

UNDISCLOSED, The State v. Dennis Perry
Episode 21 - The Man With No Name
December 17, 2018

[0:10] Rabia Chaudry: Hi *Undisclosed* listeners – Rabia here. Now before we get into the very last regularly scheduled episode of Season 3, we have a small ask for you that will make a big impact for Dennis Perry and other clients of the Georgia Innocence Project. Please – right now – text the word *Dennis* to 91999 and donate even \$5 to help GIP fight for Dennis’ freedom. Right now, you could text *Dennis* to 91999 and donate any amount you can give to support the Georgia Innocence Project to help fight for Dennis and so many others like him. Once again, text *Dennis* to 91999.

Clare Gