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**UNDISCLOSED SEASON 2:**      **THE STATE VS. JOEY WATKINS**

**EPISODE 16:**                      **THE GANG**  
**POSTED:**                              **NOVEMBER 7, 2016**

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**Rabia Chaudry:**                      Hi, and welcome to Episode 16 of *Undisclosed: The State vs. Joey Watkins*. My name is Rabia Chaudry. I'm an attorney and a fellow with the US Institute of Peace, and I'm here with my colleagues, Susan Simpson and Colin Miller.

**Susan Simpson:**                      I'm Susan Simpson. I'm an attorney with the Volkov Law Group. And I blog at *View from LL2.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:**                      In an earlier *Undisclosed* episode, we discussed how Stanley Sutton had enticed jailhouse informants to come forward with information connecting his suspects to Isaac's murder. And we also hinted that, in his desperation to move the investigation forward, he had to entice other agencies, including federal law enforcement, to also get involved. But that's not an easy thing to do. After all, government agencies have limited resources and limited jurisdiction. They only step into local cases in certain situations.

So wait till you hear what Sutton had to do to get their attention.

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[01:51]

**Colin Miller:**                              In the fifth season of the TV show *The Wire*, Detective Jimmy McNulty is trying to get a wiretap approved for Marlow Stanfield, the next generation drug dealer who has risen from the ashes of Avon Barksdale's drug monopoly. The first season of the show had featured McNulty doing mostly good, solid detective work to get wiretaps that would eventually crack the case against Barksdale and his partner-in-crime, Stringer Bell. But, now faced with a more dangerous and elusive target, McNulty begins taking extreme measures. First, in an attempt to get publicity for a string of murders that might be connected to Stanfield, McNulty plants a ribbon on a victim's wrist to raise the specter of a serial killer with a signature crime. Then when a *Baltimore Sun* reporter, based upon real life reporters like Stephen Glass and Jason Blair, makes up the claim that he received a payphone call from the supposed serial killer, McNulty substitutes Stanfield's cell phone number as the source of the fabricated call, so that he can get a wiretap that will take down Stanfield.

Now, some criticized the fifth season of *The Wire* for straying into surrealism, but I think it's intriguing in showing the personal and professional destruction of a man the audience once sided with. The question, as is often the case, is whether the ends justify the means, with the means in this case being a detective who has reached a dead end making things up to get a lifeline. As in much of pop culture, the ends are clear. Stanfield is an obvious threat and he must be taken down. But what if the wiretap ended up striking out? And what if it became clear that Stanfield was an innocent man having his privacy invaded and his friends enticed to implicate him?

These are the questions raised by the investigation and prosecution of Joey Watkins.

[03:25]

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**Rabia Chaudry:**

One week after the Floyd County Police Department was assigned the case, yet another investigative agency was brought onto the case as well. That would be the GBI, the Georgia Bureau of Investigation. The nature of the GBI's involvement wasn't clear until recently, when Clare Gilbert obtained copies of the Floyd County Police Department's case file. Prior to that, aside from the involvement of the GBI crime lab, the fact that a GBI agent had done *any* investigation in the case actually wasn't known. It only got a few glancing mentions, like when Sutton testified at the preliminary hearing that a GBI agent had been assigned. But that's all. So, Clare sent in an Open Records Request for the GBI's file on the investigation. And then later, she had a follow-up meeting with them to get their help in interpreting what she'd received... What the GBI agent had actually done.

[04:09]

**Clare Gilbert:**

*Hi, this is Clare Gilbert with the Georgia Innocence Project. I'm here talking with my boss, Aimee Maxwell, and my colleague, Christina Cribbs. And I am just debriefing them about a meeting I just had with the GBI. I met with the agents Lisa Harris, there, who's in charge of the Open Records Act request.*

**Rabia Chaudry:**

A big thing Clare Gilbert wanted to learn more about was why exactly the GBI's file had been so skimpy.

[04:42]

**Clare Gilbert:**

*So the first thing that we talked about was there was a GBI agent that had been brought on board the case in March of 2000, after Stanley Sutton got on board. So it looks like Stanley Sutton recruited Agent Garmon, and he had a case file that was released to us by GBI, which is very sparse. There are two, three, four... About five different entries in his case file, mainly just communications that he had had with Detective Moser and Sergeant Stanley Sutton of the Floyd County Police Department. And summaries of meetings that he had had with them.*

*But there's no description anywhere in here, or no indication anywhere in Agent Garmon's case file of any actions actually taken by Agent Garmon. Nothing that he'd investigated, no witnesses that he had contacted, no crime scenes that he had visited... Nothing like that. And I'm not from Georgia, and I did not know what the GBI was, or, I mean I knew what they were, but I didn't realize what kind of role a GBI agent would take if they were invited in to cooperate on a case.*

*And I learned from Lisa that this case file of Agent Garmon's is very atypical. It was very unusual to her, so even though my request was tailored just for Agent Garmon's notes, because I was looking for something different, she released the whole file to me because there really wasn't much in it at all, and she sent a note – a letter – with it, saying that it was the complete case file. But she said this was very unusual just to have an agent come in and then not really take any steps on the case whatsoever.*

*It may have been a situation where Stanley Sutton or whoever invited Agent Garmon was friends with Agent Garmon, and just wanted to loop him in. It could have been a situation where Agent Garmon came onboard and then got overwhelmed with other stuff that he was doing, and not worked on the case. But she said that this type of case file, which consists of only less than 30 pages of documents, is very unusual. So that's the first thing.*

*Then we talked about the fact that Agent Garmon went to prison. He was ultimately terminated from the GBI, or perhaps voluntarily resigned, and prosecuted for some illegal gun stuff. So we talked about how to access his internal affairs file, with the GBI. So they released that.*

**Aimee Maxwell:** *Did they explain to you how the GBI becomes involved in an investigation and what their role is, statewide?*

**Clare Gilbert:** *We did talk about that quite a bit. But she did indicate that it was pretty rare for them just to sort of sit back and watch what was going on without playing any kind of active role.*

**Aimee Maxwell:** *And so they're a state agency, but they don't have jurisdiction all over the state. They have to be invited in by the local, you know, municipality, or state, county police, or, as sheriffs. So they have to be invited in. So that's why it was important that Sutton invited them in, right?*

**Clare Gilbert:** *Yeah.*

**Christina Cribbs:** *How do we know that Sutton got Garmon involved in the case?*

**Clare Gilbert:** *Well what we do know is that Agent Garmon was first invited to participate in the case on March 7<sup>th</sup>. And there doesn't seem to be any contact with him before then. We know that Stanley Sutton came onboard on February 28<sup>th</sup>. And after he came onboard, we know that he was attempting to convene a meeting with multiple agencies. Which the three that I can figure out so far are: The GBI – and it was Agent Garmon – as well as Rome Police Department, and Floyd County.*

[09:33]

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**Rabia Chaudry:** *Even though the GBI file was thin, it left us with a number of questions. It referenced documents we'd never heard of, and weren't included with Agent Garmon's reports. As well as witness interviews that were never brought up at trial. Because the GBI's file wasn't giving up much in the way of answers, Clare then tracked down James Garmon himself, and he agreed to meet her and Susan Simpson at the Cargill Public Library to talk to them about what he could remember.*

*He didn't remember all that much. But to our surprise, he said it had been Detective Moser, with the Rome Police Department, that had requested his involvement, not Sutton, from Floyd County Police Department. And there's one thing he did remember: The case had been fraught with tension from the start – from the Rome Police Department, from the Floyd County Police Department, from the family. He couldn't remember details about the case, or where various documents referenced from his reports could be located, but the tension... That he *did* remember.*

