

UNDISCLOSED, The State V. Rocky Myers
Episode 2 - The Superman Defense
June 24, 2019

Colin Miller: In the movie *My Cousin Vinny*, two northerners played by Ralph Macchio and Mitchell Whitfield are traveling through rural Alabama in their mint green Buick Skylark convertible when they stop at the Sac-O-Suds convenience store. Shortly after they leave, two other men in a green convertible arrive at the Sac-O-Suds and rob and kill the store clerk. This leaves the titular Vinny trying to get an eyewitness to the crime to buy this strange but true scenario:

Vinny Gambini:

Is it possible that two defendants entered the store, picked 22 specific items off of the shelves, had the clerk take money, make change, then leave. Then, two different men drive up in a similar-- don't shake your head, I'm not done yet, wait 'til you hear the whole thing so you can understand this now-- two men drive up in a similar-looking car, go in, shoot the clerk, rob him, and then leave?

Mr. Tipton:

No. They didn't have enough time.

Vinny Gambini:

Well how much was they in the store?

Mr. Tipton:

Five minutes.

Vinny Gambini:

Five minutes?

Vinny then gets the witness to say the five minutes was an estimate because he saw the Skylark arrive just as he was starting to make breakfast and then heard gunshots and saw a green convertible driving away just as he was about to start eating.

Vinny Gambini:

So, Mr. Tipton. How could it take you 5 minutes to cook your grits, when it takes the entire grit-eating world 20 minutes?

Mr. Tipton:

I dunno. I'm a fast cook I guess.

Vinny Gambini:

I'm sorry, I was all the way over here, I couldn't hear you. Did you say you're a fast cook? That's it? Are we to believe that boiling water soaks into a grit faster in your kitchen than on any place on the face of the earth?

Mr. Tipton:

I don't know.

Vinny Gambini:

Well perhaps the laws of physics cease to exist on your stove! Were these magic grits? I mean, did you buy them from the same guy who sold Jack his beanstalk beans?

Attorney:

Objection Your Honor!

Judge:

Objection sustained...

Vinny Gambini:

Are you sure about that five minutes?

Mr. Tipton:

I don't know.

Judge:

I think you've made your point.

(Gavel banging)

Vinny Gambini:

(Shouting) Are you sure about that five minutes?

Mr. Tipton:

I may have been mistaken.

In Episode One of the Rocky Myers series, we told you about the murder of Ludie Mae Tucker in Decatur, Alabama and the initial suspect in that case: Anthony “Cool Breeze” Ballentine. But it wasn’t Ballentine who was convicted of the fatal stabbing of Tucker; instead, it was Robin “Rocky” Myers, a fish out of water from New Jersey, and his defense at first might seem as implausible as the one presented in *My Cousin Vinny*. And yet, there’s also strong reason to believe that it might be every bit as valid.

[3:47] Rabia Chaudry: Hi and welcome to Undisclosed. This is the second episode of The State vs. Rocky Myers: The Superman Defense. This is the second in a four episode series about a man who might be thirty days away from execution despite significant evidence of his innocence. My name is Rabia Chaudry, I’m an attorney and author of *Adnan’s Story*, and as always, I’m joined by my co-hosts, Susan Simpson and Colin Miller.

Susan Simpson: Hi, I’m Susan Simpson. I’m an attorney in Washington DC and I blog at TheViewFromLL2.

Colin Miller: Hi, this is Colin Miller. I’m an associate dean and professor at the University of South Carolina school of law, and I blog at EvidenceProfBlog.

[6:44] Rabia Chaudry: At the end of Episode One, we left you with Sergeant Boyd testifying before the grand jury in mid-October 1991 that he was convinced that Anthony “Cool Breeze” Ballentine had killed Ludie Mae Tucker. This testimony wasn’t surprising: three witnesses had said that they saw Ballentine sell Tucker’s VCR at a shot house on the same night as the murder. One said Ballentine was wearing a white Oakland A’s shirt that matched the description of the killer’s blood-stained shirt given by Tucker and her cousin Mamie Dutton. A knife and the A’s shirt were seized from Ballentine’s house a few days after the murder, with the shirt having an unwashed blood stain. And, finally, Angela Acklin placed Ballentine in an alley by Tucker’s house with a blood-stained white shirt with a logo right around the time the crime was being committed.

But fast forward a couple of weeks to October 28, 1991. There’s a document in this case entitled the “Tucker Murder Chronology.” And, on that date, we have our first mention of Rocky Myers. The entry says:

Spoke with Marzell Ewing about auto theft and was told of “Rocky” being the suspect. Did not take written statement.

