"Mr. Big" Sting Used To Frame Teenagers For A Family's Murder – The Atif Rafay & Sebastian Burns Story

By Sarah Isaacs

Dr. Tariq Rafay, his wife Sultana and their daughter Basma were viciously bludgeoned to death in their Bellevue, Washington home about dusk on July 12, 1994. About four hours later, after dinner, a movie and a late-night snack, 18-year-old Atif Rafay, the son of Tariq and Sultana, returned home with Glen Sebastian Burns, a close friend who was also 18 and a guest of the Rafay family. They discovered the horrific scene. Numb with shock, Burns called 911. The two teenagers then ran into the street to await the arrival of the police. Within moments a police cruiser passed the house, unable to find the correct address. The frantic teenagers chased after it, pounding on a window to get it to stop.

Police entering the Rafay's suburban Seattle home were shocked by the horrible, bloody crime scene. Sultana was killed by a fatal blow to her head. Basma was injured and died later at a hospital, having suffered repeated blows to the head and body. Dr. Rafay lay in bed, his head completely crushed by a blunt object. The walls, floor and ceiling of his bedroom were covered in blood, bone, teeth and tissue. Tremendous amounts of blood were tracked throughout the house – in the carpets, on the walls, in the downstairs bathroom and in a series of shoeprints in the garage.

Burns and Rafay cooperate with police

In the hours and days that followed the murders, Burns and Rafay accompanied the Bellevue Police Department for extensive questioning, provided them with their clothing, shoes and, in Atif's case, eyeglasses, and allowed police to perform searches of their bodies and personal items using a specialized light designed to detect blood in minuscule quantities. They allowed the Bellevue police to fingerprint, photograph, and subject them to other tests. Neither Burns or Rafay denied a single police request during these days, nor did they exercise their *Miranda* right to counsel. Rafay also gave investigators permission to search the contents of his computer. The two teenagers were also repeatedly interrogated by Bellevue police for more than two days. During that time they stayed in a dingy room at a since-demolished Bellevue motel where they were given little opportunity for sleep.

None of these tests, searches or interrogations revealed any incriminating evidence against either teenager. Although subjected to intense interrogations, neither teenager was offered any grief counseling or support by the police in the days after the murders.

Media fed false information by police

Burns and Rafay are both Canadian citizens, and on July 15, 1994 the Canadian Consulate in Seattle obtained explicit permission from the Bellevue PD for them to return to Vancouver, British Columbia, where they would live with Burns' parents. The Rafay family had only recently moved to Bellevue from Vancouver, which was home to Tariq Rafay. In spite of their full cooperation with the Bellevue PD and their escorted and legal return to Canada, the Bellevue police soon decided they were prime suspects and labeled them fugitives for being home in Canada. The Bellevue police told journalists in both countries a series of lies that were reported by the media. These lies included:

- Burns and Rafay behaved strangely on the night of the murders and the following days, thereby arousing suspicion;
- They failed to show emotion after finding the Rafay family murdered;
- They did not cooperate with the Bellevue police;
- They "fled" to Canada.

After observing the foul play of Bellevue police investigators, friends, family and legal counsel for Burns and Rafay recommended that they remain in Canada.

Crime evidence excludes Burns and Rafay

In the days, weeks and months following the murders, the Bellevue police discovered that contrary to their initial assumption, the evidence pointed away from supporting that either Burns or Rafay were involved:

- Neighbors on both side of the Rafay home confirmed that the murders occurred when the teenagers were known to be across the city watching a movie;
- No crime scene physical evidence linked either teenager to the crime;
- No blood, bone or tissue was found on either teenager's body or clothing that could possibly suggest involvement in the murders.

Although the physical, forensic and circumstantial evidence didn't implicate Burns or Rafay, the detectives on the case persisted in their belief that they were guilty.

Evidence points to others as killers

The physical evidence demonstrated that at least three people, none of whom was Burns or Rafay, were responsible for the murders. This is confirmed by DNA found at the crime scene and by analysis of the blood spatter in Dr. Rafay's bedroom by the State's expert.

