

UNDISCLOSED, The State v. Dennis Perry
Episode 16 - Hypothetical Firebreaks
November 12, 2018

[00:58] Susan Simpson: Every time I read through the transcripts we have from Dennis Perry's trial, I feel the same rush of confusion I felt the very first time I read through them. What. How. Why. Seriously. How could this have possibly resulted in a conviction?

In most cases, even in cases where I believe there is overwhelming evidence that there's been a wrongful conviction, I don't have trouble understanding the decision that the jury made. Even when I disagree with the result, even where I think they made the wrong call based on the evidence before them, I usually can still trace the path they took to get from where they started to where they ended up. I get it.

In Dennis Perry's case, I didn't get it.

After I looked over Dennis' case for the very first time, I called Christina Cribbs, who'd worked on his case when she was an attorney at the Georgia Innocence Project. She gave me more background on the case, more info on what had gone on, but, mostly, I just kept asking her the same question over and over again.

Susan Simpson:

But why'd they convict him? I'm still not even seeing, like the...

Christina Cribbs:

I don't know! I wish I could answer that question. I don't know!

Susan Simpson:

There's usually something...

Christina Cribbs:

I know.

There's just nothing there, it feels like. Certainly nothing there that could possibly have proven his guilt beyond a reasonable doubt. Heck, I'd struggle to even understand how

someone could believe the prosecution had met the preponderance standard here, that the State had actually pushed this mess of a case over the 50% threshold to show merely that it was more likely than not that Dennis did it.

And reasonable doubt requires so, so much more than that.

So, why? Why convict him? Christina Cribbs didn't have the answer, and neither did the case file. There were only 12 people who could answer that question, and I would need to hear from them.

[03:15] Rabia Chaudry: Hi, and welcome to Undisclosed: This is Episode 16 of The State v. Dennis Perry. I'm an attorney and author of Adnan's Story, and I'm here with my colleagues, Susan Simpson, and Colin Miller.

Susan Simpson: Hi, this is Susan Simpson. I'm an attorney in Washington, D.C., and I blog @TheViewFromLL2.

Colin Miller: Hi, I'm Colin Miller, I'm an Associate Dean and Professor at the University of South Carolina School of Law, and I blog @EvidenceProfBlog.

[05:48] Susan Simpson: Between myself and the Georgia Innocence Project, we've now spoken to most the jurors in Dennis' case. And those jurors, with one exception, are all very certain that Dennis Perry shot and killed Harold and Thelma Swain. The jurors, with one exception, did not express concern to us about the verdict they had reached. They were confident in what they'd decided. That one exception is Donna Turner.

Donna Turner:

I cannot say that all of us walked out of there feelin' like justice was really served. I felt, odds are, that he was probably present. But did he do it? No. No. I just don't believe he did it.

Many of the other jurors in this case were willing to speak with us at length about their experiences in serving on the jury in this case, but only Donna Turner was willing to be recorded. Which means, even though she's the only juror you'll be hearing from directly in this episode, don't assume what she says is necessarily a representative sample of how the other jurors in this case felt. Because often, it isn't. Most of the jurors in this case felt more like this:

Ed Costikyan:

The thing was a very cut and dry case.

That's GIP intern Ed Costikyan, giving an update on his interview with one of the jurors in this case. At the time, we were all down in Brunswick. Christina Cribbs and I had spent the day out in Camden County looking for witnesses, while Ed and GIP director Clare Gilbert had been in Glynn County talking to jurors. That evening, we'd all met up for dinner to discuss how our days had gone.

Clare Gilbert:

We were both just very met with this sort of depressed feeling... it doesn't matter who was on trial, just the fact that someone was on trial meant that they did it, with them.

[7:37] Rabia Chaudry: All of the jurors Clare and Ed had spoken to that day had been willing to talk to them about the case, but many of them had seemed confused about why exactly anyone would be interested in re-investigating this case, in particular. I mean, the guy was clearly guilty.

Although, at least one of the jurors Ed and Clare spoke to that day wasn't quite as convinced in his belief of Dennis Perry's guilt.

Clare Gilbert:

He just had a sense... if you had to weigh the two, the prosecution had a little bit stronger of a case.

Susan Simpson:

Yeah, that's usually the standard... so... it's fine.

Clare Gilbert:

And the defense really didn't do a great job proving he didn't do it.

Ed Costikyan:

He said that?

Clare Gilbert:

Yeah. But I hesitate in saying this on tape, because he was, really -- he recognized that was wrong. He was like, you know... if it was my own kid, I would have paid more attention, but he didn't know this guy, and I had just started this

job, and I just wanted it to be over.

While the jurors had a unified belief in Dennis Perry's guilt, they were anything but unified in their beliefs about how and why this crime had actually been committed. And different jurors had been convinced of his guilt for very different reasons.

For example, one of the jurors Ed and Clare spoke to that day had three big reasons for why he thought Dennis Perry was guilty. The first and foremost of those reasons all went back to that oval photo from Jane Beaver.

Ed Costikyan:

In talking to him, the thing that he seemed to have focused most on was the composite. And he pressed very much that he felt like the composite was identical to Dennis Perry, and he said at one point that if you'd had him in front of you and you had drawn a picture, you couldn't have made it any more identical.

It wasn't just the composite, though. That juror had two more reasons.

Clare Gilbert:

The first was the composite, the second was the firebreaks.

Ed Costikyan:

Oh yeah.

Susan Simpson:

So what was the third one?

Ed Costikyan:

He believed very much in the story about Dennis Perry having a beef with the Deacon, and having asked him for money. He repeated the phrase a number of times, that Dennis Perry had said, "I wanna kill me an "n-word."

For this juror, those three things added up to guilt: the composite, the firebreaks, and Jane Beaver Story's. And if you're wondering what a firebreak is and how they possibly could've come up in the context of this case, well, we'll get to that later in this episode.

But for now, to understand why the jurors reached the verdict they did, we have to go back to the very start. Back to February 10th, 2003, when Dennis Perry's trial began in Glynn County Superior Court.

[10:30] Colin Miller: Recently, GIP hired a new attorney, and she's taken over Dennis Perry's case. Jennifer Whitfield has spent the last four years as a prosecutor with the US Attorney's Office in the Northern District of Georgia, but in October, she joined the Georgia Innocence Project, and has spent the last few weeks getting immersed in the Perry case.

Susan Simpson:

So, when you first read the transcripts in Dennis' case, what was your impression? Or what did you think of it?

Jennifer Whitfield:

Well, it's hard, because we don't have the full transcript. So, for example, not having closing statements makes it really difficult to understand what the jury took away from the trial. It's also really hard to tell what evidence was admitted and what evidence wasn't admitted, because we don't have the judge's decisions on those questions. And so, it's not entirely clear what evidence was ultimately presented to or shown to the jury. But, all that said, I was stunned that he was convicted.

