



INVESTIGATIONS, SECURITY, &
COUNTERMEASURES

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WITNESS LOCATION, INTERVIEW, & BACKGROUND INVESTIGATION CASE STUDIES

Case Study #1: The Prosecution of Aldape Guerra

In this case study, our services were sought out to locate and interview witnesses and to verify their backgrounds and veracity.

Supposed Facts of the Case & Conviction

On the night of July 13, 1982, Aldape Guerra was driving with Roberto Carrasco Flores in the passenger seat. Officer James Harris received a call from a citizen reporting that their car had almost run him over. Officer Harris pulled them over and had them both exit the vehicle.

What happened next is disputed, with very different “facts” presented by prosecutors and the Guerra defense team. The one thing not in dispute was that Officer Harris was shot three times in the head with a 9mm handgun and died on the scene. A stray bullet hit and killed an innocent bystander sitting in his vehicle nearby.

Prosecutors claimed that Guerra shot the officer and later gave the handgun to Flores. Some witnesses and later evidence seemed to prove the opposite; that Flores shot the officer. After the incident, both Guerra and Flores fled the scene.

The police department sealed off the predominately Hispanic neighborhood and conducted an intensive search for the two men. About two hours into the search the officers cornered Flores hiding in a garage. Flores refused to surrender and fired on officers. He wounded one who later recovered.

Flores was then killed by the officers. He was found to have not only the handgun that killed officer Harris, but also the policeman’s service weapon. Guerra was later captured in the same area hiding under a trailer. There was a .45 caliber pistol within his reach when he was captured.

Guerra was tried and convicted of capital murder. At one point he was within one day of being executed before an appeal was filed for delay. I believe that Guerra was definitely involved in a crime, but he did not shoot Harris.

Post-Trial Revelations and Evidence

Later there was a lot of information and evidence turning up that pointed to the wrongful murder conviction of Aldape Guerra. Several witnesses stated that it was Flores who shot Harris.

After trial it was also learned that trace metal tests had been run on the hands of both Guerra and Flores. Flores showed positive on both hands while Guerra tested negative. This test evidence had not been provided to Guerra's defense attorney.

Other evidence was still turning up to exonerate Guerra of murder, including accusations of both police and prosecutor misconduct. I began to locate and interview witnesses, and I consulted with attorneys as to police procedures. I also conducted background investigations of witnesses.

There simply was no evidence that substantiated the prosecutor's claim that Guerra shot the policeman and then gave the handgun to Flores. However, there wasn't hard evidence that refuted it, just some witness statements that could not be verified. Guerra did have a pistol as well, failed to comply with police instructions and fled the scene. He definitely was guilty of crimes, just not murder.

Misconduct

You can find a lot of detail about this case in the media, some reliable and some speculation. However, the National Registry of Exonerations noted other alleged and proven acts of police and prosecutorial misconduct, including:

- While searching homes for the two men, police forced residents to lie face-down outdoors and pointed guns at their heads.
- Many residents were detained at the police station overnight.
- Though multiple people said they witnessed Flores doing the shooting, their testimony either was discounted or not provided to the defense.
- Some witnesses who didn't speak good English were threatened with legal action if they did not sign statements prepared by the police.
- During a lineup, police walked Guerra in handcuffs past witnesses just before they were asked to make an identification.
- Witnesses were allowed to talk among themselves and even encourage each other to identify Guerra.

- Three witnesses specifically told police that Aldape Guerra was not the shooter, but this information was “inaccurately recorded.”

Appeals followed Guerra’s conviction, and in 1988 the Texas Court of Criminal Appeals upheld his conviction. After that, Guerra was represented by the pro-bono team and all of this evidence came to light. The team filed a federal writ of habeas corpus in the U.S. District Court for the Southern District of Texas.

In 1995, Judge Kenneth Hoyt issued a scathing indictment of the Houston Police Department. The judge ruled that due to gross official misconduct Aldape Guerra should receive a new trial or be released. In July of 1996, the 5th Circuit Court of Appeals affirmed Judge Hoyt’s decision.

A Texas state trial court judge then ruled that much of the eyewitness testimony from the first trial would be excluded in a retrial. The state then dropped the charges against Aldape Guerra, and he was finally released on April 16, 1997. He died in a car accident in Mexico four months later.

