

July 23, 1995
Section: LOCAL
Edition: FINAL
Page: 1B

THE DREAM DEFENSE TV, LSD AND THE CLIENT'S CATNAP ALIBI

MANNY GARCIA AND DAVID LYONS *Herald Staff Writers*

Your client had sex with a woman, supposedly shot her in the head and stole her car. Before trial, the smiling prosecutor handed you a 65-page confession.

Is your client cooked? Nope.

Tell jurors your client fell asleep after sex. When he woke up, the woman was dead. Yes, he took the gun and the car -- because he was scared. By the way, that 65-page confession? The cops threatened him.

Kelvin Reese walked out of a Dade courtroom this year, a free man, after a jury believed this story. A novel defense?

"Not novel at all," said Dade Assistant Public Defender Edith Georgi, who represented the teenager. "What appears a homicide at first glance is not always the case."

How criminal defense lawyers plant seeds of doubt in the minds of jurors on the way to winning acquittal for their clients is in the national spotlight now as the O.J. Simpson legal team presents its case.

When Nicole Brown Simpson and Ronald Goldman died at the hands of a slasher in Los Angeles, the former football star was hitting golf shots at home, catching a catnap and then loading his creaking, injury-wracked body into a limousine for a trip to Chicago.

Most likely, Simpson's lawyers insist, the victims were killed by assassins in the pay of a vengeful Colombian drug lord. Even more onerous: The Los Angeles Police Department, in a clumsy, racially motivated "rush to judgment," framed Simpson by planting evidence in his house, car and back yard. While critics have chortled at the theories advanced by Simpson's legal "Dream Team," the novel -- and often outrageous -- defense is a time-honored tradition in criminal courts around the nation.

And Miami has seen its share.

Local attorneys Joel Hirschhorn and Ellis Rubin built careers around inventive defenses in seemingly hopeless cases.

"If you have the law on your side, pound on the facts," Hirschhorn said. "If you have the facts on your side, pound on the law."

Adds Rubin, a pioneer of novel defenses: "If you don't have either one, you pound on the table and yell like hell."

Rubin shot to national attention in the mid-1970s when he represented 15-year-old Ronny Zamora, who was charged with the shooting death of Eleanor Haggard, 82, a widow who lived next door to his parents in Miami Beach. He and another teen had broken into her house during a burglary.

"Before I went to see him -- I had read his confession in the paper -- I sent two psychiatrists and a psychologist to interview him," Rubin said. "And that's where the influence of television was made known to me."

Rubin pondered how that could be a valid defense.

"Thinking of television, I came up with the thought that overindulgence in TV was the same as overindulging in an intoxicant," he said.

The crux of the theory: that television was a contributing factor to Zamora's insanity.

"He could not tell the difference between television fantasy and reality," Rubin said. "He was acting out a Kojak program."

Dade Circuit Judge Paul Baker thought the defense itself was an act and barred Rubin from using it. The judge said television intoxication was not recognized by the scientific community.

A jury convicted Zamora; Baker sentenced him to life in prison with a minimum term of 25 years. "I received a lot of criticism for that," Rubin said.

Zamora hired a new legal team to have Rubin found incompetent for the purposes of winning a new trial. They failed.

State and federal appellate courts supported Rubin. The 11th U.S. Circuit Court of Appeals in Atlanta, Rubin said, found "I had no other choice but to do what I had done."

"It's now been recognized a valid defense," he said.

Said Georgi: "Ellis was ahead of his time. That defense would work today."

But other defenses have not.

Marshall Lee Gore, already on Death Row for one murder, told jurors last month that he could not be held responsible for his latest killing. Gore told jurors he had suffered

too many head injuries, either from being hit with baseball bats during fights or from car accidents -- including crashes that happened while he was driving the cars of the women he killed.

A jury sentenced him to death.

Other time-honored claims: drug addiction, psychological problems.

Earlier this year, Hirschhorn defended Mark Waddell, who said LSD cooked his brain and doctors failed to diagnose and treat him for it. As a result, Waddell said he was incompetent when he and a buddy strapped explosives to the head of a pet store clerk during a robbery.

A jury convicted him.

In 1991, Tivan Johnson and Albert Cooper killed two Miami businessmen in separate robberies. They stole thousands of dollars, spent it on limousine rides, stereo equipment and parties.

Mental health professionals, hired by defense lawyers, took the stand in their defense.

Johnson, one expert testified, suffered from "narcissism," which made him covet other people's property -- even if it meant killing them. Cooper, another expert said, suffered brain damage, so he didn't know right from wrong -- even when he shot two men.

"The jury just started laughing," said Dade Assistant State Attorney David Waksman.

Prosecutor Flora Seff, who helped beat back that defense and win a conviction, now says that people need to take responsibility for their actions.

"It's very rare to do what Hugh Grant did, say 'I'm guilty and I'm not going to do it anymore,'" she said, referring to the British actor whose scandalous arrest for having sex with a prostitute made world headlines.

Johnson and Cooper are now on Death Row.

A recent classic goes to Manny **Casabielle**, attorney for Wilbur Mitchell, who traded shots with off-duty Metro detective Evelyn Gort during a botched robbery. Surgeons even pulled the cop's bullet from Mitchell's gut.

An easy conviction? Nope.

According to **Casabielle**, Mitchell was breaking into cars when he heard shots, became frightened and ran -- into the officer's revolver, which discharged.

Prosecutors sought the death penalty. A jury convicted him of simple manslaughter. A judge sentenced him to life.

Then there is the case of the U-turn bullet.

Hirschhorn's client, also involved in a police shooting, was charged with attempted first-degree murder, even though the client was shot.

The officer testified that the defendant pulled a gun. Convinced the client was poised to shoot, the policeman shot the client.

Hirschhorn summoned a vascular surgeon who testified that the entry wound was in the back and an exit wound in front. The prosecutor asked the doctor how that could be if the officer had testified that the two men were face-to-face. The doctor replied the bullet had made a U-turn.

The client was acquitted.

The novel -- and often outrageous -- defense is a time-honored tradition in criminal courts around the nation. And Miami is no exception. In fact, many a creative defense has been spawned in Dade's courtrooms. It works with some juries. Not with others.

If you had to decide, would you believe some of these defenses?

* A 15-year-old is charged with shooting his 85-year-old neighbor during a burglary. Defense lawyers claim he suffered from television intoxication and could not tell the difference between television fantasy and reality.

* During a robbery, a man and his accomplice strap explosives to the head of the store clerk. His defense? The man was incompetent, the result of LSD use.

* A robber kills two businessmen, steals thousands of dollars, then treats himself to limousine rides, stereo equipment and parties. What made him do it? Chalk it up to a condition called 'narcissism,' which made him covet other people's property.

Illustration:photo: Ellis RUBIN, Ronny ZAMORA

Copyright (c) 1995 The Miami Herald