So, who is Marzell Ewing? In Episode One, we told you about Leon “Butch” Madden, the drug dealer at the shot house. He’s the one who traded crack for the VCR on the night of the murder. Ewing was one of his employees. Here, he describes what he did for Butch:

Marzell Ewing:

The things I’ve done for Butch, well, I’ve sold drugs, watched houses, basically anything he asked, he needed at the time.

Susan Simpson: And how did Ewing come to make a statement against Rocky Myers? Well let’s start a day or two before October 28th:

Marzell Ewing:

Later on that evening I went back on the other side of town, towards my house, and I was at a friend of mine’s house, and I was walking outside and they pushed me back in the house and told me detectives and stuff around my house with shackles and stuff, so I looked and hid behind a bush until they left, and later on, probably about a day or two later, I went and turned myself in, asked them what did they want, and everything comes out about a VCR, a murder, and all of that stuff...

Upon arrival at the station, Ewing told Sergeant Boyd some information that was a game changer in the case:

Marzell Ewing:

Well when I got to the station, they had me in the question room, and he came and asked me, did I know anything about the murder, and I was like well the guy that you have is the wrong guy because Rocky did it.

[9:16] Susan Simpson: Now, as noted in the Murder Chronology, Sergeant Boyd did not take a written statement from Ewing on October 28th. Instead, Ewing wouldn’t give his written statement for another two weeks, not until November 10, 1991. Ewing said that Anthony “Cool Breeze” Ballentine had been over to the shot house at least two times on the night of Tucker’s murder... but it was Rocky Myers who had traded the VCR for crack. Ewing would later testify to these same facts at trial.

As noted by trial investigator Keith Russell, Ewing ended up being the State’s star witness against Rocky because he was also Rocky’s friend:

Keith Russell:

The third person, Marzell Ewing, testified and perhaps was the strongest testimony, as he stated he was a friend of Mr. Robin Meyers.

[10:06] Colin Miller: Also, as we'll discuss later, unlike other witnesses against Rocky, Ewing's story was consistent and he never changed it. But, at this point, you might be asking for a rewind. The Murder Chronology said that on October 28th, Sergeant Boyd, "Spoke with Marzell Ewing about auto theft and was told of 'Rocky' being the suspect." So, what's the deal with the auto theft? It's a question that Rocky's trial counsel never explored. But his post-conviction counsel did, and it turns out that Ewing's statement about voluntarily going to the police station on the 28th wasn't true at all. Let's ourselves rewind Ewing's story about how he came to tell Boyd he had the wrong man:

Interviewer:

Let me back up a little bit. Do you remember being picked up by the police in a stolen vehicle back at that time?

Marzell Ewing:

Yes.

Interviewer:

Okay. Can you just tell me a little about that?

Marzell Ewing:

Well they picked me up in a stolen vehicle, they asked me, well when we got to the station, they had me in the question room, and he came and asked me did I know anything about the murder.

And the obvious next question is how an interrogation about Ewing's car theft shifted to Ewing implicating his friend in a murder. And the obvious answer is: *quid pro quo*:

Interviewer:

What happened to you after you provided that information to Boyd?

Marzell Ewing:

Um, Boyd told me that they had Butch in the next room, and if I go back with him then he would take the car back to Nashville or whatever and tell him he found it on the side of the road.

Interviewer:

How did you come to be in possession of that stolen vehicle?

Marzell Ewing:

Me and Flat Broke went to Nashville and stole it.

Interviewer:

(crosstalk) You don't know, Flat Broke, you don't know his real name?

Marzell Ewing:

Flat Broke is... uh... I always call him Flat Broke...

There's a reason Ewing is struggling to remember the name Craigery Miller. That's because as Miller himself will tell you, he always went by the street name "Flat Broke":

Flat Broke:

That's it!

Interviewer:

What else you got to say? (crosstalk)

Flat Broke:

Robin, is he going to see this?

Interviewer:

I think it's okay, I mean, I think it's pretty... (crosstalk)

Flat Broke:

Tell him Flat Broke, he won't know me by Craig, you gotta tell him Flat Broke. And just tell him that I hey and keep his head up and I love him.

"Flat Broke" corroborates Ewing about being arrested in a stolen car:

Interviewer:

Do you remember stealin' a car out in Nashville?

Flat Broke:

Yes, out in Nashville Tennessee.

Interviewer:

Can you tell me that story a little bit, about what you remember.

