

UNDISCLOSED, The State v. Dennis Perry
Episode 17 - It's Called Being a Judge
November 26, 2018

[0:05] Colin Miller: Jury selection in Dennis Perry's case took up an entire week. Through a process called voir dire, the attorneys learned about the potential jurors' views and backgrounds, and eliminated any who shouldn't be in the jury pool at all. We don't have the voir dire transcripts for Dennis Perry's case, but we do have attorneys' notes from the selection process, and those notes show how hard it would've been to get a jury that was completely unfamiliar with the case already. Many of the potential jurors had seen the Unsolved Mysteries episode. Several in the jury pool had attended Rising Daughter at some point in their lives. One had known the Swains. One had known the woman who'd played Thelma Swain on Unsolved Mysteries. Lots of potential jurors knew other potential jurors, or knew the judge, or knew the attorneys involved.

In Dennis Perry's case, the prosecution was seeking the death penalty, which meant that in addition to all the usual jury selection requirements, anyone who made it on to this jury would first need to be death qualified. That meant that all of the potential jurors who told the court that they would not be able to sentence Dennis Perry to death were eliminated from the jury pool. There was also one potential juror who failed his death qualification for the opposite reason. He told the court that, should there be a guilty verdict, the death penalty would be the *only* sentence he'd be willing to impose. He was removed as well, for being too pro-death. Though, others in the jury pool, who had feelings that were similar to those held by the too-pro-death juror, would make it through voir dire without those feelings being detected. And at least one of them would make it on to Dennis Perry's jury.

[1:29] Susan Simpson: Other potential jurors in the jury pool may not have been so adamant about what sort of penalty should be imposed in this case, but already, before hearing any of the evidence, they were already adamant about what the verdict should be. One member of the jury pool told the court that if the defendant was arrested, then he did it, and he would have to prove to her his innocence, but the court denied a motion to strike her for cause and instead, the defense used one of its 15 peremptory challenges to remove her. Another member of the jury pool told the court that she too had already made up her mind in the case. She must have been rehabilitated though,

because she was not removed for cause, and, ultimately, she made it on to Dennis Perry's jury.

And there were other jurors, jurors who ultimately made it onto the jury who, when we talked to them, acknowledged that perhaps they might not have been as unbiased as they ought to have been.

Clare Gilbert:

He also said that he probably shouldn't have been on the jury.

Cristina Cribbs:

Should not have? Why did he say that?

Clare Gilbert:

It appears that he said that because he has two sons who were drug addicts who committed crimes they said they did not commit, so he was predisposed to not believing in someone's innocence or that-

Cristina Cribbs:

Oh, because he knew his sons really did it and they were denying it, okay.

There were also at least two people in the jury pool who'd previously been jurors in cases that were tried by the prosecutor John B. Johnson. One of those potential jurors had written a note to the court to explain why this meant he could not serve on the jury in this case now. His note read:

"I believe we convicted and sentenced an innocent man in [that] trial. I believe that was in part because of the case presented by the prosecutor. Because of this, I do not believe I could be impartial in another case presented by this prosecutor."

The judge removed that juror for cause. And another potential juror told the court during voir dire that he too had been on a jury for a murder trial prosecuted by John Johnson. He'd been that jury's foreman. They'd sentenced the defendant to death.

That member of the jury pool ended up being selected for Dennis Perry's jury as well. And once again, he was selected to be the jury's foreman.

Finally, after a week of voir dire, a jury of six white men, four white women, and two black women was selected for the jury. Plus four alternates. Trial would begin on Monday, February 10, 2003. By Valentine's Day, Dennis Perry would be serving two life sentences.

Hi, and welcome to Undisclosed. This is the 17th episode in The State vs. Dennis Perry. I'm Colin Miller, an associate dean and professor at the University of South Carolina School of Law and I blog at EvidenceProf Blog. Rabia is out this week, so I'm joined by my colleague Susan Simpson.

Susan Simpson: Hi, this is Susan Simpson. I'm an attorney in Washington DC and I blog at The View from LL2.

SEQUESTRATION

[7:01] Susan Simpson: Overall, most of the jurors at Dennis Perry's trial seem to have taken their duties very seriously. They felt all of the weight of the task they'd be given. Many of the jurors, when I asked them to describe their experience of being on the jury, had used the same word: "traumatic." The whole thing had been traumatic, they said.

Though, even on this, there may have been some exceptions to the rule among the jurors, as juror Donna Turner recalled.

Donna Turner:

There was an older gentleman that sat next to me in that jury box and he was, why he was selected in the first place I still do not know. He was an *older* gentleman. And I would have to kick him with my foot to wake him up at times. While we were sittin' in court.

Colin Miller: Serving on a jury can be a stressful experience, no matter what kind of trial it is. But for the members of the jury in Dennis Perry's case, jury service caused more disruption to their lives than it usually entails.

Clare Gilbert:

They were sequestered. Under really really strict conditions.

The 16 jurors and alternates were kept at a hotel on nearby St. Simons Island for the duration of the trial.

