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Norm Pattis: Police trained to use trust as a weapon

From a distance, the case no doubt looked hopeless. Jonathan Gibbs had confessed to police, signing a statement under oath, telling officers he was alone, that he had fired a pistol at a fleeing man.

The man was found dead between two houses at the very location Gibbs confessed to firing from, a single gunshot to the back of his head, killing him instantly. When Jon's DNA was found on the gun, it looked like an open-and-shut case of murder.

The stakes are high in such cases. After a conviction, a defendant, even one without a record, as Jon was, can expect the full monte — 60 years. Anything less is a gift.

But Jon wasn't interested in a plea. Despite the confession, he maintained his innocence. He said he'd lied to cover for his uncle, a man whom he loved as a father, a man with a felony conviction who'd go to prison if found to be in possession of a firearm. On the eve of trial, the state suggested it might be open to a plea of guilty to manslaughter, a lesser form of

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> — Norm Pattis
> Attorney for the Defense

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homicide, and 20 years behind bars. No deal, Jon said.

I met Jonathan Gibbs, then 26, a day or two after he confessed to the police. He told me that he sat with an officer for hours the morning after the shooting. The detective asked him his side of the story, never telling Jon that the shot fired on Father's Day 2013 in New Britain had killed the victim.

After Jon had signed a confession, the police ran to get a warrant. It was only when arrested that Jon realized police were investigating, and he had been charged with a murder.

The police obtained Jon's confession under false pretenses. At trial, the detective admitted he had lied. Deception, he was taught, and the Supreme Court has concluded, is an acceptable tactic police officers can use to get at the truth.

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At Jon's trial, the prosecution played a secretly recorded videotape of Jon's confession to the jury. The prosecution also offered Jon's signed confession. This, together with evidence of Jon's DNA on the gun found in his truck, and the fact that one of Jon's shoes was found at the scene, seemed like enough corroboration of his confession to lawmen. I sensed a certain confidence in the prosecution. It rested after a few short days of evidence.

I called Jon as my first witness. The mountain he would have to climb was steep. He would tell the jury he had lied when he confessed, but was truthful now. I was handing the prosecutor Jon's head on a platter — he'd make mincemeat of the young man on cross-examination.

Jon bore up well on cross. He told the jury he lied to save his uncle. He said he trusted the police. He told the jury he did not fire the gun that night. He had never, he said, fired a gun in anger at another.

Then came character witnesses, folks who said they knew Jon's reputation for truthfulness in the community, and that he was regarded as an honest and generous young man. Family and friends also testified he loved his uncle like a father. Witnesses described the family outing Jon, his uncle and others had on Father's Day — the day of the shooting.

Jon had offered Nike sneakers for sale on Facebook a day or so before. A potential buyer named Travis offered to purchase them for $400. They agreed to meet in New Britain just before midnight on Father's Day to accomplish the sale.

Except it wasn't going to be a sale — Travis was the lookout man for the young man killed that night. The two planned to steal the sneakers when Jon arrived.

The state's theory was that after the victim had taken the tennis shoes and began to run, Jon went from the front of his pick-up truck into the truck's cab and then grabbed a holstered and licensed pistol. Removing the gun from its holster, Jon was then alleged to have turned and fired it at the fleeing thief.

I called the lookout man to the stand. He testified that when he saw the victim grab the shoes and begin to run, he himself turned to flee. He then heard what sounded like a gunshot.

"How long was it from the time you saw the victim grab the shoes and run until you heard the shot?" I asked.

"Five to 10 seconds," he said. That was a period just long enough for Jon to do what the state alleged.

"Are you saying it was this long: one, one thousand; two, one thousand, three …"

"No," the lookout man said. "It was faster than that. It was like instantaneous."

That was precisely the testimony we needed. It was impossible for Jon to do what the state accused him of doing. The more reasonable explanation was that someone else with immediate access to the gun fired the shot — Jon's uncle, who was, as Jon testified, sitting in the cab of the truck when the theft

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occurred.

We were never able to call Jon's uncle to the stand in the jury's presence. At a hearing while the jury was home one afternoon, I did question him. He pleaded the Fifth Amendment to every question but his name, including the last question I put to him: "Sir, have you no sense of shame?"

The jury never learned about this, and most of my efforts to offer the uncle's statements made in the days after the shooting were rendered inadmissible by judicial ruling.

When the jury returned with its verdict, we were tense. Everything was on the line. The tension gave way to tears of relief when the verdict was announced. "Not guilty."

The verdict is "insane," a friend said, meaning that it was improbable. It may have looked that way from press accounts. In the well of the court, and to the jury, however, it looked exactly right, and what the law required. Jon is free today.

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