Flat Broke:

I don't remember much 'cause I was... I can't remember much about it because I was like 18, 19, it was just a thing I was doing, stealing cars, bringing 'em here, and you know... People would drive 'em and we gotta sell 'em, but it's been... it was a white, Blazer, it was a blue and gray blazer. Marzell Ewing was driving it. And they lost the gas cap at the gas station and they went back to the gas station to find the gas cap and that's when the police pulled him over, and the two girls came back and said, "They picked him up."

[13:11] Rabia Chaudry: And Flat Broke's story is also corroborated by records from the Nashville police. First, an offense report dated October 25, 1991 states that a gray Chevy Blazer was indeed stolen in Nashville. Second, an affidavit by a Nashville police officer states that he spoke with Sergeant Boyd, who told him that he spoke to Ewing and Flat Broke about the stolen Blazer. Third, there's an offense report dated October 28, 1991, the same day that Ewing spoke with Boyd, in which a Nashville police officer writes that the stolen Chevy Blazer has been recovered in Decatur, Alabama and that the victim wants the perpetrators to be charged. And, finally, fourth, there's the dog that didn't bark: there's no record of Ewing or Flat Broke ever being charged with the car theft despite Boyd seemingly having Ewing dead to rights.

So, yeah, Ewing and Flat Broke corroborate each other and are corroborated by the records. But there is one key point where the stories told by Ewing and "Flat Broke" diverge. You see, Flat Broke says he was also at the shot house on the night of the murder:

Flat Broke:

After the murder had happened, Valentine--Breeze brought a VCR in there to sell. Him and... Breeze brought it in there by himself. And Butch gave him \$20 worth of crack for it, and he left out the door.

Interviewer:

Do you remember that night, seeing anybody else bring any equipment in or anything like that?

Flat Broke:

No, no. That night no one else came in with any equipment. Nothin' else, man.

Now, the jury at Rocky Myers's trial never heard from "Flat Broke-" never even heard about the car theft. What they did hear was Marzell Ewing implicating his friend in a murder. But now, years later, according to Ewing, that story was a lie, and he didn't see the man who sold the VCR:

Marzell Ewing:

Because the night the police came up in Sue's house I was way on the other end of the porch smoking and drinking. So, the only thing I seen was the guy walk in, and I seen the silhouette. But I didn't pay it too much attention, and I heard my uncle-- well, I call him my uncle, Butch-- say, "the motherfucker better work!" And he turned around, and walked out. He said he did, and turned around, and walked out.

[16:50] Susan Simpson: So, if Ewing didn't actually see the man sell the VCR, how is it that he came to tell Sergeant Boyd that it was Rocky who sold the VCR in exchange for Boyd making the stolen car issue disappear for Ewing? In one version of the story, Rocky's name came from Boyd himself. In another, Rocky's name first came up from Butch Madden:

Marzell Ewing:

And I was like, well, the guy that you have is the wrong guy because Rocky did it, and that's only because Butch told me he was the one who brought him the VCR. So, I had no reason to dispute what Butch said.

Or, were these actually two different versions? There's another entry on the Tucker Murder Chronology from October 28, 1991. It says, "Raybon and Madden are located and brought to the police department by Sergeant Boyd. Both tell that Rocky was in fact the VCR seller. No written statement was taken at that time." This entry is of course referring to Butch Madden and his right hand man Willie Reese "Road Runner" Raybon, who, as we noted last episode, initially told the police that it was Anthony "Cool Breeze" Ballentine that killed Tucker.

Colin Miller: So, did these two men change their minds about who sold the VCR, followed by Sergeant Boyd telling Ewing that he'd dump the stolen car if he adopted Madden's new story so that there would be at least one witness who hadn't changed his tune? We don't know because, as noted, Boyd didn't take written statements from these men on October 28th; indeed, he didn't take them until a couple of weeks later, so we don't know what was said on the 28th.

But we do know what Butch Madden said on November 12th and later at trial. According to Butch, Anthony Balletine did come to the shot house multiple times on the night of the murder. The first time, he bought a rock of crack. A second time, he didn't have money and was asking about buying crack on credit or collateral. And, according to Butch, Balletine was wearing a white t-shirt or sweatshirt. But, according to Butch it was Rocky who came that night and traded the VCR for crack. However, while Butch uses the name Rocky, he says, "I didn't know the dude's name, and I really still don't know for sure," although he did pick him out of a photo array. Finally, according to Butch, Rocky was wearing dark clothing, wasn't bleeding, and didn't have any blood on his clothes.

