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R v. Jeanvenne: "Mr. Big" False Confession Jury Charge Comes to Ontario

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What is the Mr. Big Undercover Technique?

- Elaborate undercover sting operation with the main goal of rendering a confession from the target to a historical crime
- Undercover police pose as members and lure the suspect to join the crime family
- Target wine and dines, is entertained and paid to do crime
- Target is exposed to staged assaults, kidnappings, and drug deals
- Once target bonds and trusts, he is repeatedly pressured to confess to past crime
- And Mr. Big promises to make it go away

What is the Problem with this?

- It is possible that the target may lie
- Target has much to gain and practically nothing to lose by confessing to crimes not actually committed
- Target may respond positively to good life, money and the rewards
- There are too many incentives to tell the boss what they want to hear

Safeguarding False Confession Risk Factors

- British Columbia, Alberta and most recently Newfoundland Court of Appeal have recognized this risk
- In Ontario, until this year in *R v. Jeanvenne*, no false confession charge was given in a Mr. Big Case
- In 2007 in *R v. Osmar* (2007 ONCA 50) the Court decided not to tackle this issue because *Osmar* had involved a “mild” Mr. Big operation:
 - “Little if any coercion”
 - No “pronounced psychological and emotional pressure”
 - No threats or intimidation and,
 - No “violence or the threats of violence”
- But OCA did not rule out potential need for a false confession charge in a future case

Current State of False Confession Jury Charge in Canada

BCCA in *R v. Bonisteel* (2008 BCCA 344) and *R v. Fry* (2011 BCCA 381) as well as Alta CA in *R v. Mack*, (2012 ABCA 42) upheld a false confession charge containing a number of the following elements:

1. Recognizing the experience of the law with false confessions and reality of false confessions;
2. Recognizing Unreliability of statements made in a Mr. Big context due to:
 - Promises of continued financial gain;
 - No perceived consequences to lying;
 - The atmosphere:
 - violence or a threat of violence
 - Pronounced psychological pressure
 - Threats, manipulation or intimidation
3. Guidance on assessing the truthfulness of the alleged confession and what jury should look for:
 - Inconsistencies between details of alleged confession and the actual evidence ("holdback" information)
 - Corroborating evidence to support the alleged confession;
 - Specific information supplied by the accused that the person who committed the offence would have known.
4. Other sources of information open to the accused (reports in the media about the alleged offence).

How did the False Confession Charge Make its Way to Ontario?

R v. Jeanvenne

- involved two unrelated homicide charges
- originally tried together in October 2005 before Justice Roydon Kealey, ending in convictions
- overturned by OCA in October 2010 (*R v. Jeanvenne*, 2010 ONCA 706); the Court agreed the two trials should have been severed and tried separately
- re-tried this year in February 2012 (for the Poulin homicide – "*Jeanvenne-1*") and June 2012 (for the Richard homicide – "*Jeanvenne-2*").

How did the False Confession Charge Make its Way to Ontario?

Jeanvenne 1

- Paul F. Lalonde of the Superior Court of Justice gave a false confession charge in a Mr. Big case for the first time in Ontario in Feb. 2012
- Andre' Jeanvenne was accused of the mercy killing of Donald Poulin (1983).
- Victim found shot twice, once under the arm and once in the back of the head with an Ithica .12 gauge shotgun found near the body
- In 2001, Andre Jeanvenne lured into Mr. Big operation lasting over a year, exposed to violence/threat of violence, treated to fancy meals, hotels and strip clubs and paid to carry out crime
- Mr. Jeanvenne knew Mr. Poulin, and had heard about his death through the media. He eventually confessed to his mercy killing.
- But important details of his alleged confession was wrong and Jeanvenne provided incorrect gauge for the gun he said he had used in the mercy killing.

How did the False Confession Charge Make its Way to Ontario?

Towards the end of the trial, the Defence argued for a false confession charge, specially since circumstances of the case increased the risk of a wrongful conviction:

1. The alleged mercy killing took place 30 years ago;
2. Loss of some of the evidence (e.g. imp. police notes);
3. Witnesses had trouble remembering details;
4. Important witness could not be located;
5. Mr. Big operation did not amount to a “mild” form of Mr. Big

How did the False Confession Charge Make its Way to Ontario?

Crown Arguments

- Justice Lalonde was required to follow *Osmar*
- *Osmar*, did not say that a strong false confession charge depended on the facts of the case
- *Osmar* said that experience of the law is only with false confessions in custody settings.

Decision

- Justice Lalonde accepted the Defence position that the Court should follow the *Bonisteel* and *Fry* model of jury instructions
- Provided a false confession charge that closely followed the model in those decisions

OCA will likely be Addressing This Issue Next Year:

Jeanvenne 2

- Mr. Jeanvenne was convicted in July 2012 of the Richard homicide (Jeanvenne 2)
- confession arose from same Mr. Big operation as Poulin homicide, BUT
 1. No physical evidence connecting Mr. Jeanvenne to the murder scene;
 2. Ambiguous French phrase used (supposedly meaning I killed him);
 3. Outright and consistent denials by Jeanvenne of killing Michel Richard in all other recordings;
 4. The evidence of the three 'rats': extensive criminal records, drug usage and/or unstable states of mind;
 5. Jeanvenne's the alleged confession to the Richard homicide was the only one not taped; and
 6. Notes of the officer on confession Mr. Jeanvenne allegedly provided him contained inconsistencies.
- Justice Colin McKinnon agreed to give a false confession charge to the jury, but declined to follow jury instruction model of *Bonisteel* and *Fry*
- Jeanvenne now appealing his conviction, and adequacy of the false confession charge will be one of his grounds of appeal.

Conclusion

1. After 3 days of deliberation in Jeanvenne 1, (Poulin homicide) jury returned with a hung jury
2. Last month the Crown stayed first degree murder charge in the Poulin homicide against Mr. Jeanvenne
3. Mr. Big technique can and does result in false confessions
4. Some safeguards should be put in place to minimize the risk of a false confession including:
 - Clarification of the law in this area, setting out the required elements a false confession charge
 - Legitimate Parameters of Mr. Big Technique – how far can the cops go and how far is too far? Rules of Conduct? Manual on the Mr. Big procedure? Training police to watch for false confession signs
 - Parameters in terms of how much bad character evidence is allowed in in Mr. Big cases and preventing intentional prosecution strategy to win the case by relying heavily on bad character evidence, compromising fair trial process