[10:27]

**Clare Gilbert:** *Well it's about a week out--*

**Susan Simpson:** *Okay.*

**Clare Gilbert:** *Sutton is onboard, that they have that first meeting. I still think it's probably a Sutton connection.*

**Susan Simpson:** *Yeah. He said it seemed to be-- It didn't seem like an actual conversation so much as, for whatever reason, the GBI said he had the impression that Moser was not thrilled about bringing them on. He had he put it that you wouldn't-- I mean, it happens. But you wouldn't, like, have your boss tell you to bring someone else in on your case, do your job for you. And that was how he described the situation with Rome contacting him.*

**Clare Gilbert:** *Well yeah, and I think also that the family was--*

**Susan Simpson:** *And the family.*

**Clare Gilbert:** *Getting frustrated that nothing was being solved.*

- Susan Simpson:** *And Rome was frustrated with the family. He also did not recall anything about an accomplice in this case.*
- Clare Gilbert:** *Which is interesting, in that, I mean, that suggests to me that the conversations, the memorable conversations and the impressions that he had from his conversations with Stanley Sutton were all about Joey, Joey, Joey, Joey, Joey.*
- Susan Simpson:** *He said Sutton was confident he had the right guy. That conversation he remembered.*
- Clare Gilbert:** *Yep. And that they-- He doesn't recall ever talking about other possible suspects. And that if documents were referenced as going to be provided, but then there's not a note, an attachment note referencing an attachment, or another addendum saying that they were provided, then they probably were never provided. And--*
- Susan Simpson:** *But that they should exist in the Floyd or the Rome case file.*
- Clare Gilbert:** *And things... May have just fallen through the cracks.*
- Susan Simpson:** *Yeah.*
- Clare Gilbert:** *In the GBI file.*
- Susan Simpson:** *Well I was wondering-- I kind of took it as saying things could have fallen through the cracks on the Floyd side, and they never provided the documents. But maybe not.*

[13:03]

- Susan Simpson:** Listening back to this audio from after our interview with Garmon, I can hear how much more somber than usual our tone is. Well, relatively, anyway. But that interview with Agent Garmon was probably something of a low point of this whole investigation. Clare was so frustrated after that interview, although frustrated probably isn't the word for it. It's the only time, though, so far, I've seen her demoralized during the course of this case. Maybe the word I'm looking for is *disgusted*, because Agent Garmon never could explain to us why exactly the GBI's file had been so thin, or offer any explanation for why the documents referenced in his reports weren't present in either the GBI's file or their own police departments, or the Floyd County Police Departments. And he never could explain even what *he* was doing on the case, why he was even involved at all.
- Maybe the explanation is simple – it's the one that was suggested to Clare by a few people, after they'd looked at the file. That Sutton had been doing Garmon a favor, by throwing him a case that he could use to boost his stats without actually doing much in the way of work.
- Or maybe there was something more to it. After all, Sutton was lying to witnesses about the extent of the GBI's involvement. In the Kelli Robinson tape, the one her dad recorded at their house when Sutton and Shiflett came by for an interview, you can hear Sutton say at one point that the GBI had only come out *one* time, and that was it – that's all they knew about the case and they had no ability to say anything more on what might have transpired. But Sutton's notes show that there were multiple calls and meetings with the GBI over the course of the investigation. Most of Garmon and a few of the other agents, but we still have no idea *why* Sutton might have been lying about that, or why he'd be trying to hide how many times he'd met with the GBI when in reality, it wasn't all that much over the course of the year.
- Who knows? The Floyd County Police Department and the Rome Police Department won't explain why the GBI was brought in, and the GBI seemingly *can't* explain what on earth its agent was doing on this case in the first place. So I guess we're left with that.

[16:48]

**Colin Miller:** Yeah. And the GBI wasn't the only outside agency that was brought into this investigation. The Federal Bureau of Investigation, the FBI, also played a role – something that was mentioned obliquely in Sutton's notes, but never fully explained.

**Susan Simpson:** We weren't actually sure the FBI had actually done anything here, that they actually were involved. Maybe it was, like, a typo in the transcript, when Sutton says "FBI" when really he meant "GBI". But Clare thought that, yeah, if Sutton says "FBI" in the transcripts then he probably said "FBI" in real life, and it's worth looking for the file.

**Colin Miller:** Back in August, the FBI finally responded to a FOIA request that Clare Gilbert had sent in, asking for more information about their possible involvement in Joey's case.

[17:28]

**Clare Gilbert:** Joey.

**Joey Watkins:** Yes, ma'am.

**Clare Gilbert:** I got-- You don't have to call me ma'am.

**Joey Watkins:** [laughs]

**Clare Gilbert:** I got a very interesting thing in the mail today.

**Joey Watkins:** Yes?

**Clare Gilbert:** From the Federal Bureau of Investigation, we did a FOIA request and we got the response back finally, today. And it says:

*Synopsis: Open and assign a--*

*Every time I say "blank", it means that the Feds have blanked out a part of the form I'm reading, so I don't know what it says. So it's:*

*Assigned to special Agent blank to assist Floyd County Police Department in murder investigation, believed to have been committed by gang led by Joseph Samuel Watkins.*

**Joey Watkins:** A gang?!

**Clare Gilbert:** *Investigation has revealed that a gang controlled by subject Watkins has systematically terrorized various persons in the Rome, Floyd County, and Cedartown, Georgia area using firearms, threats of live, actual violence, to intimidate individuals Watkins opposes. Investigation has also revealed that during the night of the murder described above, and the next day, Watkins traveled into Alabama to establish an alibi and possibly destroy evidence using interstate communication facilities during the commission and aftermath of the crime.*

**Joey Watkins:** What?!

**Clare Gilbert:** And--

**Joey Watkins:**

*That is crazy.*

**Clare Gilbert:**

*This included a request to assist in the investigation of the gang-related homicide of Isaac Dawkins. And then they further say:*

*The Floyd County Police Department requested assistance to address gang-related issues of their investigation had developed, revolving around subject Joseph Samuel Watkins. There was also a possibility of the use of FBI polygraph operators. However, shortly after this case was opened, a lead developed, blank blank, regarding the murder of Isaac Dawkins.*

*As a result, arrests were made for murder without any further investigation by the FBI. Indictments have been returned, and a trial date has been set for the defendants in this matter. As a result of the arrest of Watkins, blank, the gang-related activity ended because of the lack of Watkins' involvement. Therefore this case should be closed due to the arrests and charges of Watkins and others.*

**Joey Watkins:**

*What?*

**Clare Gilbert:**

*I know! It's crazy. And this was right around-- This is at the beginning of November. November 1 and November 8.*

**Joey Watkins:**

*These people really said that I was in a gang?*

**Susan Simpson:**

*Not any gang. The baddest gang Rome has ever seen, apparently, and you were the leader.*

**Joey Watkins:**

*What?! Wow...*

**Clare Gilbert:**

*And note that it is a nameless gang. I can't say that I've ever seen a gang-related document that doesn't reference the name of the gang.*

**Joey Watkins:**

*Are you serious?*

**Clare Gilbert:**

*Apparently you had a nameless gang.*

[20:49]