The lead prosecutor in the case, even 14 years later, stated that they still had witnesses willing to testify that Guerra was the shooter. Intimidated or just mistaken, those witnesses would not be testifying again.

The police department and involved officers continued to deny any misconduct. I was proud to be a part of the team that finally delivered justice for Aldape Guerra. Mostly I was proud to be able to rise above blind loyalty as an ex-cop to go after the facts that eventually ended his 14 years in prison.

Case Study #2: Killer Cop Case Study

Much of what I’m telling you here comes from news media coverage from various sources including a detailed article at HoustonPress.com and follow-up coverage from the Houston Chronicle. The *Killer Behind the Badge* article was published at HoustonPress.com in 1995. You can find it with a search on that title at the site.

Just to set the stage, this is a case of a police officer, Joseph McGowen, murdering a civilian, Susan White. It certainly didn’t start out as a murder investigation, but it’s complicated, so let’s get into it.

My Involvement

I was hired by an attorney representing the family of the victim, Susan White. I appreciate being involved in the investigation of officer McGowen’s character and prior involvement with Susan White.

We were hired to locate witnesses and others who knew the victim or deputy McGowen and could offer information helpful in getting to the truth. We conducted an in-depth background investigation on officer McGowen. Holding a Reserve Captain's Commission with the Harris County Sheriff's Department now, I look back on this whole investigation with some pride in my ability to help bring this deputy to justice.

To get this reserve commission, I was subjected to a very thorough background investigation. I believe that McGowen would never have become a deputy and Susan White would not have been killed had he been held to the same standards at that time.

The Shooting

This case revolves around the fatal shooting of Susan White by Harris County Sheriff Deputy Joseph Kent McGowen just after midnight on August 25, 1992. Initially, this shooting was considered "justified" before evidence came to light that resulted in McGowen's indictment for murder.

McGowen and two other deputies were at Ms. White's home with a warrant issued by an assistant district attorney and signed by a judge. The warrant was for her arrest on a charge of "retaliation" or threatening a confidential informant allegedly working with McGowen and responsible for the arrest of Susan White's son a few days earlier.

The night of the shooting, Susan was awakened by people banging on doors and windows, and she was on the second of two 911 calls when the call was disconnected and she was shot to death. According to news coverage, the transcription of her 911 calls went like this:

Operator: 9-1-1 County. What's your emergency?

White: There's a (unintelligible) here at my door. I've filed several complaints with him for sexual harassment and I need some help immediately ... So you can but get McGowen away from my house. Get McGowen away from my house!

White hung up after a few more exchanges with the operator, but seconds later she called 9-1-1 again:

Operator: Do you need a deputy out to your house?

White: They are trying to break into my house, please!

Operator: What's your address?

White: 3407 Amber Forest.

Operator: Who's breaking into your house?

White (crying): I don't know. They say they are detectives, but I have been threatened by one of them.

Operator: How many is there?

White (her voice sounding more frantic, the burglar alarm wailing): I don't know, but please! They just broke in!

Operator: What are they doing?

White: Okay....

Operator: Ma'am?

According to statements made by McGowen and the other two deputies at the scene after the shooting, he entered the home ahead of the other two deputies. They were far enough behind him to not witness the actual shooting in Susan White's bedroom. Susan was shot once in the head and twice in the torso and died almost immediately.

Those are really the only facts available at the scene that were considered factual and not later in dispute. Simply, they broke into the home to serve the warrant, McGowen proceeded to Ms. White's bedroom, and he shot her three times, killing her. But, then there's the REST of the story.

Strange Behavior, Disputed Facts and Conflicting Stories

Now let's try to pick our way through a minefield of odd testimony, even stranger behavior and some obviously conflicting "facts." Let's start with a description of the shooting scene with all of the players in place.

Fatal shootings involving police officers are always strange scenes. The cordoned off area with the yellow police tape is always much larger with police shootings. Of course, this keeps not only the idly curious far away, but the press as well.

Detectives and Internal Affairs investigators are normally not inclined to talk to reporters, but they were surprised to find no reporters in the immediate area. Hurricane Andrew was looming and the media had a lot of other things to do. There was a collective sigh of relief that the press wasn't nosing around at the scene.

