

UNDISCLOSED SEASON 2: THE STATE VS. JOEY WATKINS
EPISODE 4: THE NIGHT OF

POSTED 1 AUGUST 2016

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Rabia Chaudry:

On the night of Jan 11th 2000, shortly after the police discovered that Isaac's injuries came from a gunshot wound, and not a car accident, the police began asking the question they should – who would want to do such a thing?

It didn't take much digging to turn their attention almost immediately towards Joey Watkins, Isaac's ex-girlfriend's ex-boyfriend. So they positioned their radar towards Joey as the investigation began.

But first they had to figure out exactly what happened on the night of the accident. Pinning down Isaac's movements, and examining what tale the crime scene had to tell.

[2:14]

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Rabia Chaudry:

Hi, and welcome to Episode 4 of *Undisclosed: The State vs. Joey Watkins*. My name is Rabia Chaudry, I'm an attorney and fellow at the US Institute of Peace, and I blog at splitthemoon.com.

Susan Simpson:

I'm Susan Simpson, I'm an attorney with the Volkov Law Group, and I blog at viewfromLL2.com.

Colin Miller:

I'm Colin Miller, I'm an associate dean and professor at the University of South Carolina School of Law, and I blog at Evidence Prof. Blog.

Rabia Chaudry:

On today's episode we are gonna look at all the evidence and documents we have that help us figure out exactly what Isaac Dawkins did that night after he left Floyd College.

Because before we can figure out who committed this murder, we have to figure out exactly what happened.

[2:57]

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Colin Miller:

In the 1891 story *The Boscombe Valley Mystery*, Sherlock Holmes and Dr Watson investigate the death of a man in the woods in Herefordshire, England.

Shortly before the man's death, two eye-witnesses claim to have seen the man's estranged son following him into the woods with a gun in his hand, and the deceased, in fact, was found with an injury that very well could have been caused by blunt force trauma from the butt of a gun.

The son becomes the prime suspect, both for the police and the community, until the daughter of the deceased's friend contacts Inspector Lestrade, believing the son to be innocent.

When Sherlock Holmes arrives at the scene, he realises that a mistake has been made. The cause of death was not the gun, but a jagged stone, lying among the moss.

According to Holmes, "Oh how simple it would have been, had I been here before they came like a herd of buffalo and wallowed all over it."

Holmes is referring to the officers who processed the crime scene, and his assessment is probably pretty accurate for the time.

According to Dr Ian Burney, a historian at the University of Manchester, it wasn't until the 1920s that dedicated CSIs began to appear as supervisors of a complex police and scientific operation, accompanied by photographers and policemen to search and protect the scene.

Before then, well-intending officers routinely contaminated crime scenes, leading to lost and misleading evidence.

Now interestingly, according to Dr Burney, Sherlock Holmes and another fictional character, Dr John Evelyn Thorndyke, actually influenced the development of modern crime scene investigation.

But even without that, Holmes was able to find the stone that eventually led him to discover the true identity of the murderer.

But sometimes, even with modern advances in crime scene investigation, mistakes are made.

Sometimes eye-witnesses are handled wrong, the crime scene is compromised, the cause of death not recognised, the true killer ignored when the police pick a suspect and can't let him go.

[4:46]

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Rabia Chaudry:

We'll start by looking at the last known movements of the victim, Isaac Dawkins, eye-witnesses to events leading up to his death, and the crime scene. But let's start with when Isaac left school.

Isaac's American History class at Floyd College was supposed to end at 7:15pm that night, on Tuesday January 11th. But we don't know for sure if it ended at 7:15, or if, because it was the first day of classes for the spring semester, he got out early. There's evidence pointing both ways.

But the last confirmed person to see Isaac alive was a woman named Amy Sudduth, a classmate, who wasn't friends with him, but she knew him through a co-worker, and was in his American History class that evening.

[5:25]

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Amy Sudduth:

We had um, a history class together with Dr Robert Page.

Lawyer:

Okay, was that on the first day of college?

Amy Sudduth:

The very first day of class.

Lawyer:

Alright, excuse me, first day of class.

Amy Sudduth:

Mm-hmm.

Lawyer:

And Isaac was in the same class as you?

Amy Sudduth:

Mm-hmm.

Lawyer:

Was that his last class for the day?

Amy Sudduth:

I would assume. He was- we walked out of class together.

Lawyer:

Did you see- well, first of all, where did you go?

I- uh, or, where did y'all go?

Amy Sudduth: *Oh, we walked out of the hallway, and- and he... was like, "Hey, I know you," and uh, we talked about how we knew each other, and then we got to the bookstore, and I went into the bookstore to buy my book for that class, and he said, "Okay, I'll see you in the next class," and... I said, "Okay, see ya."*

And I'm assuming he walked... through the cafeteria, like he was going toward the front of the school to leave.

Lawyer: *That's where the parking lot would be?*

Amy Sudduth: *Mm-hmm.*

Lawyer: *How was Isaac acting?*

And by that, I mean, did he seem to be upset? Did he seem to be nervous?

Amy Sudduth: *No.*

He didn't, he just... seemed normal.

Lawyer: *Do you- do you recall about what time you left... Floyd College uh... on January 11th?*

Amy Sudduth: *Yeah, it was around 7:00. It was like a... 5:30, 6:00 class.*

It was the first day of class. So we probably stayed the majority of class time.

Lawyer: *'Kay. You didn't stay the whole time, though there?*

Amy Sudduth: *Hmm...*

Lawyer: *The professor let you go a little early?*

Amy Sudduth: *[crosstalk]*

Yeah... he may have let us go a little early.

Susan Simpson: Like Amy said, they could have gotten out at 7:15, if they could've gotten out a few minutes early, because it was the first day of that class. And often, you know, first day of school, professors end class a few minutes early.

And other sources, there's kind of a more definitive 7:15 stop time, but it's never really firmly established. And given they talked to students the very next day, on the 12th, you'd think they would've had an answer one way or another here.

But we have no notes of the interviews that the police did on January 12th with the professor of the class and his other classmates, so we can't really tell one way or another.

Rabia Chaudry: So, if we're to assume that class ended early at 7:15pm, which is when it was scheduled to end, that means, then, Isaac immediately went out to his car, was he seen doing something else...?

It would've been really helpful, obviously, to know exactly what time class ended, because then you could establish what time he left the college.

But, unfortunately, nobody seems to have gotten a firm answer, the police weren't able to pin that down, not even from the professor teaching the class himself.

[7:49]

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Colin Miller:

Now, there's also one other weird thing about the testimony by Amy Sudduth, who again was Isaac's classmate in his American History class on January 11th.

Now, at trial, Tami Colston, the prosecutor, asked Amy, "Were you aware of any problems that Isaac had with anybody in school that day?" and Amy's response was, "No."

And now, here's a clip actually, of Amy testifying at the trial of Joey Watkin's co-defendant, Mark Free:

[8:11]

Lawyer:

Had you seen Isaac in any disputes with anyone in class, or- or in your presence there, at c-Floyd College?

Amy Sudduth:

Mm-nnh.

Lawyer:

Did he seem to get along with everybody?

Amy Sudduth:

Yeah, I mean I always- I- I didn't know him, I knew of him, but I always thought that he was, you know, a... super nice guy.

Lawyer:

Did you see anybody picking a fight with him there?

Amy Sudduth:

No.

Uh-uhh.

Lawyer:

Did you see him picking a fight with anybody?

Amy Sudduth:

No.

[laughs]

Lawyer:

Thank you, Ms. Sudduth.

Colin Miller:

So that's Amy testifying at Mark Free's trial, but if we look at other statements in the case, that doesn't seem to be entirely true.

And that's because there was another student named Shauna, and she told detective Moser that, quote:

A friend named Amy Sudduth told her she heard that the victim talked to some friends in the parking lot after class, on 1/11/00, heard Joey might've been there.