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**Colin Miller:**

*Now, the part where it says "A lead developed, blank blank blank blank blank", is we're pretty sure, a redacted reference to Josh Flemister's confession that we mentioned previously in Virginia. Or at least, the reason listed for the redaction is due to an informant. But everything else is really just sort of crazy. There's no basis for it, either in reality, or the Floyd County Police Department's case files. In fact, their own investigation didn't support any of the claims the FBI report was making.*

[21:19]

**Clare Gilbert:**

*Yeah.*

**Joey Watkins:**

*Man, are you serious? These people-- They said I was in a gang? I was a gang leader?*

**Clare Gilbert:**

*It's really fascinating because you know, we have poured through... I'm like, what are we at? Like, nine or ten thousand pages of documents at this point? Is it that many? It's probably eight thousand pages of documents at this point. And not once, anywhere in any of those documents, is there the slightest hint that you might be associated with a gang, not even one time. And here they are recruiting the FBI because you're a violent--*

**Joey Watkins:** *Man, these people are such liars, man. They-- I cannot believe this. See I didn't-- This is the first I've heard of this. I--*

**Susan Simpson:** *It's the first we ever heard of it. First anyone has.*

**Joey Watkins:** *Are you-- Well look, I'll tell you guys this: I've been locked up what, 16 years now? And you can pull up my GDC file. And in the 16 years that I've been locked up, there is nothing that can connect me with any kind of gang. Don't you think if I was some kind of gang leader or big bad guy like that this would have followed me?*

**Clare Gilbert:** *I don't think that Floyd County remotely thinks you're a gang member. They-- It never even entered their head except to lie to the FBI to get them involved. There has to be a reason for federal involvement.*

[22:57]

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**Colin Miller:** From the FBI's file, it's clear Sutton used two reasons to get federal involvement in a case: The first was that Joey was the kingpin of a gang that, quote: "Systematically terrorized people in the Floyd and Polk County areas that Joey opposed." And this is sort of what I would call the 'McNulty' moment, because just as we had McNulty raising the specter of this serial killer in Baltimore, that's *exactly* what Sutton is doing here. He is claiming that Joey is this mastermind who's the head of this gang that's terrorizing Floyd and Polk Counties, and that's the way, initially, he's trying to get the FBI involved.

And then there's the second way: The second way in which he tries to get the FBI involved is through claiming interstate activity. That, as the FBI report says, "During the night of the murder and the next day, Watkins traveled to Alabama to establish an alibi and possibly destroy evidence using interstate communications facilities during the commission and aftermath of the crime."

**Susan Simpson:** Which is kind of hilarious, and by hilarious I mean kind of sickening. Because Sutton had been telling *all kinds* of witnesses, like Aislinn Hogue, that Joey had been lying to everyone about going to Alabama that day – both the day of the murder and the following day. Because his phone records, Sutton said, showed he'd never been in Alabama in the first place. But when Sutton was talking to the FBI and trying to establish federal jurisdiction, he told them the exact opposite – that Joey *had* been in Alabama, and that they knew it because he was using interstate communication facilities, aka his cell phone.

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**Rabia Chaudry:** Now, the FBI was called in at the end of October. And Aislinn's statement, where she described how Sutton showed her the phone records proving that Joey had lied, was from before that, on October 4<sup>th</sup>. So, theoretically it's possible that Sutton had truly believed that Joey was lying about Alabama when he talked to Aislinn, and then he learned the truth somehow at the end of the month. But if so, Sutton interviewed Aislinn again in January of 2001, and he made no attempt to inform her that he had been wrong before, and that Joey had *not* been lying to her.

So why was the FBI brought into the case anyway? Well that part's not clear. At Joey and Mark's preliminary hearing, Sutton testified that some guy from the FBI had been brought on to help, but he didn't really do anything. He said:

*I can't recall his name, I never met the guy, he just assisted me in trying to locate a projectile at the residence where the dog had got shot.*

**Colin Miller:**

Sutton's notes show that on November 9<sup>th</sup> – the same day that Paul called and told them about Josh Flemister – Sutton had called FBI profile and FBI polygraph, whatever that means. And records from a wiretap on Joey's phone the previous month in October had at least one FBI agent, Agent Meadows, that had been monitoring the wire.

Anyway, whatever the FBI was brought in to do, it came in on the basis of the Floyd County Police Department's apparent allegations that suspect Joey Watkins was again, some 'huge gang leader' with Mark Free as his lieutenant, sort of the relationship of Avon Barksdale and Stringer Bell. But a gang takes more than two people, so in addition to Joey Watkins and Mark Free, who else was in the supposed gang? The FBI's report only names one other individual, and it's redacted. We can see how many characters are in the name though, and based on what else was going on in the investigation at the time, it's clear this other, quote, "gang member" is the third suspect in Isaac's murder – Mark's friend David Brown.

Now at this point you're probably saying, who's David Brown again? Which one is he? But it's not anyone you should recognize at this point, because he's not someone we've discussed in the show so far. The only real appearance he makes in this case is in Sutton's imagination. Nevertheless, David Brown was officially listed as a suspect in Floyd County's case file and also apparently in Floyd County's communications with the FBI. But why?

**Susan Simpson:**

The evidence against Mark mostly consisted of jailhouse informants. But one component of the State's case against Mark, as it was against Joey, was evidence that Mark had fabricated an alibi. Mark, the State argued, had gotten his friend David Brown to lie for him, to say that Mark had been with *him* the night of the murder. It's not surprising though, that Mark's alibi would have been David, because around that time, that's who he spent most of his time with, and who he was basically living with. But at trial, David testified that no, he hadn't been with Mark the night Isaac was shot. Yeah, he'd seen Mark that *day*, but it was at some point *earlier*, not sure exactly when. And then Mark had left with his girlfriend. And, David said, he hadn't seen him again after that.

At first, though, in the initial months after Isaac's murder, things had gone differently in the investigation. David had been able to back up Mark's alibi. Way back in March, when the RPD was still on the case and still actively involved, Jim Moser and Marshall Smith had interviewed Mark for the first time, because of what jailhouse informant Joey Samples had told them. Mark said in that interview that he'd been with David when Isaac was shot, and based on Moser's notes, the police seemed to have believed Mark. And at least initially, David also backed up Mark's alibi. Because the next day on March 8<sup>th</sup>, Moser went to interview David. And David told him, "Yeah, I remember that night. Mark was with me. We watched a movie, got Church's Chicken, and then Mark got a phone call from a friend of ours, Johnny Williams." Johnny mentioned that this guy Isaac had been shot, and Mark's reaction was to be surprised, saying, "No way! What happened?" Anyway, according to Moser's notes, David told him that to the best of his knowledge, Mark had been with *him* on January 11<sup>th</sup>, 2000, at 7:15 pm.

**Rabia Chaudry:**

And that was it for David's involvement, at least for a while. Mark had an alibi, other witnesses could confirm it, end of story. But then, seven months later, long after Sutton had taken over the case, and around when they were starting to get truly desperate because their investigation wasn't going anywhere, the police came calling once again. On October 2<sup>nd</sup>, Tommy Shiflett and Stanley Sutton interviewed David again. And this time, David tells them the same thing: Mark was with *him* that night. He was positive. He remembered that Mark and Mark's ex-girlfriend had come over to his place, where they'd watched some movie about rattlesnakes. Then at some point their friend Johnny Williams called and told Mark about Isaac being shot. He was sure that was the same day as Isaac's death, David told them, because he remembered right after that, Mark had left his house and been arrested for a parole violation. He remembered that part well.