After Dennis Perry's conviction, he tried to obtain the full transcripts from his trial. He had new post-conviction counsel, and, as an indigent defendant, he would normally have been entitled to have a copy of those transcripts paid for by the State. In this case though, Judge Williams said, wait. Hold up. Before the State will pay for this transcript, you'll have to prove to me first that you're going to use those transcripts to file a motion that actually has some kind of merit.

Dennis Perry, through his counsel, told the court that he intended to file a habeas petition raising three grounds for relief: First, that he'd received ineffective assistance of counsel, because his attorneys had never prepared for the sentencing phase of the trial; and, second and third, he intended to raise claims that his waiver of his appellate rights had been coerced and was not freely and voluntarily made.

In 2004, Judge Williams issued an order on Dennis' motion:

"Since none of the grounds alleged by Defendant in his proposed habeas petition require resorting to the transcript of the guilt-innocence phase of his trial, he is not entitled to said transcript at public expense, and his motion seeking that relief is DENIED."

Those transcripts would've cost thousands of dollars that Dennis Perry didn't have. His case proceeded without transcripts of anything but his sentencing agreement until 2005 and 2006, when he got the funding to obtain partial transcripts. Transcripts that, we hope, contain at least all of the witness testimony in this case.

But there's no closing arguments. Actually, there's no anything that happened on that last day of trial, before the verdict was returned. We do have the opening statements, though.

Jennifer Whitfield:

After opening statements, I wasn't feeling great for Dennis, I gotta tell you.

Susan Simpson:

Oh really?

Jennifer Whitfield:

Yeah. Because, after opening statements, the Defense did a really powerful job of hammering the fact that the evidence had been lost, but the Prosecution laid out their story.

In its opening, the defense gave the jury a preview of all the evidence that was gone in this case. And it was a long list. An important list. But what it came down to was the prosecution telling a story of Dennis Perry's guilt, and the defense saying, hey, wait, there was so much evidence of this guy's innocence -- it's just that the Camden County Sheriff's Office lost it all.

And many of the jurors still had strong memories of just how much evidence had been lost in this case.

Donna Turner:

However, there was a lot of lost... mishandled evidence, as well. I remember that vividly. Like... why? I think it was kind of a botched job from the beginning, possibly? You kind of piece that together, because of things that really should have been in place that really didn't seem to be, evidence wise.

[14:05] Susan Simpson: Donna Turner is kind of the wildcard juror. And often, her impressions and experiences at trial deviated from the norm set by the other jurors that we talked to. But in this respect, when it comes to the missing evidence, Donna Turner

has the same view the rest of the jury had. A lot of other jurors we talked to told us the same thing; about all the missing evidence, often with an eye roll. Because, how on earth did the State manage to lose that much evidence?

So that part of the defense's opening statement seems to have made an impression on the jury. But in contrast to the defense's litany of everything that had been lost in the case -- the glasses, the Pepsi bottles, the mirror, the lineups, the alibi records, the arrays, the police notes, and on and on -- what the State had, in *its* opening, was a solid story about *why* Dennis Perry was guilty. Though, it was not necessarily an *accurate* story. Take, for example, John Johnson's description of how Dennis Perry made a literal confession to the murders.

Jennifer Whitfield:

Well, those kind of statements in opening, are why I left opening statements feeling quite troubled for Dennis. Because... they are very damning. They describe a confession that didn't happen- that no one testified happened.

None of the officers in this case, not even Dale Bundy, though he'd come the closest, would testify at trial that Dennis Perry had actually confessed in the way John Johnson described in his opening statement. But at least some of the jurors would come away from Dennis Perry's trial believing that Dennis Perry had admitted to this crime.

Ed Costikyan:

His big thing was he confessed and there were numerous police witnesses to him confessing, and then he recanted, but he didn't say that, so...

Clare Gilbert:

Why would someone have confessed if they didn't do it.

Ed Costikyan:

He said you couldn't beat me with a stick long enough to have me confess to something I didn't do.

[17:32] Colin Miller: On the first day of Dennis' trial, after the opening statements were completed, the jury heard from Sheriff Bill Smith as well as from the coroner who'd been at the crime scene. Nothing in their testimony directly implicated Dennis Perry, though Sheriff Smith made sure the jury knew how big and strong Harold Swain's pulp wooder hands had been.

On the second day, the jury heard from the church ladies. The first two, Vandora Baker and Lettie Frazier, described what happened in the church that night, but they too said nothing to implicate Dennis Perry. Neither had been asked before to identify Dennis Perry, and neither were asked to at trial.

And then Vanzola Williams testified. She was the first witness to give evidence that pointed to Dennis Perry. Of all the women at the church that night, only Vanzola Williams had seen him up close when she spoke to him in the vestibule. Before trial, the defense had sought to exclude Vanzola Williams from identifying Jane Beaver's oval photo as the man she'd seen in the church that night, due to how suggestive the single-photo identification procedure had been. Judge Williams had denied the motion, writing,

"While these events may have been somewhat suggestive, Ms. Williams did not positively identify Defendant as the perpetrator of the murders when the officer showed her his photograph."

The identification procedure couldn't have been *that* suggestive, Judge Williams ruled, because it hadn't worked. Vanzola Williams hadn't been able to positively identify Dennis Perry.

And at the pretrial hearing, this was true. Again and again, Vanzola Williams says she isn't sure if Dennis Perry was the man she'd seen in the vestibule. I'm not sure, I wasn't sure, I can't be sure, she says. She says this over a dozen times.

But then, at Dennis Perry's trial, when the jury is listening, when it actually matters, Vanzola Williams changes her story. "Dennis Perry looks like the killer", she says. On cross examination, the defense works hard to pin Vanzola Williams into a corner, and finally, finally she admits that previously she'd testified she hadn't been sure. But the damage is done. Vanzola Williams sounds as if she's confident that Dennis Perry is the killer, when before she'd been full of doubts.

Later, the defense will have GBI Agent Joe Gregory testify that back in 1988, when Dennis Perry's name was the first one called in by a tipster, he'd gotten a photo of him from the DMV, put it in a six photo array, and shown it to Vanzola Williams.

Agent Joe Gregory:

And Vanzola looked at that -- she could not pick out anybody. Nobody even was close, according to her.

[19:53] Rabia Chaudry: From a defense perspective, Dennis Perry's trial was a trial of lost opportunities. Again and again, they had opportunities where it seems like, just by digging in a little, they could've scored easy but potentially significant points in undermining the State's case, and again and again, they turned those opportunities away. Take, for example, the testimony of the medical examiner, Dr. Larry Howard, who performed the autopsies on Harold and Thelma Swain. He also testified on Day 2, and when he took the stand, the Defense Attorney Dale Westling told the court:

"Judge, we're willing to stipulate to this gentleman's credentials to give expert testimony as to the cause of death and any other forensics he may have discovered in doing the autopsies on these bodies."