Susan Simpson:

After hearing that, Moser went and talked to Amy herself.

And here are what the notes with his interview with her say:

That she was a student at Floyd, that she knew Isaac from the past, and that she walked out of class at the same time as Isaac. She says that she went to the school store, while Isaac continued walking, and the notes say 7:15 is when, "Got out of class," but again, we don't know if the question was, "When did class end?" or, "When did you get out that day?"

Anyway, Amy goes on to say the day after, so January 12th, at the help desk, she heard an unknown white male state that, "This incident with Isaac was crazy," and that the victim had left school and was supposedly talking to his "so-called friends," in quotes.

And that this 'unknown white male' said he didn't see it himself, he just heard it from others.

And, apparently, according to Amy, this person also knew that the victim used to date an ex of Joey Watkins.

She also said the buzz at school was that Joey had done it.

Now, again, like a lot of this case, it's a bunch of rumors, and I'm not gonna put particularly high odds on there being anything behind it.

But this is something that you'd want to have checked out, right?

By the time this interview with Amy happens, it's February – almost a month later.

Rabia Chaudry:

But it's interesting that uh, within that month, that that is a rumor that's already, or the buzz is already about Joey.

Susan Simpson:

The next day it was. And also, Moser talked to the students in Isaac's American History class on the 12th. Why didn't the story come out then?

Because, Amy is saying she heard this the next day, she heard this from some person. And yet, it was never apparently shared with investigators until some other student heard the rumor and passed it along to them.

So while factually, it's hard to say what relevance it has, I find it interesting in context with her testimony at the trials.

It's less of an issue with her testimony at Mark Free's trial, in which she's only asked, "Did you see Isaac in a fight?" And she says "No," 'cause she didn't.

But at the first trial, Joey's trial, the question's a little more open-ended. And her answers seem a little bit more... un-straightforward, I guess you could say? In light of these notes.

Colin Miller:

Yeah, I mean, at Joey's trial, the prosecutor asks Amy if she's aware of any problems that Isaac had with anybody in school that day, and it seems pretty clear that she had previously, in a prior statement, mentioned some type of incident in the parking lot after class on January 11th and... while that wouldn't be admissible at trial, it would be hearsay, and couldn't be used to prove the truth of the matter asserted, there is a rule allowing for impeachment, attacks on the credibility on a witness based upon prior inconsistent statements, and... it at least seems here there are some inconsistencies.

And as we'll get to later with the timeline, those inconsistencies seem pretty implausible for Joey to actually have been there at Floyd College on January 11th.

Susan Simpson:

Mostly I just wish that the story had come out on the 12th and that someone could have checked it out then.

Because, it's- while it's probably just another rumor, which, like most rumors in this case, is baseless and just totally made up cause someone felt like it, maybe there's something to it.

But there's no way now, or even back in February of 2000 to figure that out.

[11:56]

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Rabia Chaudry:

So, I mean, like, there's two things that you know, we can get from Amy, that there might or might not have been something happening with Isaac right after class, between him and somebody else, maybe a white male, like we don't know.

Uh, and also what time he- he was left. But she was definitely the last person apparently to have seen him, at school that day.

Susan Simpson: And she's also evidence that even the next day, even at a school that Joey didn't attend, it was already being passed around, student to student, that Joey had something to do with it, and that Joey had done it out of revenge.

[12:32]

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Rabia Chaudry: So, at some point, then, Isaac leaves the school.

And it's really important to pin these minutes down, because the minutes are gonna matter in this case. And we're gonna get more in depth on why those minutes matter with cell phone records, and where Joey was that night, but for now we have to try to figure out exactly when the accident took place, when he was allegedly shot, and when he was seen on the road.

Colin Miller: Yeah, but, in terms of Amy overall, while obviously we're noting now those minutes are important, Stanley Sutton, who came onto the case to investigate, interviewed Amy seven months later and apparently, for him at least, the minutes weren't important, because in his notes about Amy he wrote only:

Sutton, Amy Sudduth, talked with her, she walked out with Isaac into parking lot of Floyd College, they had American History. She could remember the time.

But despite him writing in his notes she could remember the time, he doesn't specify the actual time she remembered, so... it doesn't actually tell us, all these months later, what time she remembers. Though of course, in the earlier notes it said 7:15pm.

Susan Simpson: Yeah. "Witness can remember," don't ask witness what they remember. Thanks, Sutton.

Rabia Chaudry: Susan, can I ask you, did she testify, uh, to what time she saw him?

Susan Simpson: At Joey's trial she says approximately seven o'clock.

At Mark's trial, she says, "Class got out at 7:15, but it's likely we got out a few minutes early because it was the first day.

[14:05]

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Susan Simpson: The next time Isaac is seen, is approximately one mile north of Floyd College.

Now, Isaac lived up in Amurchee, which is on the north side of Rome, and Floyd College is on the south end, both along 27.

So, Isaac got in his truck, started driving north, and was next seen about a mile later by a man named Wayne Benson.

Wayne Benson worked in Cedartown but lived in Rome, and he'd gotten off work around, it's not clear, 6:30, 6:45, and was driving up back home, when he suddenly saw an odd interaction between two cars in the northbound lane.

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Benson first encountered Isaac's truck a little under a mile north of Floyd College and about 1.7 miles south of where Isaac's truck would ultimately wreck. During that 1.7 miles, between where Mr Benson first encountered Isaac's truck and the wreck site, there was only ever one other car near Isaac's truck – a little blue-ish four-door sedan that Mr Benson thought was a Honda, something like that.

Here is his testimony at Mark Free's trial:

[15:12]

Lawyer: *When you got into Rome, did you see anything, any unusual incident out on the highway?*

- Wayne Benson:** *Yes, sir, on my way home I did.*
- Lawyer:** *Alright, tell us what you saw, Mr Benson.*
- Wayne Benson:** *Uh, about a mile, I guess, north of Floyd College, I came around a curve right there, at uh, I believe it was North Georgia Camper.*
- And, there was a white uh, pick-up truck just, for some unknown reason, in the... uh, outside lane, just stopped, so I... stopped, and uh- the- the truck stopped, uh- little blue car in front of it darted off to the side of the road.*
- Lawyer:** *[crosstalk]*
- Now when you say, excuse me-*
- Wayne Benson:** *Mm-hmm.*
- Lawyer:** *The truck, you think, was stopped in the... traffic lane?*
- Wayne Benson:** *Yes, sir.*
- Lawyer:** *On the left-hand side?*
- Wayne Benson:** *Well, on the right-hand side.*
- Lawyer:** *[crosstalk]*
- On the right side.*
- Wayne Benson:** *[crosstalk]*
- On the right-hand side coming into Rome.*
- Lawyer:** *[crosstalk]*
- Alcan? On the outside lane?*
- Wayne Benson:** *[crosstalk]*
- Yes, sir. Mm-hmm.*
- Lawyer:** *That'd be as you're heading north?*
- Wayne Benson:** *Yes sir.*
- Lawyer:** *Alright, and where was this little car?*
- Wayne Benson:** *Uh, it was- uh- first I come aware of the little car is when the truck stopped. I didn't know why the truck stopped. Just as soon as he stopped, the little blue car darted off to the- on the right-hand shoulder of the road, and the white truck increased it's speed and took off.*
- Colin Miller:** *The white truck is stopped in the middle- it's like the, sort of like the- the left side of 27, is that right?*
- Susan Simpson:** *So, the white truck stopped in the right lane, on the outside lane. That's the first thing he noticed- he sees brake lights, he has to like, pull up short so he doesn't like, rear-end Isaac's truck.*
- Susan Simpson:** *And...*

Colin Miller:

Right.

Susan Simpson:

Right after that happens he sees a little blue car that was in front of the truck suddenly pull off into the shoulder.

