

# THE ALIBI GAMBIT

## COLIN MILLER AND KAY L. LEVINE



### Notes

- <sup>1</sup> *Commonwealth v. McQueen*, 112 A.2d 820, 822 (Pa. Super. 1955).
- <sup>2</sup> *Johnson v. Bennett*, 393 US 253 (1968); *Commonwealth v. Bonomo*, 151 A.2d 441, 446 (Pa. 1959).
- <sup>3</sup> Kay L. Levine and Colin Miller, *The Strategic Use of Alibi Defenses*, in ALIBIS AND CORROBORATORS: PSYCHOLOGICAL, CRIMINOLOGICAL, AND LEGAL PERSPECTIVES (Joshua Behl and Megan Kienzle, eds.) (forthcoming 2022).
- <sup>4</sup> The accused can establish an alibi simply with his own testimony, *Commonwealth v. Roxberry*, 602 A.2d 826, 828 (1992); however, extrinsic evidence is much more convincing to the factfinder.
- <sup>5</sup> Lisa J. Steele, *Investigating and Presenting an Alibi Defense*. 56 (6) CRIMINAL LAW BULLETIN 1083 (2020).
- <sup>6</sup> <https://www.nbcnews.com/news/all/temujin-kensu-ninja-killer-or-wrongfully-convicted-man-n1260983>.
- <sup>7</sup> Steele, *supra* note 5; Steven Drizen & Richard Leo. *The Problem of False Confessions in the Post-DNA World*, 82 NORTH CAROLINA LAW REVIEW 891 (2004).
- <sup>8</sup> Jennifer Dysart and Deryn Strange, *Beliefs about Alibis and Alibi Investigations: A Survey of Law Enforcement*. 18(1) PSYCHOLOGY, CRIME AND LAW 11, 19 (2012).
- <sup>9</sup> Scott E. Culhane and Harmon M. Hosch, *Changed Alibis: Current Law Enforcement, Future Law Enforcement, and Layperson Reactions*. 39(7) CRIMINAL JUSTICE AND BEHAVIOR 958 (2012).
- <sup>10</sup> Ricardo Nieuwkamp, Robert Horselenberg and Peter van Koppen, *True and False Alibis Among Prisoners and Their Detection by Police Detectives*. 25(6) PSYCHIATRY, PSYCHOLOGY AND LAW 902, 903 (2019); Scott E. Culhane and Harmon M. Hosch, *An Alibi Witness' Influence on Jurors' Decision-Making*. 34 JOURNAL OF APPLIED SOCIAL PSYCHOLOGY 1604 (2004).
- <sup>11</sup> Steele, *supra* note 5.
- <sup>12</sup> <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5154>
- <sup>13</sup> <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5624>
- <sup>14</sup> Pa.R.Crim.P. 567 and 579.
- <sup>15</sup> Pa.R.Crim.P. 579.
- <sup>16</sup> Culhane and Hosch, *supra* note 9, at 974; Steele, *supra* note 5.
- <sup>17</sup> MODEL RULES OF PROF'L CONDUCT r. 3.3(a)(3) (AM. BAR ASS'N 1983).
- <sup>18</sup> See *Henry v. Poole*, 409 F.3d 48, 65 (2nd Cir. 2005).
- <sup>19</sup> MODEL RULES OF PROF'L CONDUCT r. 3.3 cmt. 10 (AM. BAR ASS'N 1983).
- <sup>20</sup> *Id.*
- <sup>21</sup> *Shockley v. State*, 565 A.2d 1373 (Del. 1989).
- <sup>22</sup> Thomas P. Sullivan, *Presentation of the Defense*, 62 J. CRIM. L. & CRIMINOLOGY 153, 160 (1971).
- <sup>23</sup> Levine and Miller, *supra* note 3.
- <sup>24</sup> *Strickland v. Washington*, 466 U.S. 668, 687 (1984).
- <sup>25</sup> <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=42&div=0&chpt=95>.
- <sup>26</sup> See *State v. Syed*, 204 A.3d 139, 152 (Md. 2019).
- <sup>27</sup> *Commonwealth v. Jones*, 210 A.3d 1014, 1017 (2019).
- <sup>28</sup> *Skakel v. Commissioner of Correction*, 188 A.3d 1, 24-26 (Conn. 2018).
- <sup>29</sup> Steele, *supra* note 5.