But perhaps the defense shouldn't have been so hasty in stipulating to all of the medical examiner's findings. To begin with, Dr. Howard's report is full of inconsistent and confusing claims, with important details about the autopsies completely omitted from his report. And for another, it's not at all clear whether he had the expertise to be giving the sorts of opinions he was giving about the gunshot residue.

[20:59] Susan Simpson: Recently, Jennifer was looking up Dr. Howard up to see if there was any chance he was still around so that we could speak to him. He's not, but while searching, Jennifer found an old news article about him.

Jennifer Whitfield:

Oh no ...

Susan Simpson:

What? Uh oh (gasps).

Jennifer Whitfield:

"I respect Dr. Howard and Dr Dawson", said Burton. "But I do not think they are qualified. In the past few months I have learned things that shaped that opinion. Larry Howard and Brian Dawson specialize in shootings and stabbings", Burton points out. "Anyone can look at a body and see it has been shot. Most anyone can trace the course of that bullet. You could do it. But that's only a small portion of what a pathologist is supposed to do."

Dr. Larry Howard, it turns out, does not have the background you might have expected.

Jennifer Whitfield:

They call him Dr. Howard. Which he is ...

Susan Simpson:

So you assume it's a medical doctor!

Jennifer Whitfield:

But it's a PhD, it's not a medical doctor.

Which means an actual pathologist has never reviewed the autopsy results in this case. It was never actually established whether Dr. Howard, PhD in pharmacology, was actually qualified to opine on the autopsy results, or on the meaning of the gunpowder residue that was found at the scene. And, given some of his testimony, it's reasonable to have questions about his work. For instance, Dr. Howard testified that he couldn't say if gunpowder particles had been found in the gunshot wound to Harold Swain's head, because Harold Swain had black hair, and gunpowder particles were also black, and he only had a flashlight, so how could he tell?

[22:37] Rabia Chaudry: On that same day of trial, there actually was testimony from a medical doctor. But that testimony was not about anything related to forensics. It was Cora Fisher's doctor, and he was there to testify as to why Cora Fisher could not come to court to testify.

Susan Simpson:

And a prosecutor asks, "Tell us if you would, please, why she ... why Cora -- what the medical reasons are that prevent her from coming to this court to testify?" And he says, "Well, there are two parts to that." And then the prosecutor asks, "Let's talk about her *physical* condition."

Jennifer Whitfield:

Oh ... huh, interesting (laughs).

Susan Simpson:

Like, I mean ... if part one's the physical condition, that would seem to imply that part two was the mental condition. And no one asked him about it. What if she really was mentally incompetent?

Another lost opportunity. The defense attorneys declined to ask Cora Fisher's doctor any questions of their own, and we'll never know what the second reason was. And

Cora Fisher did not testify in person, so the jury had no ability to evaluate her mental condition for themselves.

[23:46] Susan Simpson: When I talked to Dale Bundy, I was hoping he could give me some more insight into Cora Fisher's mental condition. He'd spoken to her on at least three different occasions, which was more than anyone else in the case had. So I asked him, was there anything that ever caused him to question Cora Fisher's mental competence?

Dale Bundy:

Yeah, at the trial we had to go to a nursing home and interview her.

Susan Simpson:

Did she seem mentally ...?

Dale Bundy:

She was just fine. As a matter of fact, the defense attorney showed her a picture of a Florida drivers license that they had copied with Donnie Barrentine's picture on it (laughs) and he asked her ... he said, "Ms. Cora, do you recognize the person in this picture?" She says, "How am I gonna recognize that?" She says, "You can't recognize that either, it's a terrible copy." And she gave it back to him. Yeah, Ms. Cora was still Ms. Cora. Yeah, her mind was still okay at the time.

Susan Simpson:

Yeah ...

Dale Bundy:

They went and tried to depose her and she ...

Susan Simpson:

She held up?

Dale Bundy:

Oh yeah. She did just fine.

What Bundy said here was a big deal. I just didn't realize it at all. I think I'd assumed that he'd been talking about some sort of interview with Cora Fisher that hadn't been recorded, because I'd never seen anything in the case file that matched what he was describing. But it turns out, what he is talking about, is actually what happened at Cora

Fisher's deposition. The one read into the record at Dennis Perry's trial. It's just that Bundy's description of what happened is so far off from what really happened that it's unrecognizable.

Although, in this case, the transcripts themselves are also misleading. As Jennifer Whitfield pointed out, what had *really* happened at Cora Fisher's deposition is the exact opposite of what Bundy claims.

[25:29] Jennifer Whitfield:

She identified Donnie Barrentine at trial, as the shooter!

Susan Simpson:

No she didn't.

Jennifer Whitfield:

Oh, she did.

Susan Simpson:

No, she wasn't at trial.

Jennifer Whitfield:

Yes! In her deposition.

Susan Simpson:

She wasn't at trial. She never saw him.

Jennifer Whitfield:

No, in her deposition, the defense shows her a picture of Donnie Barrentine and says, "Is this the shooter?" and she says "Yes." They absolutely do.

Jennifer was right, they absolutely do. At Cora Fisher's deposition, the defense shows her a photo of a man and asks her if the man in the photo is the man she saw in the church the night the Swains were killed. Cora Fisher says yes, it is. Only, in the transcript, no one actually identifies the photo that Cora Fisher is being shown at the time. And, if you're only reading the transcript, and don't have access to any of the exhibits like we don't, it's easy to assume that the photo in question must be a photo of Dennis Perry. That's what I thought.

But it's not. It's a photo of Donnie Barrentine.

Jennifer Whitfield:

And then she's asked, "Are you pretty sure that that boy at the top picture...", who's Donnie Barrentine, she's not told that, but ... " that the boy at the top picture is the boy you saw in the church that night?" She says, "Yes." Which is a plain identification of Donnie Barrentine as the shooter in the church that night.

[26:47] Colin Miller: The State's star eyewitness identified the defense's alternative suspect as the killer, and for some reason, there's not a single word about it in the defense's opening statement. We have to assume they did at least bring it up in closing. But from the transcripts we have, this whole identification of Donnie Barrentine is only ever brought up once during the evidentiary portion of the case. And that was during the cross examination of Dale Bundy. Defense Attorney Dale Westling asks Bundy about it directly: were you there when Cora Fisher identified the photo of Donnie Barrentine as the killer, and he says, yes, I was there.

Susan Simpson:

And, the defense asks, "Well did that cause you a little worry?" Answer: "No, sir." Just no concern. He did not ... not bothered by it at all.

Jennifer Whitfield:

Yeah, you do hear from the transcript too that the defense attorney, on at least I think two occasions, asks the judge to direct Dale Bundy to stop smirking at the jury. And it gives that kind of answer a little color, right? If you could imagine him, sort of smiling at the jury in this like knowing way. He's approaching it from an overabundance of confidence.