This was shaping up to be a very dangerous situation for someone, as there were just too many weird inconsistencies.

The Threat and the Shots

Officer McGowen's statement at the scene was that he fired three times, first hitting Susan White in the head, then the other two in the torso. He stated that when he entered the room, Ms. White had a .25 caliber pistol and raised it in her right hand, pointing it at him, forcing him to fire in self-defense. The handgun was near her in the bed.

Police training is exactly the opposite for shot placement. First you fire at the torso to stop the advance of the adversary, then if necessary a head shot is fired to end the threat completely. Later it was found that White's fingerprints were not on the gun in her bed.

McGowen was proud and boasting about that accurate first head shot. However, the investigators at the scene found disturbing contradictions. The first shot was in fact not a direct hit. It had ricocheted off of a cable TV converter box and had travelled right to left across the bridge of White's nose. If she had been directly facing McGowen as he stated, the shot would not have taken that path.

An analysis of all of the data proved a very different set of events. Susan White had actually been on the other side of the bed next to her phone where she was talking to the 911 operator. As she hung up the phone, she turned her head to see McGowen in the doorway. The bullet travelled across her nose and lodged in the headboard of the bed.

This was the only scenario that fit the evidence. As she fell across the bed, she was struck by the second shot in the upper chest and the third penetrating her arm and entering her torso. This was the kind of evidence that persuades jurors.

Other officers also found it curious that McGowen had not followed established procedures in clearing rooms in the house. This was especially odd because he had cautioned the other officers about possible gun running activities in the home. Instead, he proceeded quickly and directly to White's bedroom. This resulted in the other deputies being too far behind him to see the shooting incident.

A History with the Victim

McGowen had a history with Susan White, and it should have set off alarms for someone to listen to her fears of what he might do to her or her family. She had voiced her fears to more than one person in the past.

Susan White and Joseph McGowen met while he was performing his duties in the affluent Olde Oaks subdivision in northwestern Harris County. There were two kinds of deputies, district and contract. District deputies were assigned to county precincts and generally patrolled wide areas.

Contract deputies generally had less seniority and were assigned to provide security for upscale subdivisions that partially or wholly funded their services. McGowen was a contract deputy, which placed him in Olde Oaks and the life of Susan White.

Susan and here 15-year-old son, Jason Aguilar, had moved into the subdivision that summer. She was an attractive and athletic 42-year-old. She was known to tell others about her marital woes and problems with her son Jason's behavior. However, she seemed to be fitting in, and it wasn't long before she attracted the attention of patrolling deputy McGowen.

As well as sharing her troubles with her marriage and son Jason, Susan began to tell others about unwanted attention from deputy McGowen. On several occasions she mentioned to friends that McGowen was pulling her over when she was driving through the subdivision. She was becoming uneasy with his attention.

Her friend Helen Bazata was hearing a lot from Susan about McGowen's behavior. One report was that Bazata said that McGowen was "hitting on Susan," and "Susan wished that he would just leave her alone."

More troubling information surfaced from Ray Valentine, a man with whom White developed a friendship that summer. The two often had dinner together at Del Frisco's Steak House in the area. At times they would be joined by C.J. Harper, a captain with the sheriff's department. Harper became acquainted with Mr. Valentine in his capacity as the producer of the Shrine Circus in Houston.

During one of these dinners, Susan was expressing her growing apprehension with McGowen's fixation on her and frequent intrusions into her life. She did say that when she first met him she appreciated the fact that a law enforcement officer was friendly and felt a little more secure in the neighborhood. However, her secure feeling dissolved and became more fearful. She expressed her concerns to the two men at that dinner. It was an informal situation, not an official complaint, and no action was taken.

According to media coverage, Valentine said that Susan "was scared to death of McGowen." He also said that he felt she was being overly hysterical about it. When he didn't take any action, he said that she told him: "Well, I guess you and everybody else will believe me when he kills me or Jason or both of us."

On Sunday, August 23d, the two were having dinner when Valentine received a call on his portable phone from Susan's son Jason's girlfriend. She called to let Susan know that Jason had been arrested by deputy McGowen. Valentine drove Susan to a nearby strip center parking lot where Jason was being arrested for allegedly selling a stolen gun to one of McGowen's "confidential informants."