[16:51]

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Susan Simpson:

When I first heard this, I guess my first thought was, "Wait, I thought that Joey was supposed to have pursued and killed Isaac? So why is Isaac's truck behind the blue car when Benson first sees it?" Because, if Benson's to be believed, the blue car has to be the shooter.

So, how come Isaac's truck is behind the blue car?

It doesn't make any sense to me.

Rabia Chaudry:

Well, unless Benson didn't come up- upon them, like, early enough, maybe before he approached the two cars, there was already something going on.

I have seen teenagers do that, where they're kind of, you know, being aggressive towards each other, kind of trying to cut each other off on the road and mess around.

It could be that that was already happening and then Isaac got in front of the blue car, like, by the time Benson caught up to them?

Susan Simpson:

Yeah, I think something clearly happened before Benson got there.

But to the extent there's a story at trial, the story is that Joey was following Isaac. So why would Joey have pulled ahead of Isaac if he was following him?

Colin Miller:

And this is only, as you said, Susan, about a mile north of Floyd College, so... y'know, assuming that Joey is pursuing Isaac, that's not that much time for him to have somehow have gotten ahead of him, and then this whole cat-and-mouse game starting.

So I mean, I guess it's possible, but it- it- it seems a bit odd, with what Benson's describing, how that fits with the State's theory of the case.

Rabia Chaudry:

Does Benson tell us how fast he was going and at how fast he thinks, approximately, that the other cars were going?

Susan Simpson:

Speed limit.

Not slow, not fast.

[18:29]

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Susan Simpson:

At Joey's trial, Benson said that when he first saw how Isaac's truck and the little blue car were manoeuvring, he figured it was a girlfriend-boyfriend dispute or something.

Lawyer:

What happened then?

Wayne Benson:

Well, I didn't- not knowing what the little blue car was gonna do, I sort of slowed down, you know, uh, and it sped off also, and uh, the white truck got into the inside lane, and I think about probably three to four tenths of a mile there's a traffic light at Walker Mountain.

Uh, the little blue car had caught the truck there, they run side-by-side at the traffic light.

Lawyer:

What happened next?

Wayne Benson: *The- the two cars, they were running, uh, sort of side-by-side, the blue car might've been just a little behind the uh, white truck going up the hill up right there, 'bout the Coca-Cola plant, I believe.*

And all of a sudden, for some reason the- the little white truck disappeared off the road, it crossed the media, and got in the south-bound lane traveling north.

It, uh, ran that way probably I would say three-tenths of a mile or more.

Uh, and it finally hit a guard rail, it ran up against the guard rail, an' followed the guard rail to the end. And at the end of the guard rail, the guard rail sort of goes into the ground.

Little truck reared up on the guard rail and it caused the truck to flip over at least one time and ended up back upright.

[19:54]

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Susan Simpson: And again, according to Benson, there's no one else around when this happens. He's behind Isaac's truck and the little blue Honda.

Wayne Benson: *Like I said earlier, I was probably three, four-tenths of a mile behind them. I wasn't, you know, right on their bumper, because they, uh, they were under the light and I had to slow down for the light, so they got ahead of me just a- a little distance.*

Man: *Yeah.*

But there was other cars around them as well?

Wayne Benson: *Not- not right up on them, I wouldn't- I wouldn't think, best I can recall.*

You know, uh, best I can recall, like I- like I said, the little blue car and the truck, the last time I actually saw them close together, they were side-by-side.

The blue car had caught the truck at the traffic light, they were side-by-side.

They went under the traffic light.

And then the white truck took off and then they were running- I would say, this is the truck, they were running about like this, this bein' the blue car.

The last time I 'came aware of them, up on top of the hill before the- 'fore the truck left of the road.

Man: *Okay, and you actually saw the truck leave the road?*

Wayne Benson: *Yes sir, I sure did.*

Susan Simpson: Which mean, with no other cars around, then if Benson's memory is right, and if Isaac was shot from another moving vehicle, then this blue Honda-ish car had to have been the shooter.

Which means Joey, if he was the shooter, or with the shooter, had to have already been following Isaac's truck no later than one mile north of Floyd College.

Rabia Chaudry: So, Benson saw the car go off the road, was he- was he one of the first people to make the 911 call, then?

Susan Simpson: We think he was the first 911 caller.

He was one of the two 911 recordings we have. Again, for some reason, they were not all saved.

But Benson has identified the first call. And the call we opened Episode 1 with as his voice.

[21:38]

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Call Center: *Rome, Floyd 911.*

Man: *Uh, just had an accident right over here on 27 South, right uh, close to Alcan.*

Call Center: *27 South next to Alcan?*

Rabia Chaudry: It's interesting to me that he- when he's asked if there are other cars on road, it's not an immediate, "Oh, no, there's nothing there."

He's almost seeming to suggest that maybe there were, but not close by or something. But he doesn't- and the police don't ask him.

Susan Simpson: See, they do actually. And he- in his first statement about this, he does give it a firm "No." Nothing in between the victim and Mr Benson when the victim left the roadway.

So, this is two years later at Mark's trial he gives that answer. But prior to that, he was always very clear that it was just him, Honda-ish blue car and Isaac's truck.

Rabia Chaudry: Got it.

Susan Simpson: When I first started looking at this case, and trying to put these statements together, part of me wonders like, "Did Mr. Benson see what he thought he saw? Is this a reliable statement that we can depend upon?"

'Cause if he's right, then, I mean, if Benson's right, it does resolve a very central question of who shot Isaac? Answer: it's whoever's in that little blue car.

Rabia Chaudry: Okay, so it was dark that night. We're talking about January, s- after 7:00pm it's gonna be dark, and I don't know how well that road is lit, so I'm- I'm gonna assume that even though he might've been able to see the cars and maybe see, like, the shape and color, that he wouldn't have been able to see, like, how many people were sitting in the car, or anything like that, right?

Did he have anymore details?

Susan Simpson: He did not.

So, one thing I thought was interesting though is he thought that- he didn't get a tag, he didn't get the license plate, but he did notice it wasn't a dealer plate. It wasn't the bright yellow or bright red of a dealer plate. So, it was a regular tag, whatever was on there.

But what's also interesting, though, is that Mr Benson didn't immediately connect this crash with the blue car.

Because, it doesn't seem like he brought it up in his statement when he talked to police that night.

We don't know what he said to the police, there's no notes about it.

His name is written down on the initial police report, suggesting that he had in fact talked to cops on the scene, but... it does not seem like he was telling them, "Oh, yeah, that truck went off the road because something happened with that blue car. That blue car ran it off, that blue car..."

It- it seems like he thought it was just a wreck, like, possibly Isaac had fallen asleep at the wheel.

Rabia Chaudry: But the blue car didn't stop, right? It just kept going.

Susan Simpson: [sighs]

See, this is the part where I don't think Mr Benson has a clear memory. He assumes it kept going, but as he puts it, I mean, his eyes were on the truck. When he saw the truck veer off across the median and go into the south-bound lane, that's all he was looking at. He was not trying to watch this blue car.

[26:59]

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Colin Miller: Now, in the very first reports on Isaac's crash, and the subsequent death and murder investigation, it was stated that Isaac's crash into the pine thicket off of Highway 27 occurred at 7:18pm. This was also included in a press report issued by the Rome Police Department on January 12th.

But by the time that Joey's case got to trial, the State is saying that essentially everything happened at approximately 7:20.

Now, I know that probably doesn't sound like that big of a difference, and we'll be addressing all of this in more detail in the next few episodes, but for now just remember this: minutes matter in this case.

What time the wreck was is a big deal for a lot of reasons. And for some reason we can't quite explain, there's an extreme shortage of documents showing the exact minutes at which certain events occurred.