Investigators found physical evidence at the crime scene that they believed must have been left by the killers. This key evidence was tested and re-tested, but was found to contain DNA that did not belong to either the three victims or Burns or Rafay. Key pieces of evidence are:

- A coarse body hair or pubic hair found on Dr. Rafay's fitted sheet;
- DNA in the downstairs shower mixed with Dr. Rafay's blood;
- DNA in a footprint in the garage mixed with Dr. Rafay's blood.

Ross Gardner, the state's expert who examined the blood spatter evidence, concluded in both his report and his trial testimoney that at least three people were in Dr. Rafay's bedroom while blows were being struck. While on the stand this expert said, "I cannot explain the stains in any other way."

The Bellevue police didn't just have physical evidence telling them three other people murdered the Rafays. They also received three independent tips, all vetted by other law enforcement agencies, that clearly implicate other parties with motives to harm the Rafays. Those tips included Islamic extremism.

Dr. Rafay had religious enemies

Dr. Rafay was a prominent Sunni Muslim active in his religious and cultural community, first in Vancouver, then in Bellevue. He was co-founder and President of the Canadian-Pakistan Friendship Organization. Among his controversial activities were publishing a paper and developing a computer program indicating Muslims in British Columbia weren't facing Mecca when they prayed.

Burns & Rafay cont. on p. 18

Rubin "Hurricane" Carter supports new trial for Rafay and Burns

Wrongly convicted of murder and imprisoned for 19 years, Rubin "Hurricane" Carter is the founder and director of Innocence International. Carter wrote an article published in *The Vancouver Sun* (Vancouver, B.C.) on March 25, 2008, in which he explains his reasons for supporting a new trial for Rafay and Burns, and that he believes they would be acquitted.

Burns & Rafay cont. from p. 3

About two weeks after the murders, a FBI informant told Bellevue investigators that a Muslim cleric in Seattle ordered Dr. Rafay killed because of disagreement with his teachings of the Koran. This informant also said a baseball bat was a murder weapon, which was a fact that had not been made public. Incredibly, the Bellevue police did not investigate this or two other credible tips, even though the tips included details like the names of people involved.

Similar murder unsolved

Today it would be readily accepted that the murders of the Rafays were religiously motivated because there are media reports every day about extreme sectarian violence. However, more than a decade ago the police investigators obviously didn't believe what can't be denied today – the murders could have been motivated by passions inflamed by differing religious ideas or extremism. The police were not only uninformed at the time, but tragic events continue to suggest Islamic extremism remains a threat to Muslims both domestically and abroad. In January 2003, Riasat Ali Khan, a close friend of Dr. Rafay and also a former president of the Canadian-Pakistan Friendship Organization, was murdered outside his home in Vancouver, BC. His murder remains unsolved.

RCMP "Mr. Big" sting operation

Nine months after the murders, frustrated by the lack of evidence suggesting the guilt of Burns or Rafay and uninterested in pursuing the evidence directly implicating other people as responsible for the murders, the Bellevue police obtained the assistance of the Royal Canadian Mounted Police in an effort to obtain incriminating evidence against the two teenagers. The RCMP decided to initiate an undercover sting operation known in Canada as "Mr. Big," in an effort to elicit a confession from one or both of them. Evidence from a Mr. Big type operation is not admissible in the United States unless it is obtained outside the country. Although legal in Canada, the technique is known to have produced false confessions from a number of people suspected of a murder.

The Mr. Big sting initiated in 1995 involved two undercover RCMP officers who first made the acquaintance of Burns, and then Rafay. They introduced themselves using phony identities as violent criminals, with one posing as a crime boss. They then systematically set out to gain the teenagers' confidence so they could coerce them to become involved in their group. They did this by putting them in the position of "knowing too much" about the alleged criminal's activities. Using threats of death and violence, promises, and even pretending to have underworld connections to the investigation in Bellevue, these undercover officers repeatedly challenged the teenagers to put to rest their professed skittishness for violence. The officers were eventually successful in pressuring them to reassure the officers of their toughness by bragging about their respective alleged roles in the Bellevue murders. Burns, Rafay and their friend Jimmy Miyoshi were subsequently arrested based on those so-called "confessions."