Now, David's statement was actually a big problem for Mark and Joey. And pretty good news for the Floyd County officers, because it meant that suddenly Mark's great alibi wasn't so great at all. Because the jail records showed that Mark *hadn't* been arrested on January 11<sup>th</sup>. He'd

been arrested the following day, on the 12<sup>th</sup>. So Sutton and Shiflett go and pull Mark out of jail, where he was being held *again* on another probation violation. They brought him up to the Floyd County Police Department, and interviewed him intensely, saying they knew he was guilty and that Joey had been confessing. Mark told them, there's no way Joey was saying he was with him, because he'd been with David Brown that day.

**Susan Simpson:**

There's no recording of the interview, at least not officially. But I have my doubts about that. Shiflett's summary seems too detailed in parts, as if he actually had a recorded version to go off of, not just scrambled handwritten notes. And also, there's no handwritten notes from the interview at all. In every other case where an officer had interviewed someone and had *not* recorded it, there seems to have been, like a record of somewhere, a few lines jotted down on lined paper. And there's none for this one.

And moreover, Mark himself has clear memories of a recorder being present and turned on. He's pretty confident about that. Whether it was recorded or not, though, there's one section included in the Floyd County summary of the interview that seems to outright say that Sutton told Mark that he needed to tell them that Joey had confessed. Here's what the summary says:

**Colin Miller:**

*Sutton asks Free if he wasn't there and he didn't kill Isaac with Joey, then Joey told him that he did it. Free said, "I swear to God, on my mama's life and my daddy's life, that I didn't do it, and Joey didn't tell me that he did it." Sutton told him that he was lying, and he could tell by the way Free was acting that he was lying.*

**Susan Simpson:**

I showed Mark the summary from his interview with the cops, and he said that it actually looked pretty accurate. Other than that they left some stuff out, anyway. Like how Sutton and Shiflett had both interviewed him separately, and then come in and interviewed him together. According to Mark anyway, in that interview, it had been Sutton that played 'good cop', and it was Shiflett playing the 'bad cop'.

And they also left out how, Mark said, he had cussed them out, told them they were full of shit, and they should either arrest him right then and there, or else shut up and take him back to jail. That part, for some reason, didn't make it into Floyd County's interview report.

[31:26]

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**Rabia Chaudry:**

But Mark can confirm, more or less, that he thought he'd been with David on the night of the murder. And they now knew that had not been the night of the murder at all, it was actually the night after. So the cops would interpret this as an attempt to falsify an alibi, because obviously Mark had known the *real* date of the murder, since he'd done it, so he must have known the date he was talking about wasn't the right one. But why would Mark attempt to use David as a false alibi if he knew he *hadn't* been with David until the day after the murder? Why didn't he just get David to say that Mark had been with him on the right date?

**Susan Simpson:**

The other explanation, the one that seems to me to be much more obvious anyway, is this: both Mark and David had wrongly believed the day Johnny called and said, "Hey, did you hear this kid Isaac got shot and killed?" was in fact the day that Isaac had been shot and killed. But it wasn't.

Isaac had died on the 12<sup>th</sup>, but the actual crime, the actual shooting on Highway 27, that had taken place the day before, on the 11<sup>th</sup>, something neither David nor Mark would have had reason to know, if they'd first learned of the shooting from Johnny's call on the 12<sup>th</sup>. After all,

Isaac had been shot around 7:00 pm, and a little after 7:00 pm, like around 8:00 - 8:30 that evening, they'd gotten the call from Johnny, telling them that Isaac was shot. Two months later, when they were questioned for the first time by the police, and asked for the first time about where they'd been the day Isaac was shot and killed, they both thought the same thing: that it had been the day that they'd gotten that call.

**Colin Miller:**

Yeah, so it wasn't until October that anyone realized this mistake, and of course ten months later, no one Mark had been hanging with back in January could remember which day, exactly, had been January 11<sup>th</sup>. The 12<sup>th</sup> – that they day remembered, or at least the part of it where Mark had gotten the call from Johnny – but the day before that, well, it was hard to be sure.

[33:09]

**Mark Free:**

*I was hanging out with David a lot then. Like me and Joey hadn't hung out in a minute-- It was probably two, three months. We hung out. I was hanging out with David and talking to Johnny. So, I really couldn't be really clear on where I was on the 11<sup>th</sup>. I mean, I-- I can't recall. I was just-- It was so long in between that time, I-- I can't remember.*

**Susan Simpson:**

*Yeah.*

**Clare Gilbert:**

*And by the time you were a suspect, you know...*

**Mark Free:**

*Yes.*

**Clare Gilbert:**

*It's far enough away from the actual date that you may well not remember what you're doing.*

**Mark Free:**

*I knew I was hanging out with David a lot. And it was like a blur... I know I wasn't committing murder that night, I know I wasn't there.*

**Colin Miller:**

Now, Mark eventually did piece together what he thinks is a timeline for his day on January 11<sup>th</sup>, and at Joey's trial when he was given immunity, and put on the stand by the prosecution, he testified to what he thought he could recall: That he'd hung out with David, and then sometime early in the evening, he talked to his sister, who told him his niece had skipped school that day, and she asked him to come talk to her. So his girlfriend had driven him to see his sister just north of Rome at Swan Lake, or at least he's pretty sure of that. Mark didn't have a license, so he'd have to have someone drive him everywhere. He couldn't have gone anywhere alone anyway. So he thinks he got to his sisters around 7:00 pm, because later than that, and she'd already have left for work before he got there. So then he stayed there for a couple of hours, and then around 9:00 pm his girlfriend drove him back to David's, where he spent the night, since that's where he was staying at the time.

**Rabia Chaudry:**

But at trial, David contradicted that. He said yes, he'd hung out with Mark at some point that day, and he thinks Mark was with his girlfriend. But after that, well, he hadn't seen Mark again that evening. And maybe he *hadn't*. It's clear that *no-one* is completely sure about the details of that day. Mark's girlfriend testified that she remembered the night they'd gone to see Mark's niece, but she had no idea what the date had been. Besides, Mark's alibi for after 9:00 pm didn't much matter, when the murder was just after 7:00 pm. Still, David's testimony was used by the prosecution to prove that Mark had lied about his whereabouts on the day that Isaac was killed.

[36:47]

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**Susan Simpson:**

It took me a while before I was able to talk to David. Mark and him are no longer close, and have actually only seen each other once since the trial. But finally Mark reached out to David for me. He told me that he'd asked David to make things right between them by speaking up

for him, by speaking to me. He told him not to be afraid of Sutton and Shiflett, that hey, they'd try to put *him* away for life, but he was still around. Besides, Mark said, he's not as if the FCPD could do anything to David now.

And David finally agreed to talk to me. He gave me a call back over the summer, and when we talked, he was open and willing to answer any questions I had. I could kind of get a sense of why he'd been reluctant to call me though. It seemed like he still felt some lingering embarrassment about what he'd agreed to do back then, and the things he'd said to Sutton, and done for him.

He'd never lied about anything, though, or given false statements about what Mark or Joey had done. He didn't perjure himself, he didn't do anything like that. But it's hard to deny that on the stand, he'd told the truth in a way that was designed to fit the State's case. And there's the fact that during the investigation, he'd unknowingly worn a wire and recorded Joey and Mark, at the request of Sutton and Shiflett. And David seemed to recognize all that, and he wasn't so much defensive about it, as he was kind of just resigned to what had happened back then.