Rabia Chaudry: I- if I'm gonna be thinking about this, I'm gonna think, well, I mean, if Benson was the first one to make a call, couldn't we establish from let's say, his cell phone records, like, what time that call was made? It had to have been fairly shortly.

But, if we're talking about a- a difference of two minutes? I mean, he could've waited a couple of minutes before he made that call, and then it still would've been a little difficult, I guess, to pinpoint it down.

Susan Simpson: But if it's earlier, that matters.

And it's interesting, because an investigator with the Floyd County Police did go to Mr Benson and ask him what his phone number was and what his phone carrier was. Not sure why.

If they used it in anything, they didn't include it in the file.

Rabia Chaudry: Maybe we could use the word 'perplexing.'

Susan Simpson: A little bit perplexing.

Rabia Chaudry: Yeah.

But for some reason, like you said, we don't have those cell phone records, so we don't know what time the call was made.

Susan Simpson: We don't have the 911 records, either. Which would probably be the easy thing to get.

We have the 911 records beginning with 7:50pm. Like the actual computer records from 911 calls, that show the second that the call hits the line and the second it's answered, and how long it lasts, and who made it, and all that good stuff.

But for some reason, they didn't think to pull the records for 40 minutes earlier, the time of the wreck.

Rabia Chaudry: So the calls that came in 40 minutes later, they were just calls to like, what, dispatch, ambulance, this and that?

Susan Simpson: No, so when you call 911, it records all those calls, and it passes them out to one of the various stations they have where people answer the phone, but it shows you, I mean, the caller and all those times.

And they did print out those records beginning with 7:50pm that night. For about 10, 15 minutes. So the records report, for sure available, for sure obtainable, but they didn't get 'em.

[29:23]

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Rabia Chaudry: So, sometime around 7:18 to 7:20, in those couple of minutes, Isaac has gone off the road and his truck has crashed.

When the police arrive at the crime scene, do we know what time they arrive?

Susan Simpson: We know what time the radio hand-written traffic log says they arrived.

But again, we'll get into more later, there's problems with that. But 7:22.

The fire trucks, or at least one of the fire engines, likely arrived first, 'cause they were very close, like a quarter of a mile away.

And their hand-written arrival time is 7:23pm.

And the cops say when they got there, the fire engine already was there on the scene, but their handwritten logs show they got there at 7:22.

So...

Rabia Chaudry: Maybe somebody's watch was off?

Susan Simpson: I just think the handwritten logs aren't clocks.

[laughs]

And shouldn't be used that way.

Rabia Chaudry: Right.

[30:27]

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Colin Miller: Now, as we noted in Episode 1, the crime scene wasn't initially secured or processed, because of a misunderstanding about what led to the car crash in this case.

So, this is from Lieutenant Burnett's investigation summary of this case. According to Lieutenant Burnett,

Due to the initial report that the incident was a traffic accident, the crime scene had been unsecured for about two hours. Numerous persons had walked through the crime scene. There was little evidence to collect at the scene, other than the measurements, the window with the bullet hole and the vehicle itself.

Rabia Chaudry:

I mean, it seemed from some of the 911 calls that there were people who witnessed the accident, who actually went up and were trying to see if he was okay, whether he was breathing or not.

Susan Simpson:

There were a lot of people there. One of the investigators, right, said there was a crowd of 10 to 15 people lingering around by the time they were on the scene. As uh, Mr. Benson described them to me, a bunch of 'Lookie-Lous'.

And there were also several people that had tried to assist Isaac immediately after the wreck.

Mr Benson remembers walking up to the truck and seeing a laptop laying out on the ground. So, he picked it up and put it in the truck bed, just to make sure it didn't get stepped on or lost during the commotion.

And, after the firefighters got there, they tried to open the doors to get to Isaac and there was the EMS, and then there were police, and then here's a question we still can't answer: this truck was out there, and the investigation was on-going, from about 7:18 to approximately 10:30 to 11:00.

That's unheard of for a wreck, or even a crime scene. Although, obviously, you'd hope a crime scene would get more methodical attention, usually a wreck isn't left there, with active investigators swarming around, for three hours. And I've talked to investigators, I've talked to people up there now. I'm still not sure why it was left there for so long.

For a regular crash, you'd expect to be cleared up within an hour. But they didn't even find out that Isaac had been shot for nearly two hours. And yet, the truck was still there.

Now, they don't know it's a crime scene, they don't know to secure it, so... presumably, they would've treated it like a wreck. Which is why it's odd the truck was still sitting there after all that time.

Colin Miller:

Yeah, if they think this is a single-car accident for an hour and a half, I don't know why that truck is still sitting there after all that time. I- certainly if they thought it was a homicide, they would've processed the scene more, but obviously, from all the evidence here, they didn't, for that first hour and a half, realize it was a homicide.

[32:51]

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Susan Simpson:

And just trying to figure out who did what at the crime scene is next to impossible.

We know, roughly, who was there, we know the names of the officers, we have their reports, their, well, limited sketches, but... we really have next to no documentation concerning the crime scene itself. Which means that witness memories are the only thing we really have to go on in reconstructing what happened there, and how it was processed.

But relying on witness statements to reconstruct a crime scene, well, if you remember Colin's discussion of the Rashomon Effect from Season 1, it's that all over again.

At first glance, it doesn't seem that the statement of any one witness can be reconciled with the statements of any other. And we have at least four statements about the crime scene to compare, here.

To show what's going on, let's take a couple of specifics about the crime scene.

There are two things in particular that have been driving me bonkers for seven months now. The back window of Isaac's truck, and the crime scene photos.

[33:53]

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Susan Simpson:

Starting with the back window, here's what we know. Isaac's truck was a single cab, white, 1994 Toyota pick-up.

The top had some damage on it, presumably from a roll-over, which a few witnesses recall seeing, and the passenger-side window was busted out.

His truck had a four-pane sliding glass back window, consisting of a frame with two fixed pieces on either side, left and right, and two sliding pieces in the center. And a hole was discovered in one of these sliding panes.

We have got exactly one piece of documentation on this window, though – that's an inventory sheet showing that it was collected at 10:25pm, on January 11th, by Captain Marshall Smith with the Rome Police Department.

That was three hours – over three hours – after the wreck. And, of course, the inventory sheet identifies the crime it was collected in conjunction with as murder, which means it wasn't even filled out until at least the next day, when Isaac died.

We also have a single, unfocused photo of this window pane, but I've got a lot of questions about what the photo's actually showing.

Supposedly, it's depicting the middle sliding pane, closer to the driver's side of the cab, but there's no proof of that that I've seen. There's just this blurry photo of a blurry figure holding up a blurry glass pane against an indeterminate spot along an even blurrier window frame in the dark, with bad lighting. And that's kind of it.

I mean, yeah, the hole looks like a bullet hole, so, maybe that's how Isaac was shot, but no one ever even attempted to line up the bullet hole with the bullet wound in Isaac's head to see how they lined up, or, if they lined up at all.

So why does this even matter? Why do we care where the window pane was found, or what condition it was in, or who found it?

We have a victim with a gunshot wound in the head and a hole in the window of his truck. So, one plus one equals two, right?

Well, given the mass of contradictory witness statements in this case, about how Isaac was shot, knowing how that bullet actually entered Isaac's truck would've been pretty significant.

On the other hand, evidence confirming which window Isaac had been shot through would have necessarily disproven the statements of a majority of the witnesses who claimed to have knowledge of the shooting.

So, if you're the State, I guess that's kind of inconvenient. See, the State relied on a lot of different versions of how, exactly, Isaac was shot.

To give just a few examples, in October of 2000, the State used one version of the shooting to get a wire tap on Joey and one of his alleged accomplices. They used an entirely different version of events, in November of 2000, in order to have Joey arrested. And they used yet an even more different version of events at trial, in June of 2001.