Later, the RCMP threatened Miyoshi with a charge of conspiracy to commit murder, even suggesting to him that he could face the death penalty if he did not tell the police that Burns and Rafay were guilty. Miyoshi signed an immunity agreement and provided the RCMP with a number of statements. Every statement by Miyoshi contradicts the last and each one contradicts the physical evidence at the crime scene.

Miyoshi, who lives in Japan, refused to return to North America to testify at Burns and Rafay's trial. Instead, his deposition videotaped months earlier was shown to the jury. Before giving this videotaped deposition Miyoshi phoned Burns' lawyer and asked him for help. The lawyer could not do anything for him because he didn't represent him and Miyoshi was a witness for the prosecution.

False confessions

The statements provided by Miyoshi and the confessions by Burns and Rafay are not merely unreliable because they were coerced by threats and promises, but they are false. How do we know they are false? Every material element of them is refuted by physical evidence collected by the police, and forensic testing and analysis of that evidence by the state's experts who testified during Burns and Rafay's trial. Some of the inconsistencies in the statements and confessions are:

Burns & Rafay cont. on p. 19

AEDPA cont. from page 17

1. It is 14 times more likely that a capital petitioner is represented by a lawyer than a non-capital petitioner.
2. It is 23 times more likely for a capital petitioner to be granted an evidentiary hearing.
3. It is 43 times more likely for a capital petitioner to be granted a new trial or a sentence reduction.

These findings about the possible impact of being represented by an experienced post-conviction lawyer are emphasized by the fact that 58% of non-capital petitions are denied on the merits of one or more claims. That isn't dramatically less than the 72% of capital petitions decided on the merits of a claim. An experienced post-conviction lawyer is able to not just frame legal arguments, but eliminate weak arguments from a petition that detract from possibly winning arguments.

Claims for relief

The study also analyzed the number and types of claims that are made in post-AEDPA petitions. Non-capital habeas cases average about four claims for relief from a conviction or sentence. Capital habeas petitions averaged 28 claims, with significant differences between districts: California petitions averaged 80 claims, while Texas petitions averaged only 13 claims.

Although a significant number of capital and non-capital petitions allege new evidence of innocence, no petitioner was granted relief on the basis of his or her factual innocence.

Conclusion

The study only includes the processing of habeas cases at the district court level. However, given the restrictive rules for the court of appeals consideration of a district court's ruling, the study's findings may be indicative of over-all how federal courts handle state habeas petitions.

This is only a very brief summary of the findings detailed in the study's 194-page report. The report can be read or printed from JD's website at,
www.justicedenied.org/cases/habeasreport2007.pdf
The report's 12-page Executive Summary can be read or printed from JD's website at,
www.justicedenied.org/cases/habeassummary2007.pdf
The Executive Summary (only) can also be obtained by mailing $3 (stamps OK) with a request for "Executive Habeas Summary" to: Justice Denied; PO Box 68911; Seattle, WA 98168.

* Final Technical Report: Habeas Litigation in U.S. District Courts – An empirical study of habeas corpus cases filed by state prisoners under the Antiterrorism and Effective Death Penalty Act of 1996, by Nancy J. King, J.D., Fred L. Cheesman II, Ph.D., and Brian J. Ostrom, Ph.D., Vanderbilt Public Law Research Paper No. 07-21, August 21, 2007.