Clare Gilbert:

Yeah, they couldn't get any TV, she had to approve the books. They could gather-

Cristina Cribbs:

The books? (crosstalk)

Clare Gilbert:

Yeah. They could gather and watch approved movies as a group and she, when asked, allowed them to have one beer in the evening.

One juror brought the instruction manual for his new GPS unit. That was reviewed and deemed to be approved reading material by Judge Amanda Williams. Another juror had brought the newest issue of the NRA magazine with him. That got thrown out. The jurors were allowed to call home once a day in the evenings, but those calls came with a condition. There had to be a chaperone.

Donna Turner:

I called home maybe twice, maybe three times. But each time a deputy had to be standing beside me. And I remember the first phone call to my husband was: "A deputy is standing here listenin', watch your mouth!"

Susan Simpson: Some of the jurors remembered being stressed out and frustrated by the sequestration, though most, on balance, were more stoic about the situation, describing them as a necessary if serious inconvenience. And if nothing else, the jurors were fed well. For the week of the trial, for lunch and dinner they were taken to nice restaurants around Brunswick, under guard and under instruction not to interact with anyone but court staff, but the tab was picked up by Camden County.

As one juror described being sequestered, it was like almost like being in jail, only with really good food. The juror, who clearly was skilled in making the best of a bad situation, told us about how he and another one other juror had started ordering two main courses for their meals, just because they could. They'd order steak and king crab legs. Plus oysters. The evenings may have been boring while on jury duty, but they did eat well.

For the week of Dennis Perry's trial, though, most of the jurors waking hours were spent not at fancy restaurants or the hotel, but at the Glynn County courthouse. For five days, every morning, the jurors were shuttled from the hotel to the courthouse, where they heard testimony and arguments until court would recess in the evenings. And all of this

was overseen by the judge who, three years earlier, had first been assigned to this case, back in 2000. That was Judge Amanda Williams.

AMANDA WILLIAMS

[10:18] Colin Miller: Judge Amanda Williams served as a judge for the Brunswick Judicial Circuit for 21 years. The Brunswick Judicial Circuit covers five counties in all, including Camden County, where the Swain murders were committed, and Glynn County, where Dennis Perry's trial was held. And throughout the circuit, she was known as a tough, but hard-working judge.

Donna Turner:

I was really impressed with Amanda Williams. To me, she looked like she, I mean really, I'm not a judge of judges, because I don't know judges that well, but to me, I really, my impression was she's on her A game. I mean she was very attentive, she was very concise with her instructions to us... yeah. I can't say anything bad.

That's Donna Turner, the juror from Dennis Perry's trial. Many of the other jurors gave similar accounts, although some put it in slightly harsher terms. Judge Williams was very attentive, some said, but very tough. You don't mess around with Judge Williams.

In addition to her normal judicial duties, though, Judge Williams oversaw the drug court. Actually, she's the one who started the drug court program in the first place. She was also responsible for hustling up funding to keep the drug court going. Sheriff Bill Smith helped her out with that sometimes -- as you might remember, in 2001 and 2003, Sheriff Smith donated \$100,000 to the drug court, paid out from the Camden County seized assets fund.

In 2010, *This American Life* did an episode on the toughest drug court in America. It followed the case of a woman named Lindsey Dills, who lived in Glynn County. In 2005, her father reported her to the police for a misdemeanor offense. She'd stolen \$100 from him. At the time, Lindsey had been on a downward spiral and was abusing drugs, and when he reported her to the police, this was supposed to be something like an intervention. A wake up call.

Lindsey Dills was arrested, and she ended up in drug court.

Ira Glass - This American Life:

But if you enter a drug court program it's serious business. Especially the drug court that happened to be in Lindsey's small town, which is run by a judge that many people truly fear: the chief judge of the Glynn County Superior Court, Amanda Williams.

That's Ira Glass from Episode 430 of *This American Life*, an episode called Very Tough Love. And if you haven't listened to it yet, you should go listen to the whole thing once you're done listening to this podcast. In his report on *This American Life*, Ira Glass details what was happening in Judge Williams' drug courts, and how it was affecting the lives of the defendants who came before it.

Ira Glass - This American Life:

This is a story of what happens when a judge takes that power and starts doing things other drug courts don't. Things that violate the basic philosophy of all drug courts. After months of investigation I believe that it's likely that no other drug court judge in the country is running a program like Judge Amanda Williams.

[12:44] Colin Miller: There are a lot of ways in which Judge Williams' drug court was different. But the biggest difference, quite literally, was its size. It was huge. There were far more defendants in Judge Williams' drug court than in any other drug court in Georgia. By a huge margin. It had substantially more defendants than did the drug court for the biggest county in Georgia, even though Camden and Glynn counties had only a tenth of the population. That is why Judge Williams' drug court was so expensive to run -- and why she needed that money from Sheriff Smith to keep it going.

And the reason it was so big, and so expensive, was because in the Brunswick Judicial Circuit, often you were given only two real options: go to jail right now and likely stay there for months unless you can meet the minimum \$15,000 bond, or go to Judge Williams' drug court, and get released on your own recognizance.