[36:37]

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Susan Simpson:

Let's take the story that the police finally used ten months later, in November, to arrest Joey, and which Sutton presented as a fact at Joey's preliminary hearing.

Just prior to Joey's arrest, on November 9th, Paul Allen, a former friend of Joey's, and one of the people at BriAnne's house during the night of the Panama City Incident, came to the police with a story.

He said that he'd heard from his friend Lacey, that she'd heard from her friend Josh, that Josh had told her that he and Joey and a boy named Tim Hughes – that's Joey's sister's boyfriend – had shot Isaac together.

This statement was a big deal, because four days later, as a result of a follow-up interviews that police conducted in response to Paul's statement, Joey and Mark would be arrested for Isaac's murder.

[37:16]

Detective: *And let's go back again, and tell me one more time, what she told you about this incident.*

Paul Allen: *Uh, she said that uh, they were at Josh- or, she was with- she was at Josh's I guess, or with Josh, an' uh-*

Detective: *Josh who?*

Paul Allen: *Flemister.*

Detective: *Okay.*

Paul Allen: *And he said that- he tell her, you know, he's in real big trouble, real big trouble.*

And later that night, he got drunk and told her that he was with Joey Watkins and Tim Hughes the night they shot Isaac.

And uh, she said that Josh said, that they were going down 27, and uh, Joey was... tryin' to scare him or somethin' and shot, and it- the first shot knocked out his back window.

And when he shot a second time it hit him in the back of the head.

And then she didn't say anything else after that.

She said, you know, that Josh left to go to Virginia, to- you know, he had a job up there or something.

Detective: *Is that what he had told her?*

Paul Allen: *Right.*

Susan Simpson: *And okay, yes, first off, I know you're probably confused right now, and wondering why a statement about how Joey, Josh, and this guy Tim, committed a murder could have possibly resulted in Joey and Mark being arrested for a murder.*

But for now all I can say is, don't worry about it. The police will fix that part of the story before they make any arrest. They weren't interested in Josh or Tim, and they found a way to fix the story and to turn it into evidence against Mark instead. So, just ignore all the names for now.

Secondly, let's look at another witness story, this time from a man named James Paul Cooley who was in jail with Joey in the months leading up to the trial.

For reasons we still don't know, he was ultimately a no-show at trial, although the prosecutor, Tami Colston, was able to admit key evidence by representing to the court that he would later be testifying.

He never showed, but here's what he said in a statement of February of 20001.

[38:56]

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James Paul Cooley: *From what he's told me, but I'm not sure on that.*

Detective:

Okay.

James Paul Cooley:

But they turned around there at the BP and followed him, you know, back towards town, and uh, as- as- like I said, as he started around him, they said Mark shot at once, and it went through the back window.

And then shot again, from my understanding, through the side window.

Susan Simpson:

And lastly, here's Todd Bextine's version of the shooting. This statement was used at Mark's trial, and it was also used by Stanley Sutton to obtain a three-week long wire tap against the Watkins family phone line.

[39:27]

Man:

Did they both of them get out of their vehicles at that time?

Todd Bextine:

What Mark said is Joey got out first, went up to the passenger side, as he was going up the passenger side, Mr Free got out, walked up- I mean, he went up to the driver's side, Mr Free walked up on the passenger side, Joey got Isaac's attention by talking to him, and uh, Isaac had, at the back of his head, turned this way, up- up- turned to the left so that he could talk to, uh, Joey. And that's when- when Mark shot him. He fired two shots.

Susan Simpson:

Like I said, don't worry about the names at this point, just remember this: we have about as many different versions about what window Isaac was shot through as we have witness statements on it.

[41:13]

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Susan Simpson:

And just look at the three versions we just played here. In one of them, Joey shoots out the back window of Isaac's truck, and then he shoots through the now blown-out window and his Isaac.

In the second, Isaac's back window is shot, but the bullet misses... but then he's shot again, this time through the passenger window.

And in the third, Isaac's truck was pulled over to the side of the road, and he was then shot twice through the passenger-side window.

This is why the crime scene discrepancies are such a big deal.

Joey was arrested as a direct result of the story about Josh saying that Joey had shot out the back window of Isaac's truck, and then shot again through the now-open window.

Wire taps were obtained on the basis of a story about how there were two shots coming from the passenger-side window.

And, because there's little documentation about the crime scene, and only vague kinda statements about what windows might have been shot and how, it made it a lot easier for all these batshit crazy stories to move the case against Joey forward.

[41:12]

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Susan Simpson:

Like I said, though, here's what we do know: at the crime scene, somewhere, a window pane was found with a hole in it.

As for where exactly it was found, or who found it, or the condition it was in, or when it was found, well... the general assumption has been that when Isaac's truck wrecked, it flipped over at least once.

And uh, at that point the entire frame of the truck's window, like, the frame, the glass, everything, it all popped out of the seal, landing so that it fell, apparently, upright, against some pine saplings, not too far from Isaac's truck, maybe about ten feet.

Here's Captain Marshall Smith with the Rome Police Department describing this at Mark's trial:

[41:51]

Lawyer: *Okay, Marshall, in this area here, the rear window area, did you take that area out yourself? Or did it pop out on it's own?*

Captain Marshall Smith: *It was already out.*

You can see it in one of the photographs, it's over to the left-hand side of the truck in the pine trees.

Just- just sittin' there.

Lawyer: *[crosstalk]*

You're saying it appeared to have popped out on impact?

Captain Marshall Smith: *Yes, sir.*

Lawyer: *[crosstalk]*

Is that what you're saying-

Captain Marshall Smith: *Yes, sir.*

Lawyer: *And was laying out to the side?*

Captain Marshall Smith: *Yes, sir.*

Lawyer: *Okay. Marshall, there is an area right here.*

Captain Marshall Smith: *Yes, sir.*

Lawyer: *Is that it?*

Captain Marshall Smith: *Yes, sir.*

Lawyer: *That's a good, six, seven feet away from it. Would it not have been?*

Captain Marshall Smith: *Yes, sir. I would think it's that, or maybe a little greater.*

Susan Simpson: And it's true that at some point that night, a photo was taken showing the whole back frame of Isaac's back window propped against some pine saplings.

But here's the problem: Marshall Smith didn't arrive on the scene until quite a while after the accident, and there isn't a single person who arrived shortly after the crash who has any memory of Isaac's back truck window having popped out of the seal like this.

The closest it gets is a couple witnesses who remember that, after the wreck, Isaac was on his hands and knees in the truck's cab, with his right arm dangling outside the back of the truck, into the actual bed of the truck.

But that could have happened if either the whole window had popped out of the seal, or if just the sliding glass pane had.

And, in contrast to Marshall Smith's testimony, at least one witness has a very strong memory of the back window having still being in the truck when he got there.

Six minutes after police arrived at the scene, they radioed for a tow truck, and Terry Ferguson, who was a tow truck driver on call that night, showed up not long after.

His memory was that the back window of Isaac's truck was still in there when he got there. But that the sliding glass in the middle was open.

[43:26]

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Terry Ferguson:

But the glass- I still say that that glass was in the back of that truck.

And my youngest boy says it, too.

Susan Simpson:

The glass?

Terry Ferguson:

The back window of the truck.

Now, 'cause I specifically asked, I'm pretty sure it was Marshall Smith, I said- after they said he'd been shot.

I said, how did he get shot?

And he was saying, only thing he could recognize is, they were going down the road this way and they shot and it went through the open sliding glass window and hit him in the head.

So- something's real fishy with this case.

'Cause I could'a swore that glass was in that truck.

Susan Simpson:

What do you mean, like, in the truck, still? Like in the back of the bed?

Terry Ferguson:

Yeah- no, in-

Susan Simpson:

In place.

Terry Ferguson:

Still in the truck.

