3.5 hours on the first occasion and 3 hours on the second occasion. Both interrogations were lengthy (i.e., longer than the

typical interrogation). Lengthy interrogations are associated with an elevated risk of obtaining a false confession.

- E. Detective Nelson pressured Mr. Burcham to give one, specific account of what happened; other accounts were taken as evidence of lying. Nelson repeatedly implied that there would be no legal consequences for Burcham, no matter what Burcham said. In my opinion, the approach used by Detective Nelson could induce an innocent person to make self-incriminating statements (because there appears to be no cost, no downside to making such statements). A person who has low intelligence and is relatively ignorant of police procedures and legal proceedings would be especially vulnerable to these pressures and inducements.
- F. To my knowledge, in all of the statements Mr. Burcham gave to the police, he never said anything that unequivocally demonstrates that he has “guilty knowledge” (i.e., knowledge of the crime known only to the perpetrator and the police). The crime scene evidence mentioned by Mr. Burcham in his final statement was information that had been given to him or suggested to him by Detective Nelson.
- G. In my opinion, it is not possible to determine what did or did not happen in the victim’s trailer on the basis of Mr. Burcham’s statements. On the one hand, some of Mr. Burcham’s statements may be accurate. (It is not possible for all of his statements to be accurate because they often contradict each other.) On the other hand, his statements may have been produced so as to bring an end to lengthy, persistent questioning by the police.

This concludes my report. Please call me at 608-363-2282 if you have any questions.

With best regards,

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