Ira Glass - This American Life:

We couldn't find any drug court in Georgia that does anything like it to prod people into their programs. Because drug court is supposed to be voluntary. If you push the wrong people in, you'll doom them to failure.

Susan Simpson: During my trips to Camden County, I've run into many people who've either come before Judge Williams' drug court, or who had close friends and family members who did. And most of those people told me about what a huge mistake choosing to go before drug court had been.

And they did all *choose* to go before drug court. Going to drug court is a voluntary thing, or at least it's supposed to be, but the story I heard over and over again is that the people who went into Judge Williams' drug court did so without always knowing the true cost of what they were agreeing to.

Mostly, they'd agreed to go to drug court because they thought it was a way to avoid the most jail time. And mostly, at least for the people I talked to at least, they were wrong about that. Sometimes, very wrong. They did far more jail time than they would've done outside of drug court. Especially because, when people in drug court screwed up, Judge Williams was very quick to sentence them to jail time. Those sentences could be lengthy, as well. Sometimes, those sentences were even indefinite.

Ira Glass - This American Life:

An indefinite sentence is just what it sounds like - Judge Williams sends you to jail, but doesn't specify how long it's gonna be. Often that's because she hasn't decided. I was told that Judge Williams will declare things like "they're going to sit their ass over there till they get a better attitude" or "take them away. You'll come back when I'm ready for you."

One of the defendants before Judge Williams' drug court was Lindsey Dills. She first came into the system in 2005, and in 2008, Judge Williams sent Lindsey back to jail again, and this time, she didn't put an end date on it. She also had Lindsey put into isolation, and Lindsey was cut off from any ability to contact the outside world. She was also not given her antidepressant medication. Ira Glass spoke to Lindsey's mother about what it was like during this time, when Lindsey was sent away for an indefinite sentence, and what the family had done when they learned what had happened to Lindsey.

Vicki - This American Life:

At that point in time, I said something to Johnny, that-- I said I have a good mind to go to the newspaper and tell them what they're doing to our child. He said, 'Oh Vikki, you cannot do that. You do not know Amanda Williams and the power she has down here.' He said, "It's gotten worse since you left. You cannot do that."

Lindsey Dills' indefinite sentence went on for months, with no contact with the outside world permitted. Finally, Lindsey Dills told Ira Glass, one day, she just couldn't take it anymore.

Lindsey Dills - This American Life:

So that night, I'm like, 'I can't do this anymore.' We had a new officer on duty that doesn't know that when you get your razor, you're supposed to give it back.

Lindsey tried to kill herself. Luckily, she did not succeed. Eventually, after a total of 7 years in the system for that original \$100 theft from her dad, Lindsey was granted an early release from probation.

[17:47] Colin Miller: It wasn't just Lindsey Dills whose entire life was changed by drug court, and not in a good way. In the "Very Tough Love" episode of *This American Life*, Ira Glass also reported on what had happened to some of the other people who'd ended up before Judge Williams' drug court. People like Charlie McCullough, who for nearly two years had been successful in the drug court. And then, one day, Charlie came in for his weekly mandatory drug test, only this time, for the first time, he failed it. He knew the result was wrong, so he asked for another test, immediately. He passed it. Then he took another. He passed that one, too. The first test, apparently, had been a false positive, due to a worker recovering the vial top from the trash.

But the two drug tests that Charlie passed weren't enough for Judge Williams. She sent him to 3 days in jail for failing the drug test, and 14 days for daring to question the result. And she gave him a year and a half longer in drug court.

Ira Glass - This American Life:

In Charlie's case, being told that now he'd be spending 3 ½ years in the program instead of just 2, when he was so close to finishing and had never missed a meeting or failed a previous drug screen—it had exactly the result that research studies show is the problem with an overly punitive approach: it made him rebel. It made him give up. The harshness of Judge William's sentence took a model participant and turned him into a failure.

After the *Very Tough Love* episode first aired, Judge Williams' attorney wrote to Ira Glass, threatening to sue for defamation. The letter was 14 pages long, and complained that the episode had been filled with maliciously reckless lies about Judge Williams. It even compared Ira Glass to a substance abuser, telling him that: "The story-line of your show could have been written by an addict, saturated as it was with wild but flimsy allegations, false denials, delusions of victimization, paranoia, libel."

The letter from Judge Williams' attorney goes on to warn Ira Glass that his episode may even kill people. It says:

[T]he damages that you have caused to Judge Williams pale in comparison to the damages that you have inflicted on the drug court that she supervises, potentially on other drug courts statewide and nationwide in a time of budget crisis, and most importantly, on the addicts who now may not have the privilege of trying drug court thanks to your false story. Your outrageously inaccurate reporting may result in significant losses of drug court funding, losses of drug court participation, and losses of life.

Judge Williams never did sue Ira Glass or *This American Life*. But that wasn't the end of the matter. Six months later, just after Judge Williams was re-elected for another term with over 66% of the vote, the Judicial Qualifications Commission instigated proceedings against her, alleging 14 counts of judicial wrongdoing. The Judicial Qualifications Commission, or JQC, is Georgia's judicial oversight body, charged with investigating and adjudicating misconduct by Georgia's judges. And Judge Williams, according to the JQC, had violated codes of judicial conduct and Georgia law by, quote, "using tyrannical partiality in the administration of [her] office."