Burns & Rafay cont. from p. 18

- The number of killers (The state's expert concluded at least 3 killers.);
- The identity of a murder weapon (Wounds on Dr. Rafay's neck show a sharp object was also used in the attack.);
- The timing of the murders (Two independent witnesses — neighbors of the Rafays — confirm the murders began shortly before 10 p.m. and were completed by 10:15 p.m., while the two teenagers were positively seen at a movie theater);
- The use of gloves (The state's expert said in a pre-trial interview that he would have found glove marks at the scene if gloves were used, but he didn't find any.);
- Details of Basma Rafay's attack (The state's expert concluded Basma moved from her bed to the floor, and she never walked around as newspapers reported and *later* the confessions claimed.); and,
- Movement of the murderers in the house (Blood evidence shows the killers were in the garage.).

These details were not known by Burns or Rafay at the time of the RCMP's Mr. Big sting, and they weren't public knowledge. However, the police and the killers knew them. The only reasonable explanation for the serious and numerous discrepancies between the evidence, and the statements and confessions, is that they are false.

Inconsistent "confessions"

The so-called "confessions" by Burns and Rafay are false by definition, because they are inconsistent with the facts of the case and the analysis of the crime scene by the prosecution's experts. But the manner in which Burns and Rafay told these stories also tells us they are false: their confessions are internally inconsistent and each contradicts the other's confession regarding what Burns was wearing, what they did with the incriminating evidence, and where they obtained the murder weapon. Burns and Rafay couldn't keep their stories straight, and those differing stories are also contrary to the crime scene evidence.

Even more importantly, the "confessions" do not contain information that only the killers could know. Yet, based on those demonstrably false "confessions" Burns and Rafay were each charged with three counts of aggravated murder in late July 1995.

Canada bars death penalty

The aggravated murder charges carried the possibility of the death penalty. Canada doesn't permit the death penalty as punishment for a crime. Both teenagers opposed their extradition to the United States on the basis that as Canadian citizens, Canada's Charter of Rights and Freedoms (rough equivalent to the U.S. Bill of Rights) barred their extradition to a country for charges that could result in a sentence of death. After a Canadian judge rejected their arguments in July 1996 and ordered their extradition, they appealed to the British Columbia Court of Appeals. In June 1997 the appeals court ruled they could not be extradited if they could receive a death sentence. British Columbia's Attorney General appealed to the ruling to Canada's Supreme Court, which in Feb 2001 issued the precedent setting ruling that a Canadian citizen can not be extradited to any country for a crime that could result in a sentence of death. (*United States v. Burns*, 2001 SCC 7, [2001] 1 S.C.R. 283) The King County, Washington prosecutor responded by agreeing not to seek the death penalty against either Burns or Rafay, and they were turned over to U.S. authorities and jailed to await their trial.

Burns and Rafay's trial

The trial began on November 24, 2003, in King County Superior Court in Seattle.

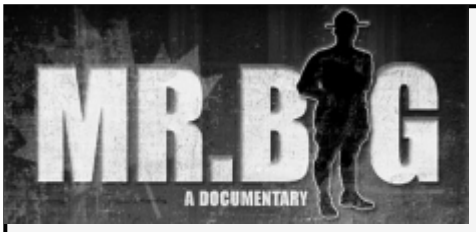
Rafay and Burns defense was what they both repeatedly told police in the days after the murders: They drove to a Bellevue restaurant for dinner, then went to a movie in Bellevue, then had a late-night snack in downtown Seattle before returning home about 2 a.m., and when they discovered what had happened they immediately called 911. Their presence at all three locations was corroborated by witnesses.

The movie, *The Lion King*, was scheduled to start at 9:50 p.m. and they were well remembered: when the curtain malfunctioned at the beginning of the movie Burns complained to the manager after he and Rafay ran up to the front of the theatre and tugged at the curtain in an effort to free it. So their presence at the theatre is positively known until at least 10:05 p.m., and no one saw them leave the movie before it ended. The waitress who served them at Steve's Broiler in downtown Seattle after midnight testified they were friendly, polite and she did not say they appeared nervous or freshly showered. (Downtown Seattle is about 12 miles from Bellevue.)

The prosecution's theory of the crime was that the two snuck out of the theatre during the movie, went home, took off their clothes, beat all three family members with a baseball bat, washed off all the blood and brain matter in the downstairs shower, dressed in the same clothes they had been wearing, and then went to Steve's Broiler to have an alibi for when they returned home at about 2 a.m. to call 911 and report the attack.