Susan Simpson:

Still in place.

Terry Ferguson:

'Cause we would've had to pick the stuff up.

Susan Simpson:

So, what's going on here?

Best I can figure, there's one of two options:

First, the entire back window frame popped out at the rubber seal when Isaac's truck rolled over, just like Marshall Smith said.

Or two, the pane of glass that had been shot fell out when the truck rolled over, and later on, the back window frame was removed whole some how, maybe during rescue efforts by the fire department.

But the only evidence about this that was introduced at trial came from Captain Smith.

He remembers that he found the window after going to the crime scene because Lieutenant Debbie Burnett had told him that it was a shooting.

[44:50]

- Lawyer:** *Now, Marshall, in connection with January the 11th, at some point in the evening at January the 11th, were you called out to a wreck scene out on US 27?*
- Captain Marshall Smith:** *Yes, I was.*
- Lawyer:** *What- why were you called out?*
- Captain Marshall Smith:** *Uh, my lieutenant, at the time was Lieutenant Debbie Burnett, and she uh, had received some information that it wasn't really a wreck in itself, that it, uh- the person driving the car had been shot.*
- Lawyer:** *Now, did you go about, uh, inspecting the scene?*
- Captain Marshall Smith:** *I looked around the scene a little bit, and I discovered the uh- um... the back glass of the truck... Um, I inspected the back glass, um... to... see, maybe if I could determine what- you know, what had happened there and there was uh... a bullet hole through the back of the glass.*
- Susan Simpson:** *So, Marshall thinks that Debbie Burnett told him it was a shooting and that he then found the window. But, there's another version of events to contend with. That's from Officer Hank Jackson, who was one of the first two officers at the scene that night, and he doesn't recall seeing Marshall there. He says he could have missed him- it doesn't mean he wasn't there, but, Jackson also remembers being there when the window was found.*
- He remembers Lieutenant Burnett coming to the wreck site and announcing to everyone there that it was a shooting, and then he looked over and found the glass with a hole in it.*
- Here's Hank Jackson from his interview with Clare earlier this year, talking about his surprise at learning the wreck was actually a shooting, and then finding the window with a bullet hole in it.*
- [46:14]
- Hank Jackson:** *I'm thinking the truck is facing south-bound, and the back window would've been north of it. Like it had stopped and the window just kept going, continued, and it went north?*
- That's what I'm thinking, but it was off to the side of the truck. It wasn't in the bed of the truck, it was actually physically on the ground.*
- Clare Gilbert:** *Okay. And wh- when did you first notice the- the window?*
- Hank Jackson:** *When, at the time, it was Lieutenant Burnett, came up and she said at the hospital that they discovered the- the driver had a bullet wound to the head.*
- And, so I'm thinking, well, if he's going north-bound, somebody probably shot 'im from the side or from the back. And then I look, and I see the window on the ground, and then I see the hole in the window.*
- Clare Gilbert:** *Okay. So- so even though the window was not in the truck, um... you- you didn't actually notice where it was until after Debbie Burnett came and-*
- Hank Jackson:** *[crosstalk]*
- Correct. Correct.*
- Clare Gilbert:** *Okay.*
- Susan Simpson:** *And here's Clare showing Hank Jackson our only photo of the truck's window at the crime scene:*
- [47:21]

- Clare Gilbert:** *So this is it in the woods. It's a little hard to tell, but this is -*
- Hank Jackson:** *That's not a very good picture.*
- Clare Gilbert:** *No, but this is the window back in the woods.*
- Hank Jackson:** *Yeah, that looks like it's shattered. Well, I can't tell if that's- that looks like mi- it's some kind of foliage or something, I don't know... I don't know.*
- Clare Gilbert:** *This is the bullet hole in the middle, here, and that's sort of shattered-*
- Hank Jackson:** *[crosstalk]*
- Shattered*
- Clare Gilbert:** *Around there.*
- So you don't remember looking at this...?*
- Hank Jackson:** *I- I thought the whole window was um... kinda broken up.*
- To me the tray looks like this side and this side is not damaged, and the center... is completely shattered. I don't remember... yeah, I don't remember that.*
- But I remember seeing the bullet hole, cause when she come up and said something, I was real... amazed, and... things started clicking about- well, yeah, it makes sense now. I know why he's on the wrong side of the road, he's trying get away or he's shot.*
- And then, when she says that, I said, well, I wonder if it came through the side, and we start looking at the truck, at the side window if it broke, or whatever, and I don't remember if they were, but- and then we see the- the back glass, and... I remember seeing that bullet hole in- in that back glass.*
- But I thought the whole window was fragmented.*
- Clare Gilbert:** *The- both sides?*
- Hank Jackson:** *[crosstalk]*
- Yeah, yeah,*
- Clare Gilbert:** *[crosstalk]*
- 'Cause it-*
- Hank Jackson:** *[crosstalk]*
- I thought it was, yeah.*
- Susan Simpson:** *Now, this interview was from 2016, so it's not surprise that the photos don't perfectly match now Sargent Jackson's memory of what the scene looked like that night.*
- But, while we'd in no way expect him to remember every detail of the crime scene, his memory of finding the bullet hole seems so clear.*
- I mean, yes, memory in this point could be faulty, but in general, Hank Jackson seemed very observant, and he was very clear about what he could and could not remember about the crime scene.*

And while we can't rule out the possibility that this is a false memory, I also can't find any reason to think that somehow his memory is somehow less correct, on this point, than Marshall Smith's.

And then we get back to Terry Ferguson. He was on the scene early, he thinks, and he stayed until the very end, when he towed the truck away.

And yet, he doesn't recall ever seeing a bullet hole in the window, at any point.

[49:18]

Terry Ferguson: *If they were to- saw that window with a bullet hole, why would they work it as a wreck?*

Clare Gilbert: *That's what I don't understand.*

It must be that nobody saw the bullet hole until after 9:00, when they learned from the hospital that it was a shooting.

And how can that be, how can you be at a- at the crime scene for an hour and forty minutes

Terry Ferguson: *Yeah.*

Clare Gilbert: *And not see the bullet hole in the window.*

Even if it's dark! They have/// flashlights.

Terry Ferguson: *Well, we've got big floodlights-*

Clare Gilbert: *Yeah.*

Terry Ferguson: *On the truck to light up that whole area.*

Susan Simpson: *Was everyone shocked when they called it in as a- as a shooting?*

Terry Ferguson: *He did. He was hollerin' and screaming, telling me to get away from the truck.*

'Cause I done had the truck hooked up... and I was pulling up- and I'd done got into the truck and put in neutral, and was pulling- basically pulling it up onto the bed. And actually, I done had the tires on the bed.

And now he started hollerin' and screamin', I thought- I thought somebody'd shot him, way he was hollerin'.

Susan Simpson: *They wouldn't have gotten pictures before that... do you think?*

Clare Gilbert: *Oh, I- I think -*

Susan Simpson: *They did?*

Clare Gilbert: *Well, they intended to. 'Cause they called Collier at 8:26 or whatever time I said it was.*

Susan Simpson: *[crosstalk]*

And they didn't know by then?

Clare Gilbert: *Well, I think they were probably just getting pictures for a run-of-the-mill wreck at that point, right?*

Terry Ferguson: *Yeah. Yeah, he- he- Clyde Collier had been taking pictures for the city and county for years and years. But if he took that picture, he shouldha... som-*

Susan Simpson: So, if Terry is right, it means something important. There were never any photos taken of the crime scene after it was known to be a crime scene.

According to Terry, the truck had been moved – two wheels onto his wrecker, before anyone at the scene learned it was a crime scene.

That's a big "if," though. I still have no idea what to make of Terry's memory of events. But, then again, Hank Jackson and Captain Marshall Smith also seem to give mutually-exclusive versions of what happened.