Susan Simpson: Counts 1 and 2 of the proceedings against Judge Williams were based on her treatment of several drug court defendants, including all the defendants whose cases were discussed on the *This American Life* episode. In particular, in County 1, on the Lindsey Dills case, the JQC's charges note that:

"At the time you ordered Dills into indefinite, restrictive custody, you knew or should have known that Dills was predisposed to suicidal tendencies, having previously signed an order placing her on a suicide-watch while she was in custody."

The 12 remaining counts were not all about how Judge Williams ran the drug court. Many of the charges had to do with her conduct in connection with her normal criminal and civil dockets. Like from Count 3 of the JQC's charges:

"You violated Canon 3B of the Code of Judicial Conduct when you engaged in ex parte communications about substantive legal matters. You violated Canon 3D of the Code of Judicial Conduct when you failed to recuse yourself from a case, after your impartiality could be reasonably questioned, and thereafter improperly reassigned the case to another judge you selected. "

Or from Count 4:

“You violated Canon 2B of the Code of Judicial Conduct when you showed favoritism in your order requiring payment to your daughter, under penalty of contempt, and in doing so allowed your family relationships to influence your judicial conduct. [] [I]n the Joseph case, you ordered that the parties pay your daughter \$1000 within 30 days; failing which the parties would be subject to contempt of court. [And] [i]n Crabb v. Crabb, you signed a “Temporary Consent Order” which was prepared by your daughter. The pleadings were signed by both your husband, James Williams, and daughter as attorneys for the defendant.”

Or Count 6:

“You continued to improperly act ex parte in proceedings where the respondents were denied the opportunity to be heard by the court or given due process of the law, to wit: in the domestic relations contempt action brought by Henry Bishop, III against his former wife, resulting in an illegal “lock-up” order against Lisa Bishop.”

Or Count 9:

“You violated Canons 2 or 3, or both, of the Code of Judicial Conduct by failing to be patient, dignified, and courteous to individuals appearing before you. You have used rude, abusive, or insulting language.

A drug court defendant appeared before you to request to be excused from a Saturday class for a family function. Because of your disdain for the young man’s use of the term “baby momma,” you ordered that the defendant be summarily jailed.”

[22:35] Or, finally, Count 14, in which Judge Williams was charged with wrongfully steering a man facing nine family violence charges into the drug court program, even though no drugs were involved in the case. By bringing him into the drug court program, those charges could later be dropped, and also not cause consequences to the man’s career. And, the reason Judge Williams did all this was that that man was related to a prominent Brunswick attorney named James Bishop. When a drug court staffer questioned Judge Williams about why she was bringing Bishop’s relative into the drug program, Judge Williams responded:

“Jim Bishop has been there for me for years and years and years. He has never asked me for anything, ever, in the entire time I have been on the bench, to use

my power in any case to do anything for anybody and he's asked me to do this. ... And it's that damn simple. It's called being a Bishop. And I don't want to have any more conversations about it. I know I'm doing the wrong thing, "

The conduct described in the JQC charges is not some kind of aberration in Judge Williams' record, not some blip in a lengthy but otherwise uneventful career. Far as I can tell, just about everyone in Camden and Glynn Counties, has a Judge Williams story or two to tell, but just about no one in Camden or Glynn Counties is willing to share that story on the record. The most common thing I heard about Judge Williams, though, was about her courtroom behavior. Her judicial temperament, such as it was, was hostile, volatile, and downright middle school. If she didn't like the argument an attorney was making, she'd turn her back on him, and ignore him, letting him address her back side. Or she'd tell defendants to, essentially, talk to the hand. And there was profanity. Quite a bit of it. Or at least quite a bit of it for a judge.

And all of this was something Judge Williams was well known for in the community. In "Very Tough Love," Ira Glass described hearing similar reports about Judge Williams' behavior.

Ira Glass - This American Life:

And the question it raises is the most uncomfortable question people raise about Judge Williams. Is she just a hothead? Someone who can't stand to be contradicted? Someone who overreacts when argued with? And is that affecting her rulings? This came up in the fall elections. Jim Jenkins says that what's clear is that any drug court judge has unusual powers. Powers most judges do not have, and needs to wield them fairly.

For this case, there's another question that all of this raises about Judge Williams. And that's, did any of this effect what happened at Dennis Perry's trial?

It's not clear. What I can say is that, in the transcripts we do have, at least as they've been written, there's little evidence of temper tantrums or courtroom theatrics during Dennis Perry's trial. A couple of snide comments tossed off at defense attorneys here and there, things like that, but not at times the jury could've heard them, so nothing that really mattered.

But I hesitate to make any sort of conclusions about how Judge Williams handled the Perry case. Remember, the transcripts we have are only partial transcripts, and the primary thing missing from them are the parts that have to do with Judge Williams.