[38:07]

**David Brown:**

*I didn't even want to go to court. The whole deal about the alibi, I didn't even want to go, and they're like, "Well, you're going to have to go." And all I said, when I got-- When we got to court was, uh, "Was you with Mark in this time?" and I said, "No, I don't think I was". I said, but I really can't remember, you know. I said, who can-- Who can remember something that far back-- I mean... But I mean...*

**Colin Miller:**

But that's not quite what David had testified to. At Joey's trial, he *did* say he thought Mark's girlfriend was his alibi, but he definitively stated Mark had *not* been with him that night. So here is the transcript of his testimony:

**Rabia Chaudry:**

*Question: He didn't go stay at your house all day and then go over to his sister's house and come back?*

*Answer: Well, he stayed-- He-- I seen him that day, and he left with Mika.*

*Question: Uh-huh. You saw him that day, but he wasn't over at your house?*

*Answer: Uh-huh.*

*Question: And he didn't spend the night with you?*

*Answer: No.*

**Colin Miller:**

But again, for all anyone knows, this could be true. In October, when the date mix-up was discovered, no one could remember the 11<sup>th</sup> with 100% certainty. And besides, Mark's testimony was that he'd left his sister's and headed back to David's at 9:00 pm, long after the crime, and long after he even needed an alibi.

**Susan Simpson:**

And this is another area where I wish defense counsel had at least-- I mean, they did point it out through their questioning, but never really seemed to bring the point home. Yes, there's

this discrepancy between what Mark says his alibi was and David's ability to verify it, but they only really differ when it comes to the after-9:00 pm part of the night.

So maybe Mark misremembered that he went and stayed with David. Maybe he went and stayed with his girlfriend instead. But none of that had any bearing on the murder. And somehow, the State was able to present it as evidence of lying, instead of evidence, of, well, nothing. Like it really is.

**Colin Miller:** So yeah. Maybe David's testimony was a shade more definitive than warranted, but it wasn't a lie. and he never meant to hurt Mark, who was his best friend, and he'd had nothing against Joey either. He just needed the cops to leave him alone.

[41:01]

**David Brown:** *I mean, every day I come home from work, and there he'd be at my job, take me up there to the police station, or-- Or come by my house, or something.*

**Susan Simpson:** *How many times did this happen, do you think? Roughly?*

**David Brown:** *Uh, I know he come by my job-- I know they come by my job at least twice.*

**Susan Simpson:** *Mm-hmm. And then by your house as well?*

**David Brown:** *Yeah, they come by my house three times, too.*

**Colin Miller:** And it wasn't just that Sutton was constantly there, dragging him down to the police station. In fact, Sutton had leverage against David.

[40:27]

**David Brown:** *Well, they just kept-- He kept threatening, you know? "You're on probation, I'm not going to do this. Catch you lying, and I'll put you in jail." You know? And "You'll get a probation violation." That's what Sutton kept telling me.*

*And I guess once you-- If I hadn't been on probation, I'd just told him, you know, to shove off. I wouldn't have had nothing to do with it or nothing like it. But that's basically all I-- At least, that's how I come about it, in all of it.*

**Susan Simpson:** *So what'd they say to you down at the station?*

**David Brown:** *I can't really remember, it's been so long. All I can remember is being really scared. And it wasn't so much Tommy Shiflett, as it was Stanley Sutton. 'Cause, like, he was: "I know you know about this", and all this, and I said, "I do not know about this".*

*And he just: "I know you know. I know because you all are best friends. Y'all done been..." You know? "But he's been arrested at your house before, and I know you know more than what you're saying." And I said, "I do not know nothing about this."*

*I mean, Stanley was just-- He was hard up on me. Kept saying, you know, "I know you know all this", and everything. And that's the only reason that I did what I did, in the trial, was 'cause I was scared.*

**Susan Simpson:** *When you say "do what you did". What are you referring to?*

**David Brown:** *Well, the recording and all that crap. Because they told me, they said, "Well, how do we know you're telling us the truth or whatever?" I said, You know, "I don't care." I just want to be left*

*alone and they-- Stanley Sutton wasn't never leaving me alone. And they're like, we need to-- When you talk to Mark or whatever, we need to know that you talked to him.*

*And they even asked me, they said, "Do you think Mark would kill somebody?" And I told them "No." I said, "Mark's not the type of person that would kill somebody. He's more the type of person that would get them in the mouth, or beat the crap out of them, or something like that."*

*I could never see Mark-- I'm telling you, I grew up with him, and I could never see Mark Free killing nobody.*

**Rabia Chaudry:**

And to be fair, David had better reason than most to not want to risk going to jail on Mark's behalf, because he'd already done that. And that's why he was on probation in the first place. It happened one night when David was being harassed by a couple of guys who kept driving by his place. Finally, him and Mark drove after them.

[42:54]

**David Brown:**

*And we get down to the end of the road, the red light catches them. So me and Mark get out of the car and go up around them, and I'm like, "What are you all doing? Why do you all keep messing with me?" But at that time, Mark comes up and hits the boy. You know? And Mark was on probation at the time and when we get to the jail, I told them that I did it. That I was the one that hit him. That Mark didn't hit him, and I'd take the blame for it.*

*And Mark went home and I stayed in jail, and my brother-in-law come and got me out later on that evening. But that's why I was on probation to begin with, and I was like, you know what? I'm already on probation, you know, I'm not going to get no more trouble, you know, for him. I'm just going to go ahead and I won't tell-- They kept telling me, you know, "You mess-- If you lie to me and I find out, I'll make sure you go to jail on your probation for both". Sutton kept telling me that.*

**Rabia Chaudry:**

But David actually never knew back then of his real status in the case. That the Floyd County Police Department and the FBI's paperwork had named *him* during the Fall of 2000 as the third conspirator in Isaac's murder. And all the times that they threatened him with revoking his probation if he didn't talk, they didn't actually mention that they were considering him as a candidate for a murder charge.

[44:08]

**Susan Simpson:**

*My mistake, I assumed you'd known that you were officially a suspect in the case.*

**David Brown:**

*No!*

**Susan Simpson:**

*Yeah...*

**David Brown:**

*I never knew that.*

**Susan Simpson:**

*They obviously, after the wiretap-- Or the recorded call she did, I guess they lost interest in you. But that's why they had a wiretap on you.*

**David Brown:**

*No. I never knew that.*

**Susan Simpson:**

*Yeah.*

**David Brown:**

*Because I had-- You can even ask Mark. As far as me, him, and Joey ever going anywhere together, I never went anywhere with Joey Watkins. Me and Mark were best friends from*

*when we were little. And I've never went out party, I mean, and then-- Me and Mark used to party together, but I've never partied with Joey Watkins, never.*

**Susan Simpson:** But just from the pressure of the repeated questioning from Sutton and Shiflett, David finally gave in. At Sutton and Shiflett's request, he agreed to initiate and record a phone call with Mark. And that he'd then hand the recording over to the cops:

[45:05]

**David Brown:** *Hello?*

**Mark Free:** *Hi.*

**David Brown:** *What are you doing, shithead?*

**Mark Free:** *Not much, what are you doing?*

**David Brown:** *Nothing. Being goddamn harassed.*

**Mark Free:** *By...?*

**David Brown:** *The police.*

**Mark Free:** *Heavy?*

**David Brown:** *Yep.*

**Mark Free:** *I figured you had to fucking come and got me-- Get out of jail Monday.*

**David Brown:** *But uh, yes, Stanley Sutton got all up in my face, and he asked me questions. And I told him something about, I really don't know nothing about nothing.*