[30:04] Rabia Chaudry: On Day 3 of Dennis Perry's trial, the jury heard from Butch Kennedy, from Carrol Ann Raborn (Ray-born), and from Jane Beaver. Butch Kennedy described his work during the initial investigation, while Carrol Ann told the prosecutor she'd never said that Dennis Perry had called her on March 10th, 1985, to tell her he was in Waverly. The prosecutor then put GBI Agent Ron Rhodes on the stand, who testified that he interviewed Carrol Ann in 1998, and she had said Dennis called her on exactly March 10th, 1985. Though, Agent Rhodes said, he'd never thought to ask her how she possibly could've known the date of a phone call that happened 13 years ago.

And then Jane Beaver testified. She came off as a credible seeming witness, and her testimony was damning.

It also came with an unexpected surprise, one that Dennis' defense attorneys had been given no warning about in advance of trial. Here's the transcript, from prosecutor John Johnson's direct examination of Jane Beaver:

JOHNSON: Is there another way to get there from Mr. Wilson's house, to the area around the church?

BEAVER: There's a firebreak through the woods.

JOHNSON: And if you go that way, how far is it?

BEAVER: Probably five minutes.

Camden County is mostly timberland. That timberland is crisscrossed with firebreaks -- clear cut strips in the woods that, in the event of a forest fire, are intended to slow a fire's advance. And at first, it's not clear why John Johnson wants to talk to Jane Beaver about firebreaks, because he moves on with his questioning. But then a few minutes later, he circles back. "Now, about those firebreaks -- what does Dennis Perry know about them?", John Johnson asks Jane Beaver.

The defense objects. They are confused about why Jane Beaver is being asked about firebreaks, of all things, but the question is inappropriate regardless, and anyway, any testimony about conversations involving the defendant should've been disclosed in advance of trial. This certainly never was. But John Johnson tells Judge Williams that he himself only learned about these firebreaks 5 minutes ago, during a brief recess, when Jane Beaver told him about it for the very first time. So Judge Williams rules that since the prosecutor had only just learned of it himself, she was going to allow the evidence to come in.

[32:13] Colin Miller: That's why, at Dennis Perry's trial, Jane Beaver ends up spending a lot of her testimony talking about firebreaks, and how she'd once been in Waverly visiting Carrol Ann, when Dennis Perry came to visit. She'd asked Dennis how he'd gotten to Carrol Ann's place, and he told her: I walked the firebreak.

Jane Beaver tells the court she only knows about one firebreak that Dennis Perry walked on, and that's the one between his grandparents' house and Carrol Ann's house. But, she says, if Dennis Perry knew about this firebreak, he might know about other firebreaks. Such as firebreaks that ran through the timberland behind Rising Daughter, and back over towards the roads connecting up with the road Dennis Perry lived on.

[32:48] Susan Simpson: And this is why, when Jennifer and I were down in Waverly one day, we went out searching for firebreaks. As we were driving around, I was telling

Jennifer about how, after all this firebreak stuff came up at the trial, there'd been a brief period when the attorneys and the court were considering taking the jury out to Waverly to see these supposed firebreaks for themselves. Eventually, though, Defense Attorney Dale Westling had made a call. "I'm not going to go out there," he said. "I'm afraid of snakes." And Judge Williams replied, "So am I." So that was that. No field trip to the firebreaks.

And I was telling Jennifer all this, but really what I was doing was trying to convince her that, yes, we actually needed to be out here, driving around looking for these firebreaks for ourselves.

Susan Simpson:

Why didn't they go to the site? Then the jurors could see that it's all just a bunch of confusing nonsense.

Jennifer Whitfield:

But, more importantly, who cares?

Susan Simpson:

That's a good point.

Jennifer Whitfield:

I don't understand ... I mean instead, I think why was it made an issue at all? I don't ...

Susan Simpson:

Because they have to explain ... he didn't have a car, they had to explain how he got there.

Jennifer Whitfield:

From his house to the church?

[33:53] Colin Miller: The thing is, though, there were people who cared about these firebreaks. They cared about the firebreaks a lot. And these people were on Dennis Perry's jury. That's why this matters. Multiple jurors from Dennis Perry's trial have described this firebreak thing as a big reason for why they convicted Dennis Perry. It wasn't just the juror that Ed and Clare talked to, the one who had three reasons for why Dennis was guilty, and #2 was the firebreaks. Even jurors who'd initially had some doubts about Dennis Perry's guilt, who'd been more sympathetic to his case, had found

this evidence to be convincing. As one of the jurors told us, "I remember, that for a little while, I had doubts that he had done it. But then, I wasn't so sure. They came up with -- there was this trail, a path from the church to where he lived, and he'd gone to borrow money from the pastor before, and the pastor wouldn't loan him the money."

Some of the jurors didn't recall firebreaks the at all, but a lot of them did, and all of the jurors who recalled the firebreaks, except for one, found them to be very compelling evidence. The exception, of course, is the wildcard, Donna Turner.

Donna Turner:

And they kept making a reference to this logging trail several times. How you could cut through the woods, go through this logging trail, and come up to the church. And, you know, what is the relevance of talking about a logging trail to the church? Every once in awhile it would just get really screwy, like why are we here?

Donna seems to have been the only one on the jury to have had that opinion, though. So off to the firebreaks Jennifer and Susan went.

[35:25] Susan Simpson: Jennifer and I started off by checking out what I'm going to call Firebreak #1. That's the firebreak that Jane Beaver actually testified about, that she'd actually seen Dennis Perry use. It runs between Dover Bluff and US-17, and roughly connects up Dennis Perry's grandparents' house with Carrol Ann's house.

Susan Simpson:

We are in the firebreak. So it's basically just a really beaten down dirt road. Bunch of houses on it. And there's the lake...

Jennifer Whitfield:

And it doesn't quite make it to Jane Beaver's trailer.

Susan Simpson:

Well you could walk around the lake I guess? I mean, I can see somebody possibly making a cut-through through here? I don't know...

Jennifer Whitfield:

But this is not...

Susan Simpson:

She makes it sound like a secret firebreak, not like a road. I mean it's a crappy road, but...

Jennifer Whitfield:

It's not clear to me that this is what it was though, 30 years ago.

Susan Simpson:

Nothing is. But also it wouldn't have been - there were houses here though, so it was like this.

I guess you could call the thing we were driving down a firebreak. But it's also a road that people live on. So really, I'd just call it a road. And, at least today, it's even got a stop sign and a little green street sign. Williams Place, it said. It's a road.

Unsurprisingly perhaps, our trip to this first firebreak-slash-road had not left Jennifer any more impressed with this whole firebreak theory.

Jennifer Whitfield:

I'm still struggling with why him using a cut-through to get from his house to her daughter's trailer somehow implicates him in a murder.