Transcripts of what was said at numerous bench conferences, the instructions given to the jury -- we don't know any of that. And the reason we don't have those transcripts is, of course, because of Judge Williams herself ruled that Dennis Perry is not entitled to have them.

And then there's the matter of Judge Williams' relationship with the man who most wanted Dennis Perry to be convicted, Sheriff Bill Smith. Though, when I spoke to Bill Smith, he told me he couldn't even recall now who the judge in the Dennis Perry case had been.

[26:03] Sheriff Bill Smith:

Who was the judge? I don't even remember the judge's name.

Susan Simpson:

Um, it was Amanda Williams.

Sheriff Bill Smith:

Amanda Williams? Oh gosh. That's something that ... well anyway, we won't ... she was a friend of mine, a very good friend at one time, and I don't remember what happened, to be honest with you.

Back at the time of the investigation and trial of Dennis Perry's case, Judge Williams and Sheriff Smith were friends and allies. And, just to be clear, there's nothing wrong with a judge and a sheriff being friends and allies. In most cases, anyway. But this is not most cases, and Judge Williams is not most judges. If Judge Williams was willing to do what she described as, "the wrong thing," by helping out a defendant just because he was the nephew of someone who'd supported her in the past, what would she do for a sheriff and close friend who really, really wanted to convict a murder defendant and who was giving her drug court hundreds of thousands of dollars to keep it operating?

Maybe nothing. Maybe the answer is that these conflicts didn't sway Judge Williams' decision-making at all. But, then again, maybe they did. We can't know either way. And here's the thing, when you have a judge with a history of presiding over cases despite personal and financial conflicts of interest, and when that judge's pet project is being bankrolled, in significant part, by the law enforcement official who has a vested interest in seeing the defendant before her be convicted, well, we shouldn't just be asked to assume that everything the judge did in the case was appropriate. *Especially* when that judge's rulings in the case aren't a matter of public record, and not available for public review, so we actually have no idea how the judge ruled in the case on many of the

crucial issues. That is not what due process looks like and that is not how courts are supposed to operate.

So yeah. Any ruling on how Judge Williams did in handling the Perry case will have to wait until a time when we can actually know what happened in the courtroom. And right now, without the full transcripts, we don't.

[27:57] Colin Miller: And as for the charges that the Judicial Qualifications Commission brought against Judge Williams back in 2011, well, that case never went to trial. A month after the charges were filed, Judge Williams announced her resignation from the bench, and signed a consent order agreeing she would never seek or hold judicial office again. In 2015, she was indicted and charged with two felonies in connection with false statements made to the JQC during its investigation, but those charges never went to trial either. In 2016, Georgia voters approved a constitutional amendment that effectively neutered the JQC and scaled back its role in judicial oversight. As a result, the DA's office filed a motion to dismiss the charges, finding that, in light of the voters' decision to curtail the JQC's investigative abilities, the DA's office had decided to drop the case against Judge Williams.

DELIBERATIONS

[30:42] Colin Miller: The part of Dennis Perry's trial we know the least about is the fifth day. The final day. For the other days, we have at least partial transcripts, covering what we hope is all of the evidentiary portions of Dennis' trial. But for that fifth day, we have nothing. Well almost nothing. We do have one page of handwritten notes taken by the court reporter, and that at least tells us the times of various events happening during that day. Like when closing arguments were made, and when they ended, and when the jury was sent back to deliberate.

But we don't know how Judge Williams ruled on any matters that came up on that final day, and we don't know anything about what was actually said. Which means we don't actually know whether one extremely critical piece of evidence was ever admitted at Dennis Perry's trial. And that's the DNA evidence -- the evidence that conclusively proves it was not Dennis Perry who dropped the pair of glasses found in the Rising Daughter vestibule, laying partially under the bodies of Harold and Thelma Swain.

The DNA evidence was *supposed* to be introduced at trial. That was the defense attorneys' plan, anyway. They had prepared a stipulation that was to be given to the jury on the last day of trial. A stipulation is basically where the parties to a case write what is

effectively a note to the jury, and it says, hey, here's a fact that we all agree is true. You didn't need to hear any evidence about it during the trial, because both the prosecution and the defense agree this is a fact, so you should too. So that's what we'd assumed had happened. The jury had learned about the DNA evidence through this stipulation.

And then we started talking to jurors, and came to realize that, actually, not a single juror had any memory whatsoever of a DNA profile being obtained from the glasses, or even recalling that there was any DNA evidence that had excluded Dennis Perry. And no one else who'd been at the trial recalled it either.

We realized that, technically, we don't know for sure if the jury ever even heard this DNA evidence. In the transcripts we do have, DNA evidence is mentioned exactly once, in defense's opening statement, when Defense Attorney Dale Westling told the jury:

"You will also hear in this trial, by stipulation or agreement, that hairs were taken from the glasses. Then you will hear, by stipulation between Mr. Johnson and I, that the DNA in those hairs under the modern miracles of science does not match the DNA of Dennis Perry."