Money was the motive alleged by the prosecution. As the surviving family member

Burns & Rafay cont. on p. 20



DOCUMENTARY BLOWS THE LID OFF "MR. BIG"

Mr.Big is the name of an undercover sting created and perfected by the Royal Canadian Mounted Police. Although it is known to have produced many false confessions by innocent persons, Canadian courts allow confessions to be admitted as evidence that have been made to a cop posing as a violent mafia-type criminal — Mr. Big.

The legal systems of many countries, including the United States, consider Mr. Big as an entrapment scheme if conducted domestically. However, a confession resulting from a Mr. Big operation outside the U.S. can be considered admissible as evidence.

Frustrated that DNA and extensive other crime scene evidence and witnesses pointed to at least three unknown persons as responsible for murdering the Rafay family in Bellevue, Washington in 1993, the local police enlisted the aid of the RCMP in Vancouver, British Columbia to run a Mr. Big sting to obtain confessions from two teenagers, Sebastian Burns and Atif Rafay. They were subsequently convicted by jurors relying on those confessions. However, the jurors were not permitted to hear expert testimony about how and why a Mr. Big sting easily induces a false confession.

Tiffany Burns is in the broadcast industry. She was so alarmed at the tactics the RCMP used to enmesh her brother Sebastian in the Rafay family murders that she produced and directed a documentary — *Mr. Big*, that publicly exposes the RCMP's Mr. Big undercover sting operation. With shocking undercover police video and heart-wrenching interviews *Mr.Big* reveals the experience of several sting victims exonerated after spending years in prison for murders they didn't commit.

As of the spring of 2008 *Mr. Big* is being played at film festivals in the United States and Canada. A trailer of *Mr. Big* and extensive information about the film at: www.mrbigthemovie.com

Burns & Rafay cont. from p. 19

Rafay would inherit the family's estate that was estimated to total about $200,000.

After a six-month trial, in May 2004 the jury deliberated for almost four days before convicting Burns and Rafay of three counts of aggravated murder. The prosecution managed to convince the jury that at the time of the murders Burns and Rafay were arrogant, diabolical teenagers capable of planning and executing the perfect murder. Yet, in this age of scientific analysis of a crime scene and evidence:

- Could two 18-year-olds remove *all* the minute physical evidence of three vicious bludgeonings from their own bodies, from their clothes, from their car, and from a horrifically bloody crime scene?
- Could they fabricate evidence at the crime scene to indicate that at least three other unidentified people were responsible?
- Could they coerce numerous witnesses to provide statements confirming their air-tight alibi – without any of those people disclosing to anyone that they were somehow pressured to aid the two teenagers?
- Could they possibly plant other people's DNA at the crime scene – without leaving any of their own?
- Could they have the skill and know how to plant leads – untraceable to them – before and after the murders that indicate the involvement of violent religious extremists?
- Could these same supposedly brilliant 18-year-old master criminals then be completely fooled by two undercover Canadian police officers *pretending* to be violent criminals?

Of course not. Nevertheless, they were convicted and sentenced to life in prison.

Trial judge allowed the jury to be misled

The question is: If the innocence of Burns and Rafay is so clear, why did the twelve jurors vote to convict them, and condemn them to life in prison? The most obvious answer is that the jury's understanding of this case was incomplete because the trial judge's pre-trial and trial rulings were heavily tilted to favor the prosecution and obfuscate the truth. He ruled key evidence inadmissible. Among his rulings he barred the jury from learning about the lead pointing to religious extremists provided by an FBI informant, a lead from the Seattle Police Department that also pointed to Muslim extremists as the killers, and a lead that the RCMP learned two days *before* the murders that they were contract killings. These leads that could lead to the Rafay family's killers, have never been investigated by the Bellevue police.