Susan Simpson:

Because it proves he can move like a ninja with no one noticing him. I don't know.

Jennifer Whitfield:

Which is insane. I mean, it proves that he walks from one place to another. I don't understand it.

Susan Simpson:

It's 'cause we..after all the work they did to prove he used a motorcycle to get down here, that he could have owned a Duster.. And then they just go, "oh he walked".

After checking out Firebreak #1, it was time to go check out Firebreak #2. This is the firebreak that actually mattered for purposes of the murder trial, because it's the firebreak that Dennis Perry potentially could've used to walk back from Rising Daughter to his grandparents' house after the murder.

But checking out Firebreak #2 was going to be a harder task, for a few reasons.

First, this firebreak isn't an actual thing. Not like Firebreak #1 is a thing. Firebreak #2 is just a hypothetical concept. All we know is that, at Dennis Perry's trial, Jane Beaver testified there were firebreaks back in the timberland there that went between Spring Bluff Road and US-17, and which someone could have used to walk from Rising Daughter back to Dennis' grandparents' house. Problem is, there is no actual firebreak that's ever been identified as the firebreak in question. In fact, Jane Beaver had personally never seen or heard of Dennis Perry using any firebreaks back there -- she just thought it was *possible* that he *could* have used them. Assuming they existed. Anyway, Jane Beaver wouldn't have known herself, since she certainly never walked down them.

And the second reason that Firebreak #2 would be harder for us to check out is that it was going to be much much longer than Firebreak #1 was. Williams Place, the firebreak-slash-road that cuts across from the Wilson's place to Carrol Ann's place, is only two tenths of a mile long. But this second firebreak, the hypothetical one, would run somewhere between Spring Bluff and Rising Daughter. Which means it'd have to be anywhere from 1 mile to 2.5 miles long, as the crow flies.

In the end, Jennifer and I just decided to take the first dirt road we came to on Spring Bluff Road, and see what happened.

[39:02] Susan Simpson:

Oh god, is this a terrible idea?

Jennifer Whitfield:

Hmmm...not yet!

Susan Simpson:

No, it's not...

Jennifer Whitfield:

Look at this! This is a real road!

Susan Simpson:

[laughs, crosstalk] Well I don't know...

Jennifer Whitfield:

Maybe too strong, maybe not real. But it is a road.

Now, satellite images show that this particular road we that we were on did not actually exist before 2000. Still, even though Dennis Perry could never have traveled along this roadway back in 1985, any pathways that had existed back then probably would've looked something like this one. So we drove along it as far as we could, in a direction that we hoped was more or less towards Rising Daughter.

Jennifer Whitfield:

Drive it like a rental!

Susan Simpson:

[laughs] But I don't want to get stuck. I don't want to....

The road stopped being any kind of road, so we got out and started walking. It wasn't too bad of a hike -- the land back there, at least now in 2018, is a broad flat expanse of swamps and mostly cleared timberland, and if you're careful, you can pick your way through it.

Jennifer Whitfield:

End of the world pretty?

Susan Simpson:

It is.

Jennifer Whitfield:

Isn't it? I feel like we are currently looking at what it would appear to be if there had been a nuclear disaster.

Susan Simpson:

Or like five or six years post nuclear disaster.

It is pretty back there. But it's also pretty desolate.

Susan Simpson:

Is that vulture here for us?

Jennifer Whitfield:

Yes.

Then again, all of this is just based on what the land looks like now in 2018. The pine trees that once grew here could've been harvested and regrown twice over in the time since the Swains were killed. There is no saying what exactly what it looked like on March 11, 1985.

Still, if you had to get from Rising Daughter to Spring Bluff through the timberland, could you do it? Yeah. I think you could. There's just no reason you *would*, not under normal conditions. Because it's not a shortcut -- it's a massive long cut, or whatever the opposite of a shortcut is. If you're walking along the roadway, the trip from Rising Daughter to the Wilson's house where Dennis was living is an easy stroll of about nine tenths of a mile long. But by taking the firebreak that most likely would've been available back in 1985, that stroll becomes a 2.8 mile long slog.

[41:15] Jennifer Whitfield:

If the theory -- if 30 years ago it was like it is today, and the theory is that he went there through the firebreak, wouldn't he be notably...

Susan Simpson:

Dirty?

Jennifer Whitfield:

Dirty?

Susan Simpson:

Likely...

Jennifer Whitfield:

Swampy?

Susan Simpson:

I don't know. I think the theory would have to be that he walked on the road like a normal person, and after it turned into a murder by accident, or whatever happened, that's when he would try to escape unseen. Which this would allow you to do.

Probably would allow you to do, anyway. We didn't actually walk it the whole way ourselves. Too many swamps. Instead, we went back to the car, and drove back around US-17, to see what the firebreak might've looked like from the other side. Not far down from Rising Daughter, there's a dirt road coming off from the highway that heads back towards the cleared timber land where we had just been, so we started walking down it, trying to get our bearings.

Susan Simpson:

So, with the caveat that one clump of trees looks like another, I think we were on the other side of those trees.

Jennifer Whitfield:

Yeah.

[42:20] Susan Simpson: It's a really good thing that Jennifer and I weren't trying to recreate the entire firebreak journey that day. Because later, when I compared where we'd been against satellite images of the whole area, I realized that the clump of trees we'd been looking at was definitely not the right clump of trees. If we'd tried to walk towards there, we'd have ended up bushwhacking our way through two miles of swamp and brush before we got to a real road.

Here's what it all comes down to. As a matter of every day transportation, it is wildly implausible to think that Dennis Perry would have ever have walked the firebreaks to get to Rising Daughter, or to get to anywhere else. There's just no reason whatsoever for him to do so. Walking the roadway is much quicker and much easier.

Also, while it would be completely possible for someone who is unfamiliar with the land back there to find a way to walk from one side to the other, remember, the theory here isn't that Dennis Perry was making this journey in the daytime. He was doing it at 9 o'clock at night.

Susan Simpson:

When I was staying in Camden County after you left, I went back at night to try and...

Jennifer Whitfield:

Yeah?

Susan Simpson:

Yeah...I didn't get very far. [laughs]

Jennifer Whitfield:

[laughs] That's an insane thing to do at night.

Susan Simpson:

[laughs, crosstalk] I was already...I had my phone as a flashlight, so already I'm cheating. And like I get out there, and the branches started hitting my legs, and I was like "Nnnnoo. I don't have to do this, I'm not going to do it."

Jennifer Whitfield:

[laughs] And in the middle of broad daylight I was like "Whaaat?" I don't know, I feel like there could be critters and things.

Now, I like hiking, and hiking in the dark is not something I have a problem with. But hiking through swampy land on a poorly defined path? Ehh. Given that I couldn't actually prove that the conditions there now were the same ones facing someone fleeing Rising Daughter back in 1985, and given that none of this actually meant anything, I decided to take a pass on the experiment.