But wait, why did Butch initially implicate Anthony "Cool Breeze" Balletine? Here's the pertinent exchange between the prosecutor and Butch at trial:

Q Mad at Breeze. The police were leaning on you when you were telling them it was Rocky because he was telling them that it was Breeze?

A Right. It was like a three or four page statement that he had made. They kept saying "Leon, you are lying and protecting him because it wasn't Rocky." I said "look, man, you can believe what you want, but I'm telling you the truth, I can't make you believe me." That was it.

Q Did they finally get you to sign a statement saying it was Breeze?

A Yes, sir.

[19:38] Colin Miller: And then, there's Willie Raybon. He also gave a statement on November 12th in which he again said that Anthony Ballentine came to the shot house multiple times on the night of the murder. But, like Butch, he now said that it was Rocky who pawned the VCR. According to Raybon, Rocky was wearing dark clothes, a cap like a toboggan, and a jacket. And, as for why he initially implicated Ballentine, Raybon says, "Y'all just had me scared and you already knew 'Breeze' was there and so that's what I figured you wanted me to say." At trial, Raybon is more expansive, saying that the police beat on the desk yanked his seat, shoved Ballentine's picture in front of him, and said, "You know it's him," spooking Raybon into saying that Ballentine pawned the VCR.

Of course, Raybon's street name was "Road Runner," and at trial, he outran the police again, figuratively rather than literally. Here's trial investigator Keith Russell:

Keith Russell:

Willie Reese Raybon returned to his original story prior to trial, and testified that it was Anthony Ballentine who pawned the VCR.

Rabia Chaudry: Now, Russell is actually wrong about this, but he can perhaps be forgiven for his error given that Road Runner did give shocking testimony at trial. Road Runner did testify that Rocky pawned a VCR that night while wearing dark clothes and brownish tan jacket. But he also testified that Ballentine came to the shot house three times that night: A first time to buy crack, a second time to ask about buying crack on credit or with collateral, and a third time. This third time, he was breathing hard and had on a white t-shirt or sweatshirt. According to Road Runner, Ballentine had a little blood on his hands and some on his shirt. And while Road Runner couldn't see what was in it, he testified that Ballentine had a plastic bag on this third visit. This might lead you to recall that when the daughter of the owner of the shot house retrieved the VCR the next day, it was in a bag. The prosecution would try to claim that Road Runner falsely implicated Ballentine because of the \$5 drug debt he owed him, but it seems unlikely this claim got much traction.

There was also other bad news for Ballentine. On October 29th, the day after Ewing, Madden, and Raybon spoke to police, an investigator working for Ballentine would present the Decatur Police with two alibi witnesses. Now, if you're keeping track, this was Ballentine's *third* attempt at an alibi, after first claiming that, on the night of the murder, he stayed at home all night watching the Braves game and second claiming that he'd only gone over to his neighbor James Watkins' house.

Now, he had two witnesses: his second cousin, Marion Thompson and her friend Earlean Gray. They both claimed that Ballentine had been over at Thompson's house between about 11:00 pm and 12:15 am. Initially, it's debatable whether this was even an alibi. Ludie Mae Tucker's 911 call right after her stabbing was at 12:19 am, and Thompson's house was about a mile and a half away. So, it's certainly possible that Ballentine could have gotten from Thompson's house to Tucker's house in time to commit the murder, especially if he left a few minutes before Thompson and Gray's rough estimate that he left at about 12:15 am. But, in any event, for reasons we'll discuss later, the police discredited the story told by Thompson and Gray, and they weren't called as witnesses at trial.

But while this was all bad news for Balletine, he wasn't convicted of Tucker's murder. That man was Robin "Rocky" Myers, and this was his story. So, how did a native of New Jersey end up in Decatur, Alabama?

Rocky Myers:

I moved from New Jersey down here to try to better myself. Because I got married, and kids, and that's not good to be on drugs and all that. So, I tried to better myself and I thought Alabama would help me out, being naive. 'They ain't got crack cocaine in Alabama--' yes the Hell, they do.

But my life, it was okay... I was a homebody, I wasn't no street person like all them streets-- I don't even know nobody in Alabama. The most people that I know in Alabama are the guys that I met here, you know, while I've been incarcerated. I didn't spend that much time in Alabama, then when I was out there, I was home with my kids and my wife. She worked and then when she was working I'm home, and when I'm working she's home. So, I had a little friend here and there, but I wasn't no street person, out and about. I love my family, and I tried to do the best I could, to the best of my ability. Drugs played a major part in not doing what I was supposed to do. Without that, I'd have been Ward Cleaver.