The judge also did not permit the jury to hear testimony from two defense experts, Dr. Richard A Leo and Michael Levine. The former is an expert in false confessions and the latter is an expert in undercover police operations. (Both Levine and Leo appear in the documentary, *Mr. Big*, see p. 18.)

Dr. Leo is a professor of law at the University of San Francisco, and one of the world's leading experts on the phenomenon of false confessions. Dr. Leo is also the author of one of the leading books on false confessions, *Police Interrogation and American Justice* (Harvard University Press 2008). Dr. Leo explained in his Declaration to the court that the purpose of his testimony was "to provide the jury with relevant and reliable social scientific information about the psychological phenomenon of interrogation and false confessions so that the jury can make a more informed decision when deciding the factual issue of the reliability of the defendants' admissions in this case." Dr. Leo also explained, "False confessions often lead to the erroneous conviction of factually innocent defendants because jurors tend to place more weight on confessions than any other type of evidence. ... Most people assume that confessions must be true because the idea of a false confession is so counter-intuitive and beyond common knowledge and experience."

Instead of allowing Dr. Leo's expert testimony, the judge determined that it was "the province of this jury to decide whether or not in their common experience and common sense these statements made by these defendants to those undercover police officers are voluntary or involuntary." It is reasonable to doubt if police officers posing as violent murderers to teenagers could possibly be part of the common experience or common sense of any juror. The judge's assumption that the jurors intuitively had Dr. Leo's specialized knowledge is why jurors in this trial, and many others in which expert testimony about false confessions is not allowed, are unable to distinguish real confessions from false ones.

Michael Levine is a former undercover senior DEA officer who was described on CBS' *60 Minutes* as "America's top undercover cop for 25 years." Levine has testified as an expert witness in dozens of civil and criminal cases. He has written several books on undercover operations, and since 1995 has hosted "The Expert Witness Radio Show." Levine is intimately familiar with Mr. Big type stings and he is an expert in their operation, since he used similar ones in the war on drugs. He studied the transcripts in the Burns-Rafay case, read the police reports, watched the RCMP undercover video, and listened to the wiretaps. He concluded that it was a "pin the tail on the donkey" type of operation — meaning that any time the "marks" (Burns and Rafay) were going to talk in a direction that sounded like they were innocent the undercover officer diverted the conversation or ended it. According to Levine the officers involved did this repeatedly — which means they weren't seeking to learn the truth, but they were attempting to solely obtain recorded information that supported a predetermined opinion. Levine's analysis has extra weight because he is not opposed in principle to the use of a Mr. Big type sting to obtain information — he thinks if conducted properly it can be effective in obtaining accurate information. But he opined that the manner of its use in this case was an example of poor police work.

The judge did not just refuse to allow either of these indisputable experts to testify about the Mr. Big sting, but he did not adhere to his own ruling that Burns and Rafay's videotaped statements were to be judged by the jury alone. The judge allowed undercover RCMP officers to deconstruct and analyze the teenagers behavior during the undercover operation, including repeatedly telling the jury an innocent person would not behave as they did during the sting.

Why did the judge allow the operators of the undercover sting to masquerade as experts on how innocent people respond to their menacing and coercive tactics? Conversely, why didn't the judge allow Dr. Leo, an internationally recognized expert with no interest in the outcome of the trial, to inform the jury of how innocent people actually respond to coercive and bullish police tactics? In a fair trial the officers would not have been allowed to mislead the jury with inexpert testimony, or in the alternative, the defense would have been allowed to introduce an expert to respond to the undercover police officers' self-serving and subjective interpretations of Burns and Rafay's behavior and psychology.

Current status

Burns and Rafay are both in the direct appeal process. They can be written at:

Glen Burns 8786360
Washington State Prison
1313 N. 13th St.
Walla Walla, WA 99362-1065

Atif Rafay 876362
Monroe CF - WSR
PO Box 777
Monroe, WA 98272-0777

The official website about the case is, www.rafayburnsappeal.com

Sarah Isaacs is involved with the Rafay Burns Appeal Committee. She can be emailed at, committee@rafayburnsappeal.com