But assuming the land back there now is similar to how it was back then, could someone crossed from US-17 to Spring Bluff at night, without a flashlight, and with no familiarity with the path? I don't know, but I am very skeptical that anyone would have tried. It'd be a crazy decision to make, even in the heat of a frantic moment. Besides, there is no evidence whatsoever that's what actually happened here. Jane Beaver was just speculating -- she had no idea what paths were back there, and she had no idea if Dennis Perry knew what paths were back there. She was just guessing.

But at trial, when this whole theory was suddenly sprung on the defense out of nowhere, the defense was caught off guard. They'd never heard about these firebreaks, and in the moment, they'd had no way to counteract Jane Beaver's speculation with actual facts.

[45:05] Jennifer Whitfield:

But bottom line, if they had disclosed this was their theory of the case...

Susan Simpson:

Yes

Jennifer Whitfield:

...then the defense would've been prepared to put on information about the Duster. You know, the reason why...

Susan Simpson:

But is that going to help you? I mean like "haha, he's not guilty because he didn't walk here, he's guilty because he drove a car there!"

Jennifer Whitfield:

But there's no indication that he *had* a Duster.

Susan Simpson:

Well how does that help him? So there's one witness that's bullshit, but does that really...

Jennifer Whitfield:

No, I mean it shows that they don't have any idea how he could have done this crime.

Susan Simpson:

They don't. That is true.

I was being too cynical and defeatist here. Jennifer was right. If the defense had known about the firebreaks, if they'd know that was the theory in advance, they could've not only investigated how unlikely that claim really was, but they also could have been prepared to introduce at trial all the evidence that the killer had driven a car to Rising Daughter. Something that, going into trial, the defense must've been assuming the State would plan on introducing. That evidence largely never did come in, not directly. Only one of the jurors we spoke to even picked up on it.

Instead, most of the jurors believed that Dennis Perry had walked to Rising Daughter. And so, they believed he was guilty.

[48:02] Susan Simpson: When I mentioned to Butch Kennedy that I'd spoken to some of the jurors, he'd asked me about why they'd made the decision they'd made. What had made them convict Dennis Perry?

Susan Simpson:

And like one guy told me that the firebreaks proved he was guilty. When I'm not even sure there *were* firebreaks.

Deputy Butch Kennedy:

They - It was so grown up in that area back there that I don't know that you could get from....I'm sure you can, I think Dale went down that firebreak.

Susan Simpson:

So there was a firebreak.

Deputy Butch Kennedy:

Where a firebreak had *been*.

Butch Kennedy had had no idea that the firebreaks had actually been a part of the State's case at trial. That was news to him. But he had heard about the firebreaks before -- Dale Bundy had told him about them.

Susan Simpson:

The first time anyone ever heard of it was Jane Beaver, at trial, when she comes up with this firebreak thing.

Deputy Butch Kennedy:

I remember Dale saying something to me about it.

Susan Simpson:

Before or after the trial, do you think?

Deputy Butch Kennedy:

Before.

Susan Simpson:

He mentioned firebreaks being a thing?

Deputy Butch Kennedy:

He said it's perfect. He could've just done that and walked straight down the firebreak, right out into his grandfather's house.

If Butch Kennedy is right, Dale Bundy had known about the firebreaks long before Dennis Perry ever went to trial. It was Bundy's own personal theory about how this murder had been committed.

Which means, given everything else that's gone on in this case, I have to wonder: did this whole story about firebreaks really come from Jane Beaver, who spontaneously recalled it in the middle of trial? Or did this story really come from Dale Bundy?

Deputy Butch Kennedy:

Dale -- Dale told me about them. He said that was the escape route. And I'm thinking it was the same time that he showed me the picture of Dennis and the baby on the floor.

A couple days of days after our field trip down the firebreaks, Jennifer sent me an email. She'd done some more research into the timberland that we'd been walking on back there, in the section between Spring Bluff and Rising Daughter, and she'd pulled up the deed info, to find out who owned it. Maybe we'd be able to interview the owner and find out more about the firebreaks, maybe even get copies of maps of what it was like back then.

It turned out, though, that another interview would not be necessary. I had *already* interviewed the owner. Because at the time of Dennis Perry's arrest and trial, that land had been owned by Dale Bundy.

[50:45] Rabia Chaudry: On Day 4 of Dennis Perry's trial, the three officers present at Dennis Perry's post-arrest interrogation all testify. They describe statements that Dennis Perry had made, and the officers told the jury that these statements were a confession. And this is when the jurors who, so far, had harbored doubts about Dennis Perry's guilt, began to feel those doubts slip away.

Donna Turner:

As bad as I felt for him, when the comment was made -- and he didn't say this -- and I'm thinking it was the guy from JSO, and I could be wrong. Could have even been the attorney. I'm not sure, but somebody made the comment, that 'I was so high that night I really can't remember a whole lot.' And I was like "God!" You know...

[51:37] Susan Simpson: It wasn't just the confession by itself that damned Dennis Perry. It's how it fit in with the rest of the State's case. Because if I had to choose the

single most important reason that Dennis Perry was convicted, it wouldn't be Jane Beaver, or the eyewitness identifications, or the composite image. If I had to choose just one reason, it would be the fact that, throughout the trial, prosecutor John Johnson's witnesses falsely portrayed Dennis Perry as a drug addict.

Jennifer Whitfield:

Oh my goodness, so, I now feel badly about my initial reaction, but after I read through the transcript the first time I... had in my mind a picture of a pretty severely addicted drug addict, you know. Somebody who was suffering from pretty significant substance abuse.

Rabia Chaudry: Jennifer Whitfield reached the exact same conclusion the jurors had after sitting through Dennis Perry's trial.

Susan Simpson:

And, you told me that you think it's heroin was like, in there. And you're like, "I read it in the transcript!" And I'm like, I don't remember that. So I was searching them all, like where does it say heroin, how did I miss that-

Jennifer Whitfield:

I was confident in my mind, yeah! That's what I pictured after reading the transcript the first time. I also could not find heroin in the transcripts when I went back to look, so.

The word "heroin" is nowhere in the transcripts. All that's mentioned is Dennis Perry using drugs, being on drugs, being high.

Susan Simpson:

The way they talk about it, it doesn't sound like the dude who, you know, once in a while smokes a blunt.

Jennifer Whitfield:

No, I mean there's references to him having this, you know, drug disorder, or drug addiction, or drug problem, it's just referenced over and over and over.

Most of those references were made by Jane Beaver. The rest came from Dale Bundy. It's all just hearsay. And it's not true. But the jury, just like Jennifer, thought that it was an uncontested fact that Dennis Perry was a junkie.

Susan Simpson:

What do you think the motive was for this crime?

Donna Turner:

Drugs. No doubt in my mind.