[24:17] Susan Simpson: As we discussed in Episode One, Rocky Myers was Ludie Mae Tucker's neighbor, living just to the north of her. Here, Rocky told Colin about his interactions with his neighbor:

Rocky Myers:

Yeah, we was just like that -- we was just neighbors. You know, I really didn't know her. I didn't even know her name. But, you know, when I come out my house and her house is directly across from mine, and she's out there, I can

wave to her 'cause I'm a nice guy. You know, I'm not one of those snobby, with my nose in the air type of person, so I would wave to her and she'd wave back and stuff like that. A couple of times I've asked, "Hey, ma'am, if you ever want me to cut your grass or anything like that, I can do that there." But I guess she had somebody to do that type of stuff. But we wasn't sittin' out smoking cigarettes and all that stuff, and, ya know, fightin' the heat together. We wasn't doing all that type of stuff, but she was a nice person as far as I knew. I didn't really *know* know her. And I guess she really didn't *know* know me, but we recognized each other, ya know what I'm sayin'?

But did Tucker know Rocky Myers? It's quite possibly the most important question in this case. As you might recall from Episode One, the killer came to Tucker's house and said he'd been in a car wreck and needed to call his family. How would this story have made any sense for Myers to tell or for Tucker to believe if they both of them knew that Myers lived just across the street? Moreover, when asked about the perpetrator, Tucker gave multiple people in law enforcement a general description of the man rather than saying, "It's my neighbor across the street," or simply pointing at his house.

If Tucker did know Rocky Myers, none of this makes any sense. And yet, at trial, the defense never asked Mamie Dutton whether Tucker knew her neighbor. As this clip of a post-trial interview of Dutton reveals, that was a big mistake:

Interviewer:

Were you ... did you ever talk with her about the neighborhood? The neighborhood had gone down quite a bit.

Mamie Dutton:

No, I really ... well, she never bothered nobody. She never talked about nobody or nothing. She was just a good woman. I don't know, but I'm sure that was him that afternoon because I had gone out on the porch and I'd seen him across the street, standing over on the street over there. And she said he had been there before, this guy had, and got ice and stuff, ya know.

Interviewer:

The guy that you saw across the street?

Mamie Dutton:

Yeah. Well, he lived across the street.

Interviewer:

Okay ... did y'all talk about it? Did you come in and ... how did that conversation come up?

Mamie Dutton:

Well, she just said, ya know, that he always come and got ice and stuff ...

Interviewer:

You said something to her about the guy across the street?

Mamie Dutton:

Yeah, and she said, well, you know, the way she talked, that she knew him ...

Interviewer:

Right ...

Yeah, that's right. On the very afternoon of the murder, Ludie Mae Tucker had pointed across the street and told Mamie Dutton that Rocky Myers was her neighbor and that he'd come over to get ice on multiple occasions, which is the same story that Rocky had told at trial. And yet, that same night after being stabbed, Ludie Mae Tucker did not point across the street or name Rocky Myers as her murderer.

So, at this point, you might be wondering how the prosecution found 12 jurors who were willing to agree that Rocky was guilty? As we'll discuss next episode, they didn't. But, before we get to that, we get to the inconvenient truth about this case, and it's the truth that brings the Sac-O-Suds killing from *My Cousin Vinny* back into focus:

[28:34] Colin Miller:

And what do you remember -- I'm taking you back to the night of the crime, it's also the night that you found this VCR in the stash alley -- what can you tell me about that day? I know you were supposed to go to a club, and do you remember, in any sort of detail, what happened that day?

Rocky Myers:

Not really. Not really. I know in the back of my house, when you comin' around from like my mother-in-law's house, she lived on one of them streets, I don't know the name of the street ... my memory is really messed up, I can't hardly remember anything. But, comin' from her house, and comin' around the back of my house, and walking around to the front, it's like an alleyway, and bushes and

all that stuff like that there, and that's where -- you could find a lot of stuff back there. You know, and there has been a lot of things found back there. But yeah, I really can't ... I can't recollect the whole scenario on that part right there, and I don't wanna confuse no one about that there.

Colin Miller:

Do you remember a time though, when you found a VCR and you took it to the shot house?

Rocky Myers:

Yeah, I remember I did find a VCR and I tried to trade it, I tried to sell it for some dope, and I got it. I got the dope and I went back to my house.

