

# False Confessions and the Jogger Case

By Saul Kassir

**I**LLIAMSTOWN, Mass. — The reopening of the Central Park jogger case has exposed for scrutiny the confessions of the five defendants that led to their convictions.

Four of the boys, now men — Antron McCray, Kevin Richardson, Raymond Santana and Kharey Wise — confessed on camera to the district attorney, Elizabeth Lederer. (The fifth defendant, Yusef Salaam, did not agree to be taped.) The videotapes themselves are shocking in their details and the seeming truthfulness of the defendants speaking.

Yet we now know from DNA evidence that Matias Reyes, a convicted serial rapist and murderer, had raped the jogger. He says he acted alone. No DNA or other physical evidence connected the five defendants to the crime scene.

Why then do the taped confessions seem so compelling? To appreciate how a confession can be both compelling and false, one has to understand the process. Every confession begins with a simple, stripped-down admission: "I did it." But that's not enough to prove guilt because people are too easily coaxed into compliance. To tell whether an admission is true, investigators seek proof in the form of a full post-admission narrative — a story from the suspect that tells what he did, how, when, where and why.

Most people cannot imagine that they would ever confess to a crime they did not commit. Yet false confessions have been amply documented —

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as in recent cases in which new DNA evidence exonerated convicted confesors, some on death row.

There are ways to assess whether a confession corroborates an admission of guilt. The first step is to see whether there were factors present that would have increased the likelihood of coercion — like the age and competency of the suspect as well as the conditions of custody and interrogation. Coercion increases the risk of a false confession, but does not guarantee it. Coerced confessions may be true; conversely, innocent people sometimes confess to acts they did not commit, even without prompting.

A second step requires considering whether the confession contains details that are consistent with the statements of others, accurate in their match to the facts of the crime and lead to evidence unknown to police.

Lastly, a confession proves guilt if the accurate facts it contains are knowable only to a perpetrator. To the extent that the details might have become known to the suspect from secondhand sources, a statement loses its diagnostic value and cannot corroborate the admission of guilt.

In the jogger case, the confessions appear voluntary, textured with detail, and the product of personal experience. It is easy, however, to mistake illusion for reality. Out of context, a videotaped confession is often like a Hollywood drama — scripted with crime facts, rehearsed during interrogation, directed by the questioner and enacted by the suspect.

Risk factors for coercion did exist in this case. The boys were 14 to 16 years old, making them more compliant than the average adult. At the time of their videotaped statements, the defendants had been in custody and interrogated on and off for 14 to 30 hours. Most interrogations last an hour or two; law enforcement manuals caution against pushing too much further.

The police and defendants disagree over what transpired that night — whether the parents had access to the boys, for example, and whether promises to go home were made. For all that is known, both sides may be right. Maybe explicit promises were not made but were implied or inferred. A simple assertion like "you can't go home, you're not cooperating" could lead the accused to imagine that cooperation would bring freedom.

Of course, a coercive atmosphere does not absolve the guilty or invalidate their confessions. The Central Park confessions are compelling precisely because they are so vividly detailed. Yet the narratives are filled with inconsistencies, contradictions and errors.

For example, Kharey Wise said the

## Why admissions on video may not be what they seem.

Jogger's head injuries were the result of being punched; after prompting, he said the injuries were caused by a rock; moments later, the rock turned to bricks. Mr. Wise said he was with a friend named Al; suddenly Al vanished and was replaced by an Eddie. In addition, there were inconsistencies from one account to the next. Mr. Wise and Kevin Richardson were taken to the park and separately asked to point to the attack site, and they pointed in different directions.

There were also factual errors. Antron McCray said the jogger wore blue shorts and a T-shirt; she wore long black tights and a long-sleeve jersey. Kharey Wise said the jogger and her clothes were cut with a knife; there

were no knife cuts. Kevin Richardson did not seem to know the victim bled; she bled profusely.

Looking at the inaccuracies, rather than at the errors, might lead to the conclusion that the confessions were true. That is why the analysis requires a third step. A confession proves guilt if it contains details knowable only to a perpetrator. On camera one hears questions that not only elicit information from suspects but communicate information to suspects. At one point, the prosecutor asked Mr. Richardson, "Don't you remember somebody using a brick or a stone?" — a question that suggests the answer being sought.

The investigators took Kharey Wise to the crime scene before his videotaped statement, and the prosecutor showed him pictures of the victim. Those actions made it difficult to tell what he knew on his own, further diminishing the probative value of his subsequent confession.

This multistep analysis does not compel the conclusion that the confessions were false — only that they failed to corroborate guilt. In the broader context of what is now known, however, one might reasonably conclude that Matias Reyes acted alone, as he had in other rapes, and that the five defendants were innocent of this crime.

The Manhattan district attorney, Robert M. Morgenthau, will soon decide whether to vacate the men's convictions in light of the new disclosures and perhaps assert their innocence. He should also guard against similar failures in the future. Every minute of interrogation should be videotaped. This simple procedural reform will deter police coercion, deter frivolous defense claims of coercion, and enable trial judges and juries to assess the veracity of taped confessions. The best way to ensure and determine the truth of a confession is to record and see the entire picture. □