The supposed informant was another teenager and a very good friend of Jason's. When they arrived at the scene of the arrest, Valentine says that he introduced himself to McGowen and asked how they could help. Valentine says that McGowen "took his gun and stuck it in my face." Susan White had been drinking at dinner, and began to shout obscenities at the deputy. Jason was placed in a patrol car and taken to the sheriff's department station and later was transferred to a downtown jail.

Prosecutors on duty at the jail were not impressed with the evidence against Jason, and they did not charge him for the gun sale. They did however charge him with two counts of credit card

abuse. Susan White spent much of the next 24-hour period in trying to cut through red tape and get her son out of jail.

It wasn't until 9:30 PM on Monday night, August 22nd, that Susan got her son released from jail. She had been in almost constant contact by phone with Ray Valentine, who was out of town on business. She last spoke to him about 11:30 PM that night when she expressed fears that McGowen might show up at her house. She told Valentine that she was exhausted and was going home to take two Valiums and get some sleep.

The Warrant for Susan White's Arrest

Harris County investigators later stated that the failure to charge Jason Aguilar with weapons trafficking enraged McGowen. The investigators alleged that the outraged McGowen concocted the "retaliation" accusation to get a warrant issued for Susan White's arrest. He accused her of threatening the life of his informant. Accounts are that it took him several hours of pressure and cajoling to get an assistant district attorney to OK the warrant and get it signed by a judge.

Though the investigator had to admit at the time that it could have happened the way McGowen said, the warrant and its service were marred with troubling facts. "Retaliation" warrants almost never were issued for residents of nice subdivisions. They're normally about one criminal retaliating against another for ratting them out.

The other really strange thing was the timing of the service of the warrant. Its premise was that the subject must be taken into custody to protect the safety of the informant who had been threatened. In this case, the warrant was issued not long after her son's arrest, so why didn't McGowen immediately serve it to protect his informant? It was almost two days later when he chose to serve it.

McGowen at the scene portrayed Susan White and her son as violent and dangerous gun-wielding desperadoes. This didn't seem consistent with the facts that this was an upscale neighborhood, and she called 911 twice. Criminals are not known to call 911 for help in their activities or disputes. Concerns were mounting that there was more to the story than officer McGowen's accounts.

This sequence of events led to the 12:30 AM raid on Susan White's home and her death early Tuesday, August 25, 1992.

A Pattern of Past Behavior is Ignored

This murder should not have happened with McGowen on duty as a deputy. There were enough instances of documented and reported behavior on and off duty that should have kept McGowen from serving in any official law enforcement activity. Interviews with acquaintances and law enforcement officers who served with him brought out some alarming behavior.

Houston Police Department

McGowen became a state-certified police officer while serving as a reserve deputy with the Waller County Sheriff's Department. Reserve deputy is an unpaid position, much like that of a volunteer fireman. He parlayed that experience into a position with the Houston Police Department in 1985.

Though there was no negative information about his previous reserve service, Joseph McGowen soon gained a reputation in the Houston Department as a slacker with a pronounced misogynistic streak. "He was always a problem," says a former desk sergeant at HPD's Westside Command Station where McGowen was assigned.

The desk sergeant was quoted as saying: "The guy was an asshole. If there was a problem with the patrol car, he'd tear off the mirror so he wouldn't have to drive it. I couldn't prove it. But, every time he got a car with no air conditioning, something would turn up wrong with it. He was a malingering malcontent with crusader arrogance."

The sergeant recounted an incident when McGowen was dispatched to an automobile accident. One driver who only spoke Spanish and had no insurance or driver license had rear-ended a woman's car at a stop sign. McGowen refused to issue a ticket, justifying it with a recent removal of unofficial ticket quotas.

The sergeant asked McGowen why he shouldn't issue a ticket, and he stated that there were "conflicting statements" as well. This was interesting, as he didn't speak Spanish. Another statement is cited by the sergeant as a possible indicator of McGowen's attitude about women. He told the sergeant that she "has a bad attitude," though there was no indication of that at the scene.

Officer McGowen requested to patrol the Galleria area, stating that it was where the women were, and finally got his wish. The desk sergeant was now assigned to the field and was McGowen's supervisor. "He got over to the district and was bragging about getting all of these women," said the sergeant.