Here's Clare and I during one of our early debates about what to make of Terry's statements:

[51:31]

Female Sat. Nav. Voice: *Continue on US Route 41 South for three miles.*

Clare Gilbert: *I'm not totally convinced his memory about that window is accurate. I- I'm not convinced his memory about that window is accurate.*

Susan Simpson: *I'm not either, but his logic makes a little bit of sense.*

Clare Gilbert: *Yeah.*

Susan Simpson: *I'm like, so, if his memory is right, which it might not be, but if he's right, those photos were all taken before anyone knew this was a murder case.*

Or a shooting case.

Clare Gilbert: *Well, I'm not-*

Susan Simpson: *Convinced about that?*

Clare Gilbert: *So certain about that. Because we know that the call-out for Clyde Collier was not made until like, 8:- well, I have to double check, if it's 8:36, that's, I-*

Susan Simpson: *I think they found out about 9:00.*

Clare Gilbert: *They found out at 9:00- right about 9:00, that it was a murder.*

Susan Simpson: *Mm-hmm.*

Clare Gilbert: *So, if- if Collier is called at 8:36, and- and you know, we were at Collier's house, it would take a-*

Susan Simpson: *Minute.*

Clare Gilbert: *Decent little while to get there.*

So, he's probably arriving there right about the time they find it's a murder.

Susan Simpson: *I mean, he seemed to have a very clear memory of puttin' the car... onto his wrecker and then having uh, Marshall start hollerin'.*

Clare Gilbert: *Oh, right.*

Right.

Susan Simpson: *Which could be wrong. But...*

Clare Gilbert: *So maybe he gets there, takes the pictures of the car, and then at- shortly there after, Terry loads it up.*

But, strange thing to me is Debbie Burnett, saying that... she gets on scene at 9:10 and Marshall Smith wasn't there.

And- and she called him and he came back to the scene.

Female Sat. Nav. Voice: *Use the right lane to take the US 411 ramp and sharp left onto Georgia 20 East.*

Susan Simpson: *Doesn't make any sense.*

[53:30]

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Susan Simpson: But here's one more point in favor of Terry's memory.

When Clare and I spoke to him in 2016, this wasn't the first time in 16 years that he'd been asked to talk about this wreck and remember it.

He'd actually answered questions about it maybe a half dozen times now, and the first time he was questioned about it was actually only a week or so after the shooting.

He didn't know if it was an officer, he thought it was an attorney or something, but... it's clear people were curious about what he remembered about picking up this truck very shortly after it happened.

And here's another point in Terry's favor, this one from Marshall Smith's trial testimony in 2002:

[54:03]

Lawyer: *You went out there and inspected the scene and... did what you had to do.*

What did you do then?

Captain Marshall Smith: *I left for a short time and went to the hospital.*

Lawyer: *Alright. Uh, when you got there, did you learn of his condition? Isaac's condition?*

Captain Marshall Smith: *Yes sir, I did.*

Lawyer: *Alright. After that, did you go back to the scene?*

Captain Marshall Smith: *Yes, sir, I went back to the scene and uh... they were- they were still there and the tow truck had just got there and um, matter of fact, he hadn't even hooked up yet.*

He was getting ready to hook up, and that's when, uh, I collected the uh, rear glass and uh, kept it intact the best I could.

Susan Simpson: At first, this part of Captain Smith's testimony seemed pretty innocuous.

But, when I read it again, after speaking with Terry Ferguson, it really stood out to me, because, what Captain Smith is saying here can't be true.

He says that, after learning that Isaac had been shot, he went back to the scene around the same time that the tow truck got there.

But the tow truck was called at 7:26. It would've been on the scene for at least an hour before Captain Smith returned there. And, in fact, the vehicle impound form, which notes that Rabbits was towing the vehicle, was filled out at 8:32pm, still a half hour before the

shooting was discovered, and four minutes before someone radioed dispatch and told them to call for a photographer.

And yet, Marshall Smith testified that, when he returned to the crime scene at no sooner than 9:30-ish, the tow truck was only just arriving and hadn't hooked up yet.

So, we wanted to talk to Marshall Smith and figure out what was going on here. See if maybe he could clarify what had happened, or help us figure out why Terry Ferguson has such a different memory from the official record.

Unfortunately, it didn't help too much. Here's what he remembers now.

[55:45]

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Susan Simpson:

Okay, so what did- what did Marshall say when- about the- about the wheels, or about the- the roll-back?

Clare Gilbert:

He- when I just now spoke to him on the phone, he said that... he really had a very, very minor role in the case.

He did not get contacted until after they realized it was a shooting, and when he got out there, the truck, little white Toyota, was already loaded onto the roll-back.

Susan Simpson:

Again, this is 16 years later, but the fact that Marshall Smith doesn't recall being at the crime scene until after Isaac's truck was already on the roll-back... is the exact opposite of his trial testimony, in which he says over and over again that the tow truck hadn't hooked up yet when he arrived.

Okay, to break that all down, we have on one hand Terry Ferguson, the tow truck driver, who remembers the back window frame being on the truck when he got there, and the middle window being open. But, he doesn't remember seeing a bullet hole at all.

He also remembers having Isaac's truck loaded up at the same time Marshall Smith learned it was a shooting.

Hank Jackson's version, which has Lieutenant Debbie Burnett arriving to announce that this wreck was really a shooting, and then Hank Jackson finding the bullet hole in the window.

Second, we have Captain Smith's version, which has him returning to the crime scene after learning at the hospital that it was a shooting, and then he finds the bullet hole in the window.

Actually, there's also a third police version, too, although we don't have audio for it, and that's from investigator Stanley Sutton. He testified at Joey's preliminary hearing that Marshall Smith had told him something slightly different.

Stanley Sutton said, there were two shots fired, and he's asked,

Question: Were there two bullet holes in the back window?

Answer: In talking with Marshall Smith, with the police department, there was one that entered into the windshield, and it showed the entrance, and then one in his head. So, to my understanding, there were two shots fired, or two shots into the vehicle itself.

Which means that, even if we set aside what the tow truck driver remembers, we still have three contradictory police reports to deal with.

Actually, four versions, if you consider Marshall's memory in 2016, that he hadn't arrived until Terry Ferguson had the truck on his wrecker.

Luckily though, we have exactly one report, from the Rome Police Department, that mentions this bullet hole and, hey! Maybe that will help us figure out what happened here. Or, at least who found the window, right? Let's see what it says.

Upon Lieutenant Burnett's arrival, she began her investigation of the accident scene, and observed the condition of the truck, which included the finding of a back window from the truck.

The window pane displayed an apparent bullet hole consistent with the point of entry from the outside-in.

After the initial collection of evidence, and statements at the scene of the accident, Lieutenant Burnett notified Captain Marshall Smith of the circumstances discovered.

During the course of the initial case investigation follow-up, Captain Smith arrived at the scene of the accident, where he collected a rear glass window, that was discovered as belonging to the white Toyota truck.

The window came from the rear sliding glass window frame of the Toyota truck at the accident scene. Captain Smith secured this window as part of this investigation.

So, yeah, no. That's not gonna help.

The police report says first that, Lieutenant Burnett arrived at the crime scene and found the glass with the bullet hole, and did an initial collection of evidence, and then in the very next paragraph, it says Marshall Smith arrived at the crime scene and found the rear glass window.

So, while this police report does a good job of having all its bases covered, it isn't much help in sorting between the various police accounts of what actually happened at the crime scene.

That brings us to the photographs.

This is one reason we initially had to doubt Terry Ferguson's memory. He didn't recall any photographer being at the scene that night. None at all.

But a photographer was called and photos were taken. Which means Terry has to be wrong, right?