[31:58] Colin Miller: So, let's start with the basics: There's an alley to the east of Ludie Mae Tucker's house that started south of her house, ran to the east of Rocky Myers's house, and ran up to the shot house. At trial, multiple witnesses would testify this was a stash alley where people would stash drugs and contraband when there were police in the area. And so, Rocky and the defense would claim that Ludie Mae Tucker called the police right after the stabbing, with the police arriving a few minutes later, and the killer seeing the police and stashing the VCR in a bush in the alley next to Rocky's house, which is where he found it. Here's a juror from the case, Mae Puckett, describing her takeaway from the defense's theory and the State's theory that Rocky pawning the VCR must have meant that he was guilty:

Mae Puckett:

No, that didn't make any sense. If somebody's gonna find something in the bushes and sell it, that doesn't mean they killed someone. They, you know, would use that part of the alley as a hiding place until the cops calm down or went away, and they would go back and get their goods and sell them. It seemed logical to me, it didn't seem ... I'm not familiar with that way of life, but it didn't sound like anything that would be out of the ordinary.

And while Rocky Myers admits that he pawned the VCR, he maintains that he had nothing to do with the murder of Ludie Mae Tucker:

Colin Miller:

Did you have anything to do with the murder of Ludie Mae Tucker?

Rocky Myers:

Oh, no! No sir. Hell no. I'm not that type of person, no. I wouldn't hurt nobody, no. I'm not like that. That's not in me, that's not my character to do anything like that, ya know? So, no sir, I did not do it. I did not have anything to do with it.

[33:42] Rabia Chaudry: To get into more detail about the night of Tucker's murder, both Rocky and his brother-in-law, Donald Hood, say that Rocky and he were supposed to go to a club that night with Hood's girlfriend, but Hood ended up leaving at about 11:30 pm without Rocky. In terms of clothes, Rocky was wearing a dark shirt and a cap and had borrowed a brownish-tan jacket from Hood to wear, with these clothes matching Road Runner's description of the clothes worn by Rocky that night and *not* at all matching the white t-shirt the victim's said the perpetrator was wearing. Then, having been left behind, Rocky claims he found the VCR under the bush in the alley next to his house at some point that night, and later that night, traded it for crack.

It all sounds plausible, but there was one final wrinkle into the State's case: Tyrone Elliott, a/k/a "Tank." Elliott was the brother of a Decatur Police Officer and worked under Anthony Ballentine's father at the Decatur Country Club. There's no mention of Tyrone Elliott in the Tucker Murder Chronology until October 29, 1991, the day *after* police spoke with Ewing, Madden, and Raybon. But, stop if you've heard this one before -- the State would claim at trial that Ewing actually told his brother and another Sergeant, Sergeant Coker, about the murder on October 7th, just a couple of days after the murder.

This timing is awfully convenient for the State because the Governor of Alabama declared a \$5,000 reward in the Ludie Mae Tucker case on October 8th, the very next day. The defense would claim that Elliott was seeking the reward; the State would say that Elliott came forward the day before this reward was announced despite there being no documentation of any contact with Elliott until the day after Ewing, Madden, and Raybon implicated Rocky.

[35:22] Susan Simpson: Anyway, like the alibi witnesses who didn't pan out, Elliott was interviewed by Ballentine's defense investigator. We don't have that statement, but we do have his police statement, and here's what he said to them:

On the night of the murder, his son was at the hospital. After his son was discharged, he dropped off his son and girlfriend at her house, without getting out of the car himself or having any conversation with them. Then, he drove over to his friend Tanisha's house, whereupon he was immediately told by a man named Larry Gill that they wanted beer.

And so, without getting out of the car, Elliott, Tanisha, and their friend, Chris Garth, started driving to a store they called “the Iranian store that sold beer.”

According to Elliott, as they were stopped by a stoplight just to the west of Ludie Mae Tucker’s house, he saw a short black man right in front of her house walking towards the sidewalk and then crossing the street. The man had on a dark shirt and had a dark jacket wrapped around a VCR. Elliott and others kept driving, but when they got to the Iranian store, it turned out it was closed, so they turned around and drove to the shot house, where Elliott says he saw the same man selling the VCR for drugs. And Elliott later identified Rocky Myers as the man he’d seen with the VCR.