He also quotes McGowen as saying "Yeah, I've only had one that made me wear a condom. I finally broke down and wore one. But then it broke, so that taught her." His opinion of women was obvious to the sergeant and his fellow officers. An internal affairs investigation was also conducted into a female officer's accusation of sexual harassment by McGowen.

The sergeant finally had an opportunity to make his opinion of McGowen official in an exit evaluation. McGowen was resigning from the HPD in 1989. The sergeant's report indicated that the only law enforcement job that he should qualify for would be working alone with few responsibilities and no contact with the public. He said that he wrote the report that way because he didn't want McGowen back at the HPD.

Another Shot at the HPD

McGowen reapplied to the Houston Police Department in 1991, and the sergeant was asked to change his exit evaluation, but he refused. One of the investigators of the Susan White shooting stated that, despite the sergeant's sticking to his evaluation, the HPD allowed McGowen to take two psychological evaluations for a job.

One of these evaluations was done by an HPD staff psychiatrist, the other by a doctor at the Baylor College of Medicine. The Baylor College doctor concluded that McGowen had violent tendencies and a disdain for women and minorities but did get along well with other white males. He failed both evaluations and was not hired.

Tomball, TX Police Department

In the state of Texas, peace officers must be certified by the state's Commission on Law Enforcement Officers Standards and Education. To keep this certification active without requirements for new psychological screening and drug testing, you cannot go longer than six months without working as a peace officer, either in a paid or unpaid volunteer position.

Though McGowen stated in his resignation from the HPD that he was leaving to go full time to college, he quickly replied to the Tomball, TX PD to become an unpaid reserve officer. Because smaller towns often cannot afford enough paid officers, it's easier to get reserve positions, and McGowen was working between 10 and 20 hours per week in the town.

Tomball even selected him to be department's representative to the Harris County Organized Crime Task Force. This was a plum assignment, but quickly there were allegations that McGowen was over-charging the task force for mileage. This was reported by Leroy Michna, then the acting chief of the police department. Though nothing ever came of the mileage allegations, Michna began to take notice of McGowen's behavior.

Michna, with 21 years' experience before retiring as a captain from the HPD, says that "He (McGowen) was always working on a big case. Whenever you talk to police wannabes, they're always working on the big one." Michna still didn't have anything specific to point to, at least until the day that McGowen came to his office to report that his life had been threatened.

McGowen said that he had received a page on his department pager, and when he called the number a man threatened to kill him. Michna decided to check out the story. The number was still in the beeper, and Michna traced it to an oilfield supply company in north Harris County.

Michna drove there, started asking questions, and interviewed a nervous oilfield equipment salesman who denied any knowledge of the page or call. Michna wasn't convinced, and asked the salesman to call him later. He did so and the plot thickened.

The salesman said that he didn't want to go to prison for threatening an officer, that he was a businessman. However, McGowen's father was a very wealthy man and wanted his son out of law enforcement. The father convinced the salesman to call his son to scare him in return for a big equipment order.

Joseph Kent McGowen's father denied this vehemently, and there was really no way to take it any further. However, Michna didn't want his name associated with anything McGowen might do in the future to embarrass the department. He told McGowen that he was pulling his commission.

During the next year, Michna said that he was besieged with calls from McGowen. In one call he might say he'd gotten another law enforcement job, then follow up with another call accusing Michna of costing him the new job with his statements. After many of these calls, Michna laid down the law, called McGowen crazy, and told him never to call him again or there would be consequences.

Harris County Sheriff's Department

By October 1990, McGowen was back in the law enforcement business with the Harris County Sheriff's Department despite his documented history. There was even a brief stint with a constable's office between Tomball and Harris County resulting in dismissal due to a civil rights violation complaint.

Conviction

In March 1994, McGowen was convicted of murdering Susan White. To the dismay of many, his sentence was to serve only 15 years. Under Texas law, a defendant sentenced to 15 years or less could remain free on bond while the conviction is under appeal.

One of his appeals was successful and his conviction was overturned. McGowen was tried again and convicted again in 2002. He was sentenced to 20 years in prison. The jury only spent three hours in deliberations.