**Mark Free:** *Yeah.*

**David Brown:** *You know? I told him about how that next day you went to jail and everything. After you get the phone call that one day?*

**Mark Free:** *Yeah.*

**David Brown:** *That was about it.*

**Mark Free:** *Well they fucking said they're going to charge me in jail for murder and all kind of shit, I said "Well fuckin' do it then." They couldn't, 'cause I ain't got nothing. I talked to my lawyer today, so--*

**David Brown:** *Man, they've been getting them-- I've been worried to death, you know?*

**Mark Free:** *Yeah. They trying to put it on us, but they can't.*

**David Brown:** *Do you think he did it, man?*

**Mark Free:** *Nah.*

**David Brown:** *Well how the fuck they come up with all this shit, boy?*

**Mark Free:** *Brianne. I think it's jealousy and shit, you just have to know about-- It's just--*

**David Brown:** *So, like I told them, I said, "Hell, I don't know that Isaac boy. And I don't know his sister." And I said, "I've known Joey for a long time, but I ain't never been around him about ten times at the most. And I hadn't."*

**Mark Free:** *Yeah.*

**Susan Simpson:** And I gotta say, that is some gang Joey led if he'd only seen his second-most important gang member ten times in his whole life. But despite David's protest now in 2016, part of me can't help but wonder if maybe he hadn't always been so confident in Mark's innocence. Maybe the Floyd County officers *had* gotten into his head. Because at times during the recording, it sounds like David may have had his doubts:

[46:52]

**David Brown:** *Just swear to me, man, you had nothing to do with it. Man you been like brothers to--*

**Mark Free:** *Hey, don't fuckin' ask me no shit like that.*

**David Brown:** *Well I mean we're been--*

**Mark Free:** *You know me better than that.*

**David Brown:** *Well I know we've been like brothers for years, man. You know what? If somebody would have told me you did some bullshit like it, I wouldn't believe it.*

**Mark Free:** *It's just some bullshit.*

**Susan Simpson:** Or maybe David was just putting on a show for the Floyd County officers. Trying to get Mark to say something to convince them of his innocence. I don't know. But I can see how hard it'd be to not doubt, after hearing Sutton's monologue of guilt, after hearing his list of all the evidence he supposedly had, showing how terrible Joey and Mark were, and the things they've done together. How could hearing that on multiple occasions not start to affect your relationship with the person being accused?

[50:01]

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**Colin Miller:** David started the call with Mark by complaining about the police harassment just like Tommy Shiflett had suggested that he'd do. And after a bit Mark brings Joey into the call, so it's a three-way call, so that Joey can also hear about what the cops have been trying to do and say to David.

[40:14]

**Mark Free:** *I got David on three-way.*

**David Brown:** *What are you doing, boy?*

**Joey Watkins:** *Ah nothing. What are you doing?*

**David Brown:** *Fuckin' gettin harassed.*

**Joey Watkins:** *Huh?*

**David Brown:** *Gettin' harassed.*

**Joey Watkins:** *What's going on?*

**David Brown:** *Got them police, man.*

**Joey Watkins:** *Where at?*

**Mark Free:** *Sutton fucking, uh, went back out there and questioned him again.*

**David Brown:** *Got in my goddamn face.*

**Joey Watkins:** *Sutton got in your face?*

**David Brown:** *Got in my goddamn face. They took me downtown. And told me [inaudible] told them, leave the office.*

**Mark Free:** *This is same day--*

**David Brown:** *Told him, he wasn't going to talk to me like it.*

**Mark Free:** *This is same day that uh, they come and got me. They asked me if I was with David, and all this shit again. Remember?*

**David Brown:** *They asked me that five times in a row.*

**Joey Watkins:** *You were-- You were with David the night Isaac got shot?*

**Mark Free:** *Yeah.*

**Joey Watkins:** *Okay.*

**David Brown:** *Well say that-- They asked me that Mark, and I told them. I said, I remember he was there the-- The day we got the call that he-- The boy was dead.*

**Joey Watkins:** *Right.*

**David Brown:** *And I said, "And you'd have to check my work records for the night before."*

**Joey Watkins:** *Yeah.*

**Colin Miller:** Now, this recorded call was never transcribed. Only a rough summary was provided to the defense. And it's hard not to wonder if that's because of what Joey and Mark actually say during the call. It's because the responses to David are really hard to explain if you're working from a theory of guilt. Like with Joey asking Mark if he was at David's on the night Isaac was shot. Now sure, Sutton might argue, this was all an act put on for David's benefit, but if the alibi was a *lie*, if Mark *hadn't* been with David, was telling the police he had been, then David had also been in on the scheme.

So why, then, would Joey and Mark be pretending on a call with David that Mark *had* been at his place, when David had to know it was all a lie? And even aside from the fact that it makes no sense for Joey and Mark to be putting on an intricate act here, nothing about their conversation sounds like two guys who had been carefully plotting their alibis. They aren't even sure the date of the murder, and all of them still think that Mark had gotten the phone call from Johnny just after the murder had happened, and not the following day.

[51:10]

**David Brown:** *Like I told him, I said, "Dude, I'm trying to get my life going." I said, "I can't keep doing the work and coming home and going to the police station day and all night." And I told them the*

*same thing I said, uh, you can ask uh, Mark's girl- ex-girlfriend, she was sitting there when we got the phone call, and I was.*

**Joey Watkins:** *I told them the same thing.*

**David Brown:** *And Mark went to jail that next night.*

**Joey Watkins:** *Yeah, I know Mark went to jail--*

**David Brown:** *On the 12<sup>th</sup>.*

**Mark Free:** *No, I went on the-- Uh, day-- I went on the day-- On the 13<sup>th</sup>. Uh, no it wasn't man, it was like the 18<sup>th</sup>. 'Cause it was after, uh, the-- Uh, Valentine's Day. Oh no, this was January, that's right. It was about the-- Uh, 12<sup>th</sup> or 13<sup>th</sup>.*

**Joey Watkins:** *Isaac got shot on the 12<sup>th</sup>.*

**Mark Free:** *He got shot on the 11<sup>th</sup>.*

**David Brown:** *He got shot on the 11<sup>th</sup>, I believe. I don't know when it was. I don't--*

**Mark Free:** *It was the 11<sup>th</sup> man, that's what it said on them posters.*

**Susan Simpson:** When I listen to this tape, I try to imagine how the Floyd County officers could have listened to it and maintained their iron-clad confidence in Joey's and Mark's guilt. Because they never say anything the least bit incriminating. And they're going in circles trying to piece together what even the date of the murder was. We've got Mark thinking the murder was in February at first before suddenly realizing oh wait, it was in January. And then Joey starts saying that, oh, it happened on the 12<sup>th</sup>, with Mark then correcting him, that no, all those reward posters, they all say it was the 11<sup>th</sup>.

And then David's there arguing with them *both*. Is this *really* supposed to be a carefully fabricated alibi? The conversation with Joey is brief, though, and after a few minutes, he gets off the line, with an apology to David that he's gotten sucked into this whole mess with them.