We do know, from a few pages of notes found in Glynn County's file, that some kind of stipulation was ultimately introduced on the final day of Dennis Perry's trial. But technically, we don't know if that included the DNA stipulation. Here's Susan, talking to Jennifer Whitfield, Dennis' attorney at the Georgia Innocence Project, about why we don't actually know what that stipulation was:

Susan Simpson:

Yeah, day five, Court N, 10:45 am, judge reads stipulation to the jury. Stipulation, singular. And there were two stipulations that should have been read in.

Jennifer Whitfield:

Right ...

Susan Simpson:

So, does that mean they really didn't read the DNA stipulation into evidence?

Jennifer Whitfield:

Yeah, it's really hard to know. I don't know. Or it could just be she didn't make it to the "s" at the end of the word, and that it was multiple stipulations (laughs). You know, which happens when you're taking notes.

[33:36] Susan Simpson: It seems like the defense *must've* introduced the DNA stipulation. Because they had to have, right? How could a defense attorney have not introduced such critical exculpatory evidence?

So we assume it did come in, because it had to have. In which case, there's another possible explanation for why none of the jurors can remember that there was DNA evidence that excluded Dennis Perry.

Jennifer Whitfield:

I wouldn't be shocked that the jury wouldn't recall information that was read to them through a stipulation. It's just not the most compelling way to present evidence to a jury. They're not gonna necessarily retain that information, or think of it as being very important 'cause they're not hearing it from a witness. And maybe it was hammered in closing arguments, maybe it wasn't, we don't know yet, so ...

When I've spoken to jurors and told them about the DNA evidence of the case, almost all of them were extremely interested in hearing more about it. They reacted as if it was the first time they'd ever heard about it. But they were interested. The problem here wasn't that the jurors didn't care about the DNA evidence, the problem was that, somehow, the fact that there was DNA evidence in this case just never made an impression on them.

After reading the draft stipulation that the parties prepared and intended to introduce at trial, I began to get it more. When presented out of context, as just a typewritten page randomly read off at some point during the whole case, I can see how evidence that was so critical to Dennis Perry's defense could've been seen by the jury as much ado about nothing.

"The Parties to this Agreement, The State of Georgia and Dennis Perry, Defendant, agree that the following facts are true, proven and, as such, require no further proof. Furthermore, the Parties agree that this document may be published to the jury in this case and that said jury is to consider the following facts as true."

Below that, the stipulations lays out how there were a pair of eyeglasses found near the bodies that did not belong to either victim, and that there were hairs stuck into the stem

of these glasses, and DNA, the stipulation said, had been obtained from these hairs. The stipulation then reads:

The DNA profiles from the hairs were then compared to DNA extracted from blood from the following individuals:

- A. Dennis Perry*
- B. John Edwards*
- C. Jeffery Kitrell*
- D. Marty Roberson*
- E. Donald Barrentine*

Just to make things even more confusing, two of the five people on this list had never actually been named at Dennis Perry's trial. The jurors would've had no idea who Marty Roberson or John Edwards were, and no idea why anyone would've wanted to test their DNA or compare it to the DNA found on the glasses. This stipulation and its list of unfamiliar names is weird, and confusing, and I could see how it might make the whole thing seem just kind of ridiculous and not that relevant.

[36:22] Colin Miller: And that brings us to another possible reason the DNA evidence didn't make an impression on the jurors. Dennis Perry's defense attorneys may not have *wanted* the DNA evidence to have too much of an impression on them. Here's Susan and Ed Costikyan discussing an interview that they'd had with another juror from Dennis' case:

Susan Simpson:

This guy recalled shit that I barely recalled from reading it a week ago, and what he did not recall at all, to any degree, was DNA.

Ed Costikyan:

I bet that was part of the defense strategy, that they didn't want to hammer the DNA too much because it didn't match Barrentine either and they wanted to really push Barrentine as the real killer.

The DNA evidence did not match Donnie Barrentine. Nor did it match any of three other potential suspects that Dennis' defense attorneys had identified as the actual killer at various points over the three years leading up to trial. So, like Ed said, maybe what happened here is that the defense had thought the DNA evidence hurt their case. They wanted to point the finger at Donnie Barrentine, but the DNA didn't do that.

If that was the strategy, it backfired. Massively. Because most the jurors hadn't believed it was Donnie Barrentine in the first place. So the fact the DNA evidence hadn't matched Donnie Barrentine wouldn't have undermined the defense any for most the jurors.

[37:39] Susan Simpson: Out of every juror and every person we've spoken to who was in attendance at Dennis Perry's trial, there has been, so far, exactly one person who even recalls that there was DNA evidence in this case. And that person was, unsurprisingly, the wildcard juror, Donna Turner. But her memory of the DNA in this case is something I've struggled to understand. Because the DNA evidence that she remembers is **not** the DNA evidence that was presented at trial. Or at least, not that I think was presented at trial.

Susan Simpson:

What was the evidence against the guy, the defendant, that stood out to you?

Donna Turner:

The fact there was DNA there at the church.

[38:16] Colin Miller: The DNA evidence that Donna Turner remembers was not exculpatory. It was inculpatory. What Donna Turner remembers is that Dennis Perry's DNA was actually found at the crime scene.