[59:42]

Clare Gilbert: *How he could have missed Clyde Collier, I don't know-*

Susan Simpson: *That's weird, I mean...*

Clare Gilbert: *[crosstalk]*

But at the same time-

Susan Simpson: *[crosstalk]*

Wouldn't he have noticed that Collier wasn't there? Wouldn't that have been weird in itself?

Clare Gilbert: *Yeah, I- I guess so.*

It- it makes me question how much he actually remembers from the incident, because, I mean, Clyde Collier was there taking pictures.

Susan Simpson: *Mm-hmm.*

Clare Gilbert:

[pause]

Unless it wasn't Clyde Collier. But Marshall Smith says it was Clyde Collier.

Susan Simpson:

That was Clare and I very early on in the investigation.

As it turned out, though, the fact that Terry doesn't recall photographer Clyde Collier at the scene, is less of a reason to doubt Terry than it initially appeared, because no one remembers Clyde Collier at the scene.

I mean, someone was there and did take photos, many of them blurry and most poorly framed, but we don't really know who took them.

Because, for instance, Captain Marshall Smith does not remember Clyde Collier being there.

[1:00:40]

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Lawyer:

The photographs that you were showing to the ladies and gentlemen of the jury, did you take those photographs?

Captain Marshall Smith:

No, sir, I did not.

Lawyer:

They were taken by Clyde Collier?

Captain Marshall Smith:

That is correct, sir.

Lawyer:

What time did he arrive on the scene?

Captain Marshall Smith:

Uh, I don't know, sir.

Lawyer:

Were you there when they were taken?

Captain Marshall Smith:

No, sir.

Lawyer:

You were not there?

Captain Marshall Smith:

No, sir.

Lawyer:

And... so, you don't know- do you know when he took the pictures?

Captain Marshall Smith:

Mmm... he took 'em that night, but I don't know what time.

Lawyer:

Okay.

And do you know how many photographs were taken?

Captain Marshall Smith:

No, sir.

Lawyer:

Could there have been a hundred?

Captain Marshall Smith:

Knowing Mr Collier, he probably took a- enormous amount.

Lawyer:

Okay.

And... you had already left when he arrived?

Captain Marshall Smith:

I don't remember seeing Mr Collier there that night.

Uh, it was somewhere either between the time that I- it had to be when I was gone to the Floyd Medical Center.

Uh, 'cause when I got back, the uh, the tow truck had just arrived. And everything was still like it was when I left.

Susan Simpson: And Officer Hank Jackson doesn't remember Clyde Collier being there.

[1:01:38]

Hank Jackson: *If it was Clyde Collier took those pictures, you think it would've been decent pictures.*

Clare Gilbert: *Well, there seem to be about... well, everybody says he... usually takes a ton of pictures?*

Hank Jackson: *Yup, yup.*

Clare Gilbert: *And we only... have about 30.*

Hank Jackson: *He usually takes- it's almost like a video, I mean...*

[verbalises a rapid shutter sound]

Ch-ch-ch-ch-ch-ch

He takes a lot.

Clare Gilbert: *Yeah, so we're gonna-*

Hank Jackson: *I don't know.*

Clare Gilbert: *Try and contact him and see if he can find the... originals.*

Susan Simpson: And Clyde Collier himself doesn't remember being there.

[1:02:15]

Clare Gilbert: *What - what happened with Clyde Collier? Did he talk -*

Susan Simpson: *Oh, he called me, yeah. And he said, uh, he said he'd- he'd resumed- he didn't remember the case very well, or at all, and he actually seemed to be saying like, one of his assistants may have taken the photos?*

Yeah... I didn't- I didn't I-

Clare Gilbert: *Well, that might explain why Terry never saw Clyde out there.*

Susan Simpson: *Yeah... Um, well, no one saw Clyde, because uh, Marshall Smith says in his testimony at some point that he never saw Clyde out there either. And he assumed Clyde came when he was not around.*

Clare Gilbert: *Hmm!*

Susan Simpson: *But he said he'd keep looking after Christmas and he'd see what he could find.*

But he did confirm that there would be more than twenty photos. He was like, "Oh, I took much more than that. We always took lots of photos."

Um, so what- so, I've been trying to figure out those photos, too, and we just need more. We cannot- there's not enough to figure out, what's going on. Um...

[1:03:16]

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Susan Simpson:

So, even if no one remembers Clyde Collier being at the crime scene, everyone does remember that Clyde Collier takes a bajillion photos.

So, why then do we only have 17 photos that appear to have been taken by a photographer at the scene?

I know Clare said 30, but that's generous. There are 17 at most, and that's even including a couple that, it's hard to see how Collier could have taken.

But, of the photos we do have, a maximum of 17 could have possibly come from him.

But, after months of trying and failing to obtain additional photos from Mr Collier, and receiving a thousand assurances that he could grab them any moment now, nothing happened.

So, about a month back, the GIP finally sent in a records request, asking for these photos. Because, although Clyde Collier was a private photographer, he acted as a contractor for the Rome Police Department – he was called out to call the crime scene, essentially. He took photos for them all the time. And, under public records law, his work as a contractor is subject to these kind of requests.

Well, the first response the State had was to deny it. And say, “Nope, he's a private citizen, photos he takes of the crime scene are not records that the defense is entitled to have.” Hmm.

Clare wrote back, pointing out that, actually, he clearly very much meets the requirements of a contractor, and since then, all we've heard is that, “Well, Clyde Collier doesn't keep good records, or keep organized records, so, good luck finding ‘em.”

Colin Miller:

Yeah, I mean, that's... definitely the case that Clare should have access to those photos. And you can see that in their waffling and changing the position to say, “No, the photos don't exist,” but... Yeah, under existing law in Georgia and other jurisdictions, that would certainly be fair game for an Open Records or a Public Information Act request.

[1:05:34]

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Rabia Chaudry:

So that's what we know about the last known movements of the victim, Isaac Dawkins.

About what the eyewitnesses to the events leading up to his death have to say, and about what the crime scene could tell us. But, some of these things may or may not hold up during the course of the investigation. Both the police investigation and our investigation.

But for now, we do have a basic outline of what we believe happened the night that Isaac was shot.

So, it's time to turn our attention to Joey Watkins. Because, remember, in the commission of a crime, it's not just about motive, it's also about opportunity. Next time, on *Undisclosed*.

[1:06:22]

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Dennis Robinson:

That wraps up Episode Four, Season Two of *Undisclosed*, brought to you with the support of the Georgia Innocence Project. Visit their website at www.georgiainnocenceproject.org for more info on Joey's case.

Thanks to our sponsors this week was stamps.com and Blue Apron. Stamps.com is always good to us, but I have to give special credit to Blue Apron for continuing to supply me with the delicious ammunition I need to blast Rabia into culinary oblivion. That giant rice cooker will not save you, boss woman, please remember that.

Ramiro Marquez and Patrick Cortes did the theme music. Ballooney on our logo, Nina Musser and Christie Williams on our website. That website: www.undisclosed-podcast.com.

Never forget those beautiful people maps, they were designed by Heidi Phelps, as well as episode transcripts provided for those inclined to the written word. Rebecca Lavoie of Partners in Crime Media and the podcast Crime Writers On produces this show with help from Brooke Giddings and Hannah McCarthy.

Mital Telhan has become the *über* producer. She controls all things, Mital does, especially our Instagram. She wants you to send pictures of the pets of Undisclosed to our Instagram handle @UndisclosedPod. I'll be doing the same with mine, so don't miss out on that.

As always, if you've got questions for Jon over at the *Undisclosed Addendum*, send them our way with the hashtag #UDAddendum. But try to get them in before Tuesday morning, because that's when we record.

Undisclosed's Executive Producer is Dennis Robinson. He apologizes to our fans for holding his nose and speaking out of the side of his mouth in an effort to hide his Baltimore accent. He will see you next week for episode five. Until then.

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