[53:49]

**Joey Watkins:** *I have to let you know that.*

**David Brown:** *[inaudible] goddamn sure.*

**Joey Watkins:** *I'm sorry about that, David.*

**David Brown:** *Man, hell, how does-- I'm-- I'm just going to do what they, you know-- Answer everything they ask me, and maybe they leave me alone one day. I don't know nothing.*

**Joey Watkins:** *Man, I mean, tell them you don't know nothing.*

**David Brown:** *But hell, I'll holler at you later, Joey.*

**Joey Watkins:** *Alright.*

**David Brown:** *Alright.*

**Joey Watkins:** *If you need me, call me.*

**David Brown:** *Alright.*

**Joey Watkins:**

*Alright, bye.*

**Rabia Chaudry:**

But David and Mark keep talking, and Mark then brings up all the crazy claims Sutton was telling him:

[54:27]

**Mark Free:**

*Saying that uh, they have witnesses uh, that said that uh, I like to fight, and I'm pretty good at it, and all that going around, me and Joey like going around threatening people, and bull-dogging them and shit. And uh, supposedly--*

**David Brown:**

[coughs]

**Mark Free:**

*We um, uh, run Buddy Vines down and his car and jerked him out, put a shotgun to his head or some bullshit.*

**David Brown:**

*Well, I know that didn't happen. The only time me and Buddy got into it, he had 20 people with him.*

**Mark Free:**

*Yeah. Fuck. [sighs] I ain't worried about it. We'll-- We'll find out tomorrow what's going to fucking happen.*

**David Brown:**

*Well just promise me something, man.*

**Mark Free:**

*What's that?*

**David Brown:**

*If you do find out Joey's in the middle of all this shit, I know you don't like-- You promise me, get your ass out of trouble, you tell them? So they leave me the fuck alone. Don't go down for something stupid, Mark.*

**Mark Free:**

*I ain't going down for shit, man. I don't know nothing.*

**David Brown:**

*But shit. Man, I'm going to go take me a shower.*

**Mark Free:**

*Alrighty, man.*

**David Brown:**

*Love you, man.*

**Mark Free:**

*We'll see you.*

**David Brown:**

*'Bye.*

**RABIA CHAUDRY:**

From the recording, it's hard to tell what David was really thinking. David says now that he'd always known Mark hadn't done it, and while he didn't really know Joey, he could never believe Joey had done it either – that he was just scared. But as soon as David agreed to record Mark and Joey, the cops got a *lot* friendlier towards him. They eased off their suspicion of him, the constant harassment and them dragging him down to the police station. But when David is talking to the cops, it's hard not to think he was doubting Joey and Mark's innocence.

[56:03]

**David Brown:**

*Hello? Is this Tommy?*

**Tommy Shiflett:**

*Hi.*

**David Brown:**

*Hi. I just talked to Mark and he, uh--*

**Tommy Shiflett:** *Already?*

**David Brown:** *Yeah, I called him. And uh, guess who the first person was he wanted to call?*

**Tommy Shiflett:** *[laughs] Wasn't Joey, was it?*

**David Brown:** *Yep.*

**Tommy Shiflett:** *Did he really?*

**David Brown:** *Yeah, he did.*

**Tommy Shiflett:** *That means he wouldn't talk much to you, had Jody-- Joey around. He say anything to you?*

**David Brown:** *Um, he's just acting weird, man.*

**Tommy Shiflett:** *He what?*

**David Brown:** *Like you know, I've always told him I loved him, when we'd hang up or whatever. He said, "Alright man." And hung up the phone.*

**Tommy Shiflett:** *I just want to know what you've said to him.*

**David Brown:** *I got tape over here. 'Bout fifteen minutes if you wanna listen to it, if you'll listen to it. But they talking about how they going to sue y'all and y'all don't know shit, cause they ain't done nothing.*

**Tommy Shiflett:** *Ah, well, anyway... Uh, how bout if I-- I'm going to ask you, and you can tell me yes or no, if I bring you a clean tape and just take that when you got in there with you, and leave another one on there for a day or two.*

**David Brown:** *That'd be fine.*

**Tommy Shiflett:** *That-- Will you do that?*

**David Brown:** *Yeah.*

**Tommy Shiflett:** *Okay. Well I'll be out in a minute.*

**David Brown:** *Alright.*

**Tommy Shiflett:** *Alright, 'bye.*

**David Brown:** *'Bye.*

**Rabia Chaudry:** *Maybe the answer is just that it's both. David was scared, and desperate to not wind up in jail for pissing off Stanley Sutton. And also Stanley Sutton's stories had worked. David thought his best friend was innocent, but all those stories Stanley was telling him, well, it'd be hard for anyone not to have doubts start creeping in.*

**Susan Simpson:** *And David was far from the only person that Mark and Joey knew who were put through this whole routine. Of Sutton showing up at their workplace, their homes, their friends' homes, their high school graduations. Of calling them, calling their parents. Finding excuses to show up where they'd be. Hounding them, basically, until their either finally held firm and said No, they didn't know a damn thing and they weren't going to say otherwise. Or, more often, until they relented, at least a tiny bit, and gave up some small offering in the form of a story that implicated Joey, or implicated Mark, or just painted them as bad people.*

[58:12]

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**Colin Miller:**

Many of them won't talk to us at all, and others are willing to talk but won't go on the record with their stories about how Sutton questioned them, and why they said the things they said back then. But we know the police did the same thing to Josh that they did to David, like when they had the off-the-record 'heart-to-hearts' with him about how he needed to save himself by talking about Joey, and how doing so wouldn't implicate Joey because they had other evidence, and it wouldn't hurt Mark because Mark himself had confessed.

[58:34]

**Stanley Sutton:**

*Is there anything to do? You and I had a heart-to-heart talk about not-- You know, you don't want yourself to be trapped in with this thing anymore.*

**Josh Flemister:**

*Mm-hmm.*

**Stanley Sutton:**

*Is there anything else [inaudible]. I'm asking you to be an alibi. Is there anything else now that you need to put on this record as the final thing we left with?*

**Josh Flemister:**

*Just that Joey did have a gun. But the day he come with us, he did not have-- He didn't show it to me.*

**Colin Miller:**

They even did it on friends who didn't really know anything at all, like Johnny Williams, the friend of Mark's who called to let him know about Isaac. They got Johnny to deny that he even ever called Mark to tell him about the murder, despite the fact that at least three witnesses all remember this happening. But Mark's supposed reaction to that call, one of surprise, didn't fit the narrative. So perhaps that's why, in late October, he'd tell Sutton the call had never occurred, when unquestionably it had.

And Josh wasn't the only friend of Joey's who was so scared of the pressure from Sutton that he fled Rome to get away from it. Joey's friend Adam Cagle, a different Adam from Adam Elrod, had to move out of town just so his family wouldn't have to deal with the constant Sutton 'drive-bys'.