Chris Garth and Tanisha Irvin later largely corroborated this story, but Irvin had some significant differences in her story. First, Ludie Mae Tucker lived on Gordon Drive, an east-west street, with Sixth Avenue being the north-south street to the west. Tucker’s house was the *second* house to the east of Sixth Avenue, and she said she saw the man with the VCR to the *west* of the first house to the *east* of Sixth Avenue and that the man was actually well to the *south* of that house. She even drew a diagram of where the man was located, and it can’t really be reconciled with what Elliott said.

Irvin said that they definitely didn’t go the shot house after they went to the Iranian store; instead, she says they went to a place called Jack’s Market to get the beer. Notably, Jack’s Market is just west of Ludie Mae Tucker’s house, and, despite the arrival of three police officers within minutes of the stabbing, Irvin doesn’t say she saw any police activity there, outside of Tucker’s house, as they drove to Jack’s Market.

So, what’s going on here? Is the entire story a lie and possibly an attempt to get the reward money? Or is this a real world example of the Rashomon effect? It’s unclear, but it did lead the defense to raise what we’ll call “The Superman Defense.” After all, Elliott said he saw Rocky Myers in dark clothes just in front of Tucker’s house and heading toward the sidewalk. But Tucker and Mamie Dutton both said the perpetrator was wearing a white t-shirt. And that takes us to:

[Superman 2 movie soundtrack]

[38:10] Colin Miller: You can’t see it, but that’s audio from the opening scene of Superman 2, in which Clark Kent eschews his typical phone booth clothes change for a running change of suit and tie to his super suit before flying off to save Lois Lane from certain death at the Eiffel Tower. The argument of the defense at trial was simple: Rocky Myers isn’t Superman. As they explained in closing argument: “He had to make a

Superman-like change coming out the door in order to change his clothes going out the door.”

The defense also made another argument against Elliott's story, and it's like the Magic Grits argument made in My Cousin Vinny. Decatur General Hospital is 2.3 miles away from Elliott's girlfriend's house, about a 7 minute drive. That house to Tanisha's house is another .2 miles away, so add another minute or so. Then, Tanisha's house to the intersection by Ludie Mae Tucker's house is 1.1 miles, or about another 3 minutes. Elliott's claim in his statement and at trial was that his son was discharged from the hospital after 11:00 pm, which would then fully explain why Elliott would be at the relevant intersection right after a stabbing that took place shortly before 12:19 am.

But the defense was able to obtain the discharge papers for Elliott's son at the hospital. It turns out that Elliott's son was discharged at...9:35 pm, more than two and a half hours before Ludie Mae Tucker was stabbed. So, how in the world could the events described by Elliott expand into a two and a half hour window? It might not have the ring of Joe Pesci's "Are you sure about those five minutes," but "Are you sure about those two and a half hours" seems like a reasonably compelling argument.

And then finally, we have Elliott's statement to the private investigator, which as we noted was never produced. Keith Russell, the defense investigator for Rocky Myers took Elliott to the relevant intersection and asked him to stand where he first saw Rocky Myers. When I asked Russell about this field trip, here was his response:

Keith Russell:

The bushes he was standing behind, if I remember correctly, was in the alley behind Rocky's house. And his house, Rocky's house is the old shotgun style, you know what I'm talking about house? [Colin: Uh-huh] Shotgun style? Right. That's what he lived in. It's a duplex - one little apartment on the left, one on the right, and it was long and narrow. The alley I'm speaking of, would have come in from the side street in an L beside Rocky's apartment and went back north again. So it was an L shape, flip it backwards, the way it turned out. Those bushes were, there was like a post, I don't know why it was there, not a city post. It was like a creosote railroad tie, something of that nature, or, I can't, maybe it was round instead of square or rectangular, but the bushes would come...that's where Rocky said that he found the VCR that was stolen from Miss Ludie Mae. That was Rocky's story, that he found that, and that then he took it on down to the crack dealer.

[41:06] Rabia Chaudry: Simply put, this is huge. Elliott claimed at trial that he saw Rocky Myers to the south, just in front of Ludie Mae Tucker's house. Russell is saying that Elliott told him he saw Rocky Myers to the north, by the bushes in the alley to the east of his house. Elliott's trial story makes it look like Rocky Myers killed Ludie Mae Tucker. But what Elliott told Russell corroborates Rocky's story about finding the VCR in a bush in the alley next to his house.

But you don't have to take Russell's word for it. After asking Elliott to stand where he first saw Rocky Myers, he took a photo of Elliott that was introduced at trial; it shows Elliott standing behind a bush in the alley to the east of Rocky's house.