On this point, Donna Turner was on the same page as the rest of the jury. The same wrong page. And this incorrect belief provided the jury with a way to answer all the questions that had been left unanswered by the State's case. It was all right if the State's case didn't make complete sense -- it didn't have to. Because drug addicts often don't make sense either.

On Day 4 of Dennis Perry's trial, the State rests its case. At 3:45pm that afternoon, the defense begins to put on its case. And over the next three hours, they will call 11 witnesses, though many of those witnesses were only on the stand for a couple minutes.

[54:19] Jennifer Whitfield:

You know, we know from the testimony at the habeas hearing that was challenging the voluntariness of Dennis' waiver of his appeal rights, that the defense was predicated on two main theories. One is to shift the blame to Donnie Barrentine, and to explain to the jury how Donnie Barrentine committed this crime, and the other was to explain that Dennis Perry had an alibi at the time of the crime. And the witnesses they put up as part of their defense were intended to, you know, further those defense theories.

The defense's strategy was clear. It just didn't work. In our recaps of juror interviews, the same theme kept com up over and over again.

Ed Costikyan:

It sounded like he felt like the defense was just distraction and like, bullshit and convicted almost based on that, because there was essentially no defense he believed.

Dennis Perry's alibi hadn't seemed credible. And neither had the defense's efforts to point the finger at another suspect. And that flailing, desperate attempt at a defense had just made Dennis Perry look that much more guilty.

Dennis Perry did have an alibi, though. The last witness the defense calls at trial is GBI Agent Joe Gregory, and he testifies that back in 1988, when Dennis had been called in as a suspect, he had investigated, and vetted, Dennis Perry's alibi. The notes from his case file would confirm it, he tells the jury. On the day the Swains were killed, Dennis Perry had been on the job in Atlanta, working for a concrete company there, and he could not have made it to Waverly in time to commit the crime. The problem was, Agent Gregory no longer had the notes from his case file. Those had gone missing.

But at trial, the defense doesn't just rely on Joe Gregory in making its case for Dennis' alibi. They also call an old family friend to the stand. This is the same friend who'd gotten Dennis the job at the concrete factory in the first place. And he tells the jury that he drove Dennis to and from work every day, since Dennis didn't have a car, and that on the week of the murders, Dennis Perry hadn't missed a day of work.

[56:51] Susan Simpson: When I talked to Joe Gregory, and told him I'd spoken to some of the jurors from Dennis' trial, Dennis' alibi was the first thing he wanted to know about.

Joe Gregory:

Did you ask them why they did not believe witnesses that put Perry in Atlanta?

Susan Simpson:

I did.

Joe Gregory:

And what did they say?

Susan Simpson:

You know, it was so frustrating, they were just like, "Oh, we know how it goes, you wanna be nice and do a favor for a friend, but how could you possibly remember that day that long ago?"

The jury had assumed that this family friend, who had driven Dennis Perry to and from work, was just trying to help a friend out, and that he couldn't actually recall this week in question, all those years ago.

Joe Gregory:

It was all verified, but I-I... I thought everybody, probably the same as Perry's attorney, that they would believe the guy!

But the jury hadn't believed the guy. And without the missing GBI case file, Dennis Perry had no way to show the jury that his alibi had, in fact, been documented, 15 years before.

[57:48] Colin Miller: The alibi was the less important prong of Dennis Perry's defense, though. The cornerstone of his defense was Donnie Barrentine. Everything was about Donnie Barrentine. And he was there, in person, hauled in from Florida to testify at Dennis' trial, so the defense could point at him and say -- this man is the real killer. He's the one you want. Not Dennis Perry.

It's not very often that the defense in a murder case actually puts an alternate suspect on the stand and has him testify. And in any case, when that does happen, it will probably be among the most dramatic moments of the entire trial. At the very least, it should not be a forgettable part of the State's case.

That's not what happened at Dennis Perry's case.

Ed Costikyan:

None of them had much to say at all about what the defense put on, did you notice that? None of them seemed to have a very good grasp of what the defense had been at all.

Cristina Cribbs:

Right, which is insane, because it's obviously like an alternate suspect.

Many, probably most, of the jurors did not recall Donnie Barrentine, and did not recall that there'd even been an alternated suspect. The jurors who did remember Barrentine found the whole thing ludicrous. "We weighed the alternate suspects," one of the jurors said. "And it all goes back to the fact that nothing was stolen, nothing taken. It makes no sense somebody from out of town would just be driving by and decide to shoot this couple in the church."

But reading through the transcripts, it kind of makes sense why Donnie Barrentine's testimony didn't make much of an impact. It's dull stuff. The defense asks him if he's killed the Swains, and Barrentine says no. Then they ask him he ever confessed to killing the Swains, and Barrentine says he doesn't remember. Over and over. Did you confess at a party? Not that I remember. Did you confess to cutting the phone wires?

Not that I remember. It may not have been what the defense expected, but Donnie Barrentine's testimony would have not have been as surprising to the prosecution.

In April of 2002, Prosecutor John Johnson sent an email to Donnie Barrentine. He gave Barrentine a brief update on the status of the Swain investigation, and warns Barrentine that the defense investigators may be looking for him. John Johnson tells Barrentine he won't give the the defense Barrentine's home address for a little while yet, but eventually they'll probably find him and try to talk to him.

And in that email, John Johnson tells Barrentine what he should tell the defense investigators, if and when they do find to him. John Johnson writes:

"As I told you, if you said the things that all those people say you said, that's ok. If you don't remember, that's ok too. If you deny it, then they can bring in all those people to say you said these things and make it look like you did. You have told us that you don't remember and could have said it. That's fine with me."

Even if Donnie Barrentine's trial testimony was forgettable, Donnie Barrentine himself wasn't. Donna Turner is one of the jurors who recalls Donnie Barrentine, and to this day, her memory of him is vivid.

Donna Turner:

I mean, he walked in with a swagger, I'm Billy Bad Ass.

But Donna Turner, like all of the other jurors who even recalled Donnie Barrentine playing a role in the case, had not been impressed with defense's evidence about him. There was a string of witnesses the defense called, one after the other, to testify about this party they'd been at back in 1985, down in Marianna Florida. Jeff Kittrell is the most important one. He's the one who was arrested with Donnie Barrentine in Telfair County in 1985, and the first one to tell the police that Barrentine and his blond friend had killed the Swains. Sue Wilkes testified too -- she had been Jeff Kittrell's girlfriend in 1985, and she told police she'd heard Donnie Barrentine bragging at a party that he'd killed a black couple at a church.

Donna Turner:

Um, then they bring another one in... she was also coming out of jail... you know. In my mind, I had to push that just out. Like...-

Susan Simpson:

Like, what is this nonsense. Yeah.

Donna Turner:

What is this, yeah. 'Cause to me, the credibility, it just wasn't there.