Donna Turner:

What I recall is them supposedly picking up two drink bottles that was in the churchyard. Both of them had, you know, the defendant's on it. I mean, it put him *there*.

Donna Turner was right about one thing here. There were in fact two Pepsi bottles found at the crime scene. One was in the church yard itself, and the other was directly across the road from the church, on the other side of US-17, where, not long before the murders, witnesses had seen a strange car parked just across from Rising Daughter.

But the part about DNA being found on those bottles, well that's totally wrong. There was no DNA found on those bottles. They were lost, by some agency or another, before anyone had any chance to submit them for DNA testing. It's not really clear who lost them or when, but at any rate, at some point before Dennis Perry's trial, they disappeared, and no one knows what happened to them.

Many of the jurors recalled these Pepsi bottles, and how they were lost. More jurors recalled the Pepsi bottles than recalled Donnie Barrentine -- the lost Pepsi bottles, for some reason, made a bigger impression on their memories than did the alternate suspect. But Donna Turner was the only juror who remembered anything about the bottles having DNA.

[39:34] Donna Turner:

No, you know why it sticks really hard in my mind? Because to me, that was the only hard, hard evidence that says, at that time, in my mind -- you were there. Your DNA is on the bottle in the churchyard. You had to have been at the churchyard.

[39:52] Susan Simpson: I should note here that I definitely do not think this is just a case of a juror who didn't pay much attention at trial, and has a fuzzy recollection now. Because I have no doubts that Donna Turner paid very close attention to the trial -- she paid so close attention that at times she'd picked up on details and facts I'd never realized the jury had even heard, because they'd only been hinted at during the trial indirectly. Which is why Donna Turner's insistence that there had been DNA evidence linking Dennis Perry to the crime scene was so confusing, and possibly concerning to me. If Donna Turner is remembering something about DNA evidence proving Dennis Perry's guilt, I think most likely that memory is coming from somewhere. There was something said at trial that led her to believe this. Although, without the rest of the transcripts, we can't know now what it was.

[40:45] Donna Turner

You know what though, the bottles were never brought in

Susan Simpson:

Well that's what we're looking for, because the bottles were never found, never tested.

Donna Turner:

Ha! That's not what we were told. Ha! DNA was on the bottles.

Susan Simpson:

You really think that you heard that DNA was on those bottles?

Donna Turner:

I swear I do.

Susan Simpson:

Those two Pepsi bottles went missing.

Donna Turner:

I swear....

Ed Costikyan:

They were tested for fingerprints and they didn't find any prints on them. They were not tested for DNA.

Donna Turner:

I swear. I swear. I swear. I will...no, that's just too fresh.

Donna Turner is wrong about the DNA on the bottles. She has to be. The bottles were never tested for DNA, and it seems improbable that any attorney would've tried to argue at trial that in fact such DNA evidence had been found.

What I don't know is *why* Donna Turner is wrong about all this. What led her to have this false memory. But here's what I do know. Dennis Perry's attorneys took a case that had compelling DNA evidence that excluded the defendant from being the killer, and presented a defense that was so underwhelming that not only does not a single juror recall that there was DNA evidence found at the crime scene that can't be Dennis Perry's, but that in fact one juror came away recalling the exact opposite. The DNA found on those glasses should have been huge evidence for the defense. And instead, it was nothing - or possibly worse than nothing.

GLASSES

[42:09] Colin Miller: Even though no jurors recalled the DNA evidence from the glasses, that by itself didn't explain why the glasses themselves hadn't been considered significant evidence for Dennis Perry. Because the thing about the glasses is, you don't actually need DNA from them to know they didn't belong to Dennis Perry. The prescription proves that. It doesn't match Dennis at all, he couldn't have worn them. So Susan wondered, even if Donna Turner did not recall the DNA being recovered from those glasses, had she still found the glasses to be significant evidence for other reasons?

Donna Turner:

It was probably told, but we couldn't use the glasses.

Susan Simpson:

Why?

Donna Turner:

They didn't have any evidence on them.

Susan Simpson:

Wait, wait. Because the glasses weren't...

Donna Turner:

The glasses were missing, we couldn't use them.

Susan Simpson:

Who told you this?

Donna Turner:

That was in the jury room. I know we talked about that. We couldn't use the glasses.

Susan Simpson:

You thought you couldn't talk about the glasses.

Donna Turner:

Yeah, you couldn't use it as evidence to make a decision so therefore don't worry about that. Focus on *what we have*.

Susan Simpson:

Who do you think was saying this?

Donna Turner:

Oh, our foreman.

Once a jury goes back to the deliberations room, you never know what they're going to do. Twelve people, almost always non-lawyers, are given some instructions on what they're supposed to do to decide the case, and then they're sent back to a room by themselves and, for the most part, left to figure things out on their own. And sometimes,

when juries do that, they come up with interpretations of the law that you'll never find in any case law.

For instance, you'll have juries come up with the idea that if certain kinds of evidence have been lost, that means the jurors are not supposed to consider that evidence in the course of their deliberations.