Beyond this, Rocky Myers didn't have much in the way of material possessions. According to the defense, he only had five changes of clothing, and none of them remotely matched the clothing that Tucker and Dutton said the perpetrator was wearing. But nonetheless, Rocky is a short man and while arguably not stocky, he is not a thin man. Based on Rocky matching the physical description of the killer and the testimony that he pawned Ludie Mae Tucker's VCR at the shot house, the jury was able to return a guilty verdict.

Now, at this point, you might be asking for one last rewind. You might be wondering, what about Angela Acklin, the witness who said she saw Anthony Ballentine with a bloody white shirt in an alley by Tucker's house on the night of the murder? This takes us back to Ballentine's third rejected alibi.

[42:44] Susan Simpson: You won't find the name Rita Hood in the Tucker Murder Chronology, but you will find her police interview in the discovery documents in the case. It's not dated, but here's what it says. On the night of the murder, she went to the shot house between 10:30 and 11:00 pm and stayed for about 10 minutes. As she was leaving, Anthony Ballentine asked for a ride, and she agreed, driving with him to her apartment, which was a block west of Ludie Mae Tucker's house. As they arrived, she saw Angela Acklin. Acklin's dress was torn, and she said she'd been fighting and running. Thereafter, they all went inside and smoked some crack. Finally, about 20 to 30 minutes later, Rita Hood kicked them all out because she didn't want them there when her boyfriend got back. Ballentine and Acklin then left the house together.

Rita Hood would later testify to these facts at trial, as would Anthony Ballentine, who had given up on his earlier story of being at his second cousin's house. Of course, this is good and bad for Acklin. Obviously, she made no mention of going to Hood's place in her police statement. But her statement does place her with Anthony Ballentine just

around midnight, a mere block away from Ludie Mae Tucker's house. So, what would Angela Acklin say at trial?....Well, nothing.

Acklin did appear for the first few days of trial, but then she disappeared. According to defense counsel, Acklin didn't recant; instead, she "said she was closer to the case than she wanted to be." It's impossible to say for sure what this means, but there are clues from the defense's argument at trial. First, it came out at trial that Angela's husband, Rudolph, was himself a suspect at one point in the case. And there's also the fact that her husband was a short, stocky black man. Second, the defense argued that Acklin could have been present when Ballentine killed Tucker and that her footprints could have been the footprints found in the dew in the alley to the side of Tucker's house.

In any event, the defense was allowed to read Acklin's police statement into evidence, but this likely carried a lot less weight than her actual testimony would have. A few years later, Rocky's team did track down Acklin, and she doubled down on her claim of seeing Ballentine with a bloody white t-shirt in an alley by Tucker's house on the night of the murder. She also said that she had heard that multiple VCRs were pawned at the shot house that night, but she didn't list her source of information.

There's one last piece of information about this story that seems interesting. At trial, the defense asks Ballentine about whether he saw police by Ludie Mae Tucker's house as he left Rita Hood's house. His answer?:

"Yes, I did see the police. I remember asking Rita something about it and she said something about it and she said something about somebody that had got hurt down the street. She didn't recall where it was. She said she had left home herself. I did see the police car with the lights flashing."

[45:38] Colin Miller: Now, Rita Hood said she went to the shot house between 10:30 and 11:00 pm, and her timeline has her kicking Ballentine and Acklin out of her apartment shortly before midnight. The police arrived at Ludie Mae Tucker's house at 12:20 am. So how would Ballentine have seen police upon leaving Hood's apartment and how in the world would Hood have known about the stabbing before midnight, after they had just been in her apartment for the last 20 to 30 minutes? Maybe Ballentine simply misspoke or misremembered, but this seems like a bit of a smoking gun.

And speaking of smoking guns, what if a study by researchers in Germany, done years after the Ludie Mae Tucker murder, could prove that Rocky Myers was NOT the man who took her life? Next time...on Undisclosed.

Rabia Chaudry: A big thank you to everybody who makes Undisclosed possible. Thank you to our sponsors who help us put on our episodes week after week. Thank you to Mital Telhan, our Executive Producer for helping keep this ship afloat. Thank you to Rebecca LaVoie, our fantastic Audio Producer and also the co-host and producer of a couple of my favorite podcasts, including Crime Writers On. Do not miss her podcast. Thank you to Baluki for our logo, for Kristi for maintaining our website. Also a big thank you to our listeners. Thanks for coming back week after week. Check us out and make sure to follow us online on Twitter, Instagram, and Facebook. Our handle is @undisclosedpod. And please, do not forget to subscribe to us on iTunes and rate us! Thanks so much. See you in a week.