Just like DA Glenn Thomas had predicted long ago, when he'd refused to charge Donnie Barrentine back in 1985, the jurors found these witnesses underwhelming.

[1:01:40] Susan Simpson: Jeff Kittrell passed away a few years ago, but I talked to Sue Wilkes earlier this year, and she still stands by her story. I can see, though, how a jury might've been wary of putting too much weight on her testimony. Because I'm wary of putting too much weight on her testimony. She can be somewhat scattered, but more importantly, when it gets down to it, she just doesn't know much about this case. She never has. All she's ever known is that, 33 years ago, she heard Donnie Barrentine bragging about something he'd done in Georgia.

Susan Simpson:

And they were laughing about that?

Sue Wilkes:

Yeah. That, when they was comin' back. When they come back that was what was told, that they walked into church and when they went in to shoot the people... was it black people? The (speaks softly) "n*ggers." You know what I'm saying. Yeah. When they come in and shot, that's how it was put out there like that.

Susan Simpson:

So that's how they were sayin' it?

Sue Wilkes:

Yeah, no. (stutters) - When they walked in, n*ggers jumped up and started hollerin' and they turned 'round and shot 'em.

Sue Wilkes doesn't recall many details beyond that, assuming she ever really knew more details beyond that.

Susan Simpson:

So it sounds like Donnie claimed to have done a lot of crimes...

Sue Wilkes:

He did. He did a bunch of stuff.

Susan Simpson:

But, that's what I'm trying to figure out. Was he just talkin'? Or did he mean it?

Sue Wilkes:

He mean it. I've seen him, he mean it. Donnie was crazy-

Susan Simpson:

You don't think he could have been bragging?

Sue Wilkes:

No.

Susan Simpson:

Or just making stuff up, like I'm so bad, I'm so tough, I did all this.

Sue Wilkes:

Mm-mm (negative).

Susan Simpson:

You believed him, you thought it was 100% real.

Sue Wilkes:

Yeah, I know he was real.

Though, Sue Wilkes did say one thing to me that she definitely didn't say at Dennis Perry's trial. And that was about Jeff Kittrell, who'd also be called as a defense witness to point the finger at Donnie Barrentine.

Susan Simpson:

Do you think Jeff did it too?

Sue Wilkes:

I think Jeff was stand back guy, that had a hand in it, but I think Donnie was the mastermind of it.

Susan Simpson:

But you think Jeff might have been there. 'Cause the way Jeff tells it, is that he only heard from Donnie what happened, but he wasn't there himself. But you think Jeff might have actually been there? You're nodding, yeah.

There was one potential witness for the defense who, notably to the jury, did not testify at Dennis Perry's trial. And that was Dennis Perry himself.

With Donna Turner, I got the impression that, throughout the whole trial, she'd been wanting to believe in Dennis Perry's innocence. That in some ways, she'd been silently rooting for him, hoping he'd find a way to pull through and show that, no, he hadn't done this. Something to refute the things the State was saying about him.

[1:04:13] Donna Turner:

I just hate it was so detrimental what we were told that he said... but he never said it himself to us verbally, "I was so high I don't remember a lot of that night." But I just feel like he should have fought for his... he should have got up on that stand and fought for his life. Tell me somethin', give me somethin', throw me a bone! You know, just throw me a bone. And we got no bones.

I don't think she wanted to believe the state's case. But Dennis Perry and his defense hadn't given her anything else to believe either.

Donna Turner:

Could have even been the attorney. I'm not sure, but somebody made the comment that, "I was so high that night, I really can't remember a whole lot." And I was like... God. You know. I mean, can't you remember anything? I really feel if he had had a chance to speak his peace... and give an account of that night, it probably could have went a different way.

Donna wasn't the only one who felt this way though. While talking to other jurors, I asked them what had convinced them of Dennis Perry's guilt, and several of them had mentioned the fact that he'd never testified. They knew on some level this was wrong. They knew this wasn't something they could actually say during deliberations and they all stressed that no, no one actually said it. But, inside, unsaid, it's what they felt. One juror told us, "When the murderer didn't take the stand, well, that stood out. That's a chance you take. He should've taken it."

The jurors are wrong. Wrong constitutionally in giving any consideration to whether or not Dennis Perry testified. But they're also just wrong practically in believing that Dennis Perry should've taken that chance and testified in his own defense. Because what the jury wanted here, and what the jury never got, was some kind of answer to the state's case. And that's something Dennis Perry could never have given them.

Susan Simpson:

What if he had gotten up there and said, "Well, it was 18 years ago and I have no idea where I was on a random night 18 years ago?"

Donna Turner:

Then personally I think, nah, somethin' this traumatic? And you're being held accountable for it and you've already been questioned one time about it?

[1:06:29] Rabia Chaudry: In its case against Dennis Perry, the State called 15 witnesses over the course of three days. The defense was briefer, calling 11 witnesses over the course of three hours. At the close of the defense's case, it was clear to many of the observers in the courtroom which way the winds were blowing. There were a few reporters Susan has spoken to who were present for the whole trial, and all of them thought the same thing:

Susan Simpson:

Your sense was that everyone thought he'd get acquitted?

Shannon Malcom:

Yeah, oh yes. We were joking about it in the hallway, like you know, c'mon, quit wasting our time, we just felt sure he was gonna be acquitted.

The prosecution must have shared the reporters' feelings to some degree. Because the plea offer they made to Dennis Perry in the middle of his trial suggests that they distinctly lacked confidence in their own case.

Before trial, Dennis Perry had already turned down a number of proposed plea deals from the State. But this time, at trial, the prosecution must've thought he was making an offer that Dennis Perry couldn't refuse: time served. Dennis Perry had already been in jail for 37 months at that point, while awaiting trial. The State told him, plead guilty to a lesser offense, and you'll walk out today.

Dennis Perry said no.

At 4:00pm that Friday, the fifth day of Dennis Perry's trial, the jury began its deliberations. By 7:30pm, they had a verdict.

Donna Turner:

We weren't unanimous in the beginning. We were not. But... in the end, he was convicted. And I wanted to slump out of that place and hide (laughs). I mean, his family, all of them were out there with banners, I mean it was just so sure that he was gonna get to go home. And he didn't. No.

[1:08:31] Susan Simpson: Thanks for listening to Undisclosed: The State V. Dennis Perry. We'll be back on Thursday with an Addendum episode, so send us your questions with the #UDAddendum. Mital Telhan, is our executive producer. Our logo was designed by Ballookey, and our theme music is by Ramiro Marquez and Patrick Cortez. Audio production is by Rebecca LaVoie of Partners in Crime Media, and host of the Crime Writers On podcast.

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And if any of our listeners out there have information on Dennis Perry's case that you'd like to share, we'd love to hear from you. You can reach us at undisclosedpodcast@gmail.com.

That's all for this week, and thanks so much for listening.