[59:39]

**Susan Simpson:**

*So I found a note in the files from you, or something you'd said, or some point. Why would you have thought that you and Adam Cagle were suspects?*

**Joey Watkins:**

*Because Sutton was harassing Adam, that's the whole reason Adam went to Thomasville.*

**Susan Simpson:**

*Wait... I don't know about this story.*

**Joey Watkins:**

*You don't know about Sutton harassing Adam Cagle?*

**Susan Simpson:**

*N-- I don't-- Or... No.*

**Joey Watkins:**

*Okay. Me and Adam were hanging out. This was after Isaac had been shot or whatever or whatnot. Adam and I started hanging out pretty regular again. And me and Adam kept seeing a police car go by his sister's house. Tara. She lived on Blue Pond Church Road. This was out in Kingston.*

*Well, he kept riding by, kept riding by. So we-- Eventually, Adam said, "I think that's Stanley Sutton." And 'cause his dad had been in trouble before, and he knew who Stanley Sutton was. And I was like, "Okay," I said, "Alright. I get it now. He's trying to come at you." And about three days later, he caught Adam at the Rock Store. Right off Kingston Highway. And told*

*Adam that Adam was going to tell him how me and Mark Free killed Isaac, or he was going to charge his ass along with us, and say that he was with us.*

*So Adam Cagle's like, "Look man, I don't know." He told Stanley Sutton he said, "Joey didn't do this, and I don't know shit about this." And Stanley Sutton kept harassing him, every time he would catch him out or whatever, he kept riding by Tara's house, and Tara told Adam, "You going to have to leave." So Adam left, and went to Thomasville with his dad.*

*And Adam didn't come back till long after they convicted me.*

**Susan Simpson:** *So he was going to be 'Josh' before they found Josh?*

**Joey Watkins:** *Right. They tried-- He tried to do the same thing with Adam that he did with Josh. Tried to get Adam to do that. And Adam pretty much told him to go screw his self.*

**Susan Simpson:** *And got the hell out of town.*

**Joey Watkins:** *And got the hell on.*

[1:01:55]

**Susan Simpson:** *I'd heard Joey speak fondly of Adam Cagle a few times. He was one of the few friends who stood by Joey through thick and thin. And even after the conviction. And apparently, despite his closeness with Joey, the Floyd County police didn't succeed in recruiting him as a witness.*

[1:02:08]

**Susan Simpson:** *And you never knew David Jones, did you?*

**Joey Watkins:** *Never knew David Jones. All I knew-- I heard of him, they called him 'Super Dave'. Adam Cagle knew him. But I didn't.*

**Susan Simpson:** *Yeah, they mentioned Adam Cagle on the wire.*

**Joey Watkins:** *Yeah. Adam Cagle was like my brother. He got killed in '05.*

**Susan Simpson:** *Yeah.*

**Joey Watkins:** *I wish he was still here because he could tell you about all this stuff. Adam was the only one that would come see me every weekend.*

**Susan Simpson:** *He's the only one who didn't talk to Sutton. They looked for him.*

**Joey Watkins:** *Right. 'Cause he didn't care. He was a loyal friend. And that's why I pretty much only hung around with him.*

**Susan Simpson:** *Why he talked to him on the wire.*

**Joey Watkins:** *Until I was locked up.*

[1:02:58]

**Susan Simpson:** *But I was wrong there, in my conversation with Joey. When I'd spoken to him back in the first half of the year, I'd overlooked a section of Sutton's notes. Later, when I saw something I'd missed before, I thought back on this conversation with Joey, and kind of winced, because Adam Cagle, the only friend who'd stood by Joey after his conviction? Well, he *had* given in to pressure from Sutton, too. On October 26, Sutton's notes read:*

**Rabia Chaudry:**

*Thursday, 18:00 hours. Adam Cagle, white male. Adam heard that Joey and Damon did shoot Isaac. And by the beginning of January, he heard that Joey did it. Joey threatened to kill Kendall Dixon.*

**Susan Simpson:**

Right after that, Adam Cagle had gotten the hell out of Dodge, so he was never used in the case against Joey. And also I have no idea who 'Damon' is or what that's about, so I'm not sure how Sutton could have even *used* Adam's statements. But still, Adam Cagle had talked, too.

It's hard to say, though, that the blame in a case like this falls primarily, or maybe even at *all*, on those witnesses. I think the results of Sutton's systematic interrogation campaign speaks for itself. No, not *every* person Joey knew gave into it. Some were interviewed and successfully got away without ever saying anything incriminating against Joey and Mark, or at least nothing that hadn't actually happened. And as a result, never actively assisted in building the cases against them.

But if the witnesses named in Sutton's notes gives us a complete set, or a mostly complete set of people he talked to, and for the most part that seems to be the case, then that group who didn't end up talking, they're in the minority. Because most of those witnesses would say *something* just to get the Floyd County Police off their backs. And some of those witnesses would say just about *anything*. And although the cost of that falls on Joey more than anyone else, he's not the only one that's felt the consequences of it.

[1:01:28]

**David Brown:**

*You know, I told them, I said, "If Joey didn't do it", so the base of what I told them. I said, if he didn't do it, you know? He's lost a lot.*

**Susan Simpson:**

*Mm-hmm.*

**David Brown:**

*I said, "Mark, you lost a lot. You got locked up," I said, "but look at me. I lost my best friend over every bit of this crap." That I didn't even want to be a part of, that I didn't have nothing to do with! You know? I mean...*

*I just wish-- I wish had to go back, I would have told them, you know what, "You put me-- You do what you wanna do, put me--" But after what you just told me, that I probably said enough there for something I didn't do. You know? 'Cause they never told me that I was a suspect or nothing like that.*

**Susan Simpson:**

*You know, there's no way to say it's not what would have happened, if you hadn't decided to co-operate, because Mark-- I mean, if Joey got lucky about anything, it's that Mark was never going to bend an inch.*

**David Brown:**

*Yeah.*

**Susan Simpson:**

*The cops tried the same thing on him. They tried very hard to make him flip and promised him he'd get no jail time, no problems--*

**David Brown:**

*Yeah.*

**Susan Simpson**

*If he'd just talk. And Mark was like, "Go to hell."*

**David Brown:**

*Yeah.*

**Susan Simpson:**

*But--*

**David Brown:**

*But I-- I-- But I'm going to tell you this -- are you still recording me?*

**Susan Simpson:**

*Yeah, I can turn it off if you want me to.*

**David Brown:** *No, keep recording. Mark Free was my best friend. If he would have been with Joey, and they'd have killed that boy, Mark would have told me. He never mentioned nothing about it. Nothing. And I'm telling you, we were like brothers. If anybody would have knowed if he'd had something to do with that, it have been me. And he never let up an inch. And that whole thing with me? I knew he didn't have nothing to do with it.*

**Susan Simpson:** *Mm-hmm.*

**David Brown:** *And I guess that's the main reason why I helped him, because, you know, I knew he didn't have nothing to do with it.*

**Susan Simpson:** *Mm-hm. So you didn't think the cops could ever get him actually in trouble?*

**David Brown:** *No, I knew-- I knew they wouldn't ever get him in trouble, 'cause I knew he didn't do it.*

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**Rabia Chaudry:** There seems to be a lot of regret from many of the witnesses, often friends of Mark and Joey, that the police were able to pressure them into making statements that either implicated the two guys, or at least didn't help them. A definite pattern emerges over and over again with many of them: changing statements over time, being threatened, or being enticed with reward money. We see it again and again, and not just in this case. It's actually a common feature of wrongful convictions in general.

Another common feature when the State has its back against the wall are jailhouse 'snitches'. Not long ago, attorney Kathleen Zellner, who represents Steven Avery of *Making A Murder* fame, tweeted that she fully expected the State to suddenly discover jailhouse snitches against her client, in response to her recent filing to re-test the forensic evidence in that case. And in fact, as soon as Adnan's case was overturned and his conviction was thrown out, an attorney with the Innocence Project told *me* to tell Adnan to be careful. Because it was in times like these that the police and prosecutors start making the rounds of prisons to find people they can tempt into becoming snitches. But in order to do that, in order to become a snitch, that person has to know a little bit about the case itself. So this attorney told me to tell Adnan not to keep any case documents in his cell. Scary stuff, right?

Well in Joey's case we mentioned a few prison snitches in an earlier episode who had come forward when the reward money was made public. But that was just the start. The floodgates on jailhouse snitches against both Joey and Mark was about to burst right open.

Next time, on *Undisclosed*.

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