Donna Turner:

It's like, you have a box. And what's in the box - and I mean I remember this vividly as an illustration - what is in this box is all you can use to make that decision. And we followed his lead, because he's been on a murder trial before. None of us has.

Donna Turner remembers the foreman using this box metaphor to explain what evidence they were allowed to use in their deliberations. Things were either in the box, or out of the box. And if they're out of the box, they're off limits. The glasses from the vestibule, for example, were out of the box, because they no longer existed and could not be examined, and therefore, the jury wasn't supposed to discuss it.

Donna Turner:

No - like here's your box of tricks, and you can't do a trick unless it's in this box. Yeah. And so that's what you *had* to base it on.

The way that Donna Turner remembers the jurors discussing the evidence isn't an accurate description of how the jurors were supposed to use that evidence. The jurors were free to consider that evidence and give it whatever weight they saw fit.

It's not clear what happened to the glasses. The usual story, as told by the Camden County Sheriff's Department, is that the glasses were never returned from *Unsolved Mysteries*.

[44:40] Deputy Dale Bundy:

The last time I saw those glasses was Robert Stack had them...Those glasses were given to them by Joe Gregory of the GBI and I have no idea what happened to those glasses.

[44:53] Susan Simpson: Robert Stack was falsely accused. He did not lose those glasses. *Unsolved Mysteries* was filmed in 1988, and for years after that, there are references in the case file to investigators with the Camden County Sheriff's Office

having possession of those glasses still. In 1990, for instance, Butch Kennedy and Joe Gregory took the glasses with them to California when they interviewed a suspect there. And years after that, after Butch Kennedy had been fired from the Sheriff's Office, two deputies had possession of those glasses once again. We know this because there's a record of Chuck Byerly and Darryl Griffis taking the glasses to an optometrist on March 17, 1993. But that's the end of the paper record. From there, there is nothing in the case file that says definitively where those glasses could have gone.

And then I talked to Mike Ellerson. In 1998, he'd been with the Camden County Sheriff's Office, and brought on to help with the Swain investigation. Specifically, to try and get Cora Fisher and Venzola Williams to talk. He too recalled hearing after the fact, after he was off the case, about how much of the evidence had gone missing from the Sheriff's Office.

[46:00] Susan Simpson:

...one of the files...

Mike Ellerson:

But no physical evidence...

Susan Simpson:

Oh, there's no physical evidence left.

Mike Ellerson:

Yeah, because it was...what was the story...it had been sent off to *Unsolved Mysteries*, and it was lost or whatever. I saw that evidence. I don't know if it was before or after...

Susan Simpson:

What did you see?

Mike Ellerson:

I put my hands on the glasses. But I don't know if it was before *Unsolved Mysteries* or what, but I remember seeing the glasses. 'Cause I held the glasses myself in the break room at the Sheriff's Office.

Susan Simpson:

While you were working on the case?

Mike Ellerson:

Mm-hmm. Darryl Griffis showed me the evidence.

Mike Ellerson remembers touching *the* glasses. The unknown pair from the crime scene. The Robert Stack glasses. The glasses that the prosecution claimed at Dennis Perry's trial were no longer in the State's possession.

Mike Ellerson:

I'm wanting to thing that this is before it was sent off.

Susan Simpson:

Unsolved Mysteries was 1988.

Mike Ellerson:

Did they...wait a minute. So of course -- I saw them and they're just gone.

Unsolved Mysteries was filmed before Mike Ellerson even joined the Camden County Sheriff's Office. And it was long before Mike Ellerson joined the Swain case investigation in 1998. Which means, if Mike Ellerson saw those glasses, the Camden County Sheriff's Office has been lying about how and when those glasses went missing.

Mike Ellerson:

To tell you that I touched those glasses, and felt how rough the lenses were - they're like welder's glasses - my fingerprint would be on 'em. I touched those glasses. As God as my witness, I touched those glasses.

At a certain point, the claim from the Camden County Sheriff's Office that they've just *lost* all this evidence again and again and again stops being plausible. Calling all of this "lost evidence" is really just a polite fiction. Or really more like an absurd pretense. Because, to remind you, today in 2018, the Camden County Sheriff's Office has quote "lost" every single piece of physical evidence in this case, and almost every single trial exhibit. This has been going on for decades now, and all too often the evidence that has been "lost" is the evidence that is critical to Dennis Perry's defense. And sure, I am more than willing to believe that some of this missing evidence really was lost, due to sheer incompetence and institutional failure, I absolutely could believe that - wouldn't want to argue otherwise. But not all of it was "lost", not in the accidental sense. Those glasses from the vestibule were still in the the Camden County Sheriff's Office in 1998 when Ellerson was working on the case, which means those glasses disappeared in the middle of a very active reopened investigation into the Swain murders. That's not

neglect, or incompetence, that's strategy. And it's a strategy that the Brunswick Judicial Circuit has used again, again, and again to send people to death row. Next time, on *Undisclosed*.

[49:09] Susan Simpson: That's all for episode 17 of *Undisclosed: The State V. Dennis Perry*. Thanks for listening this week, and if you have questions for our next Addendum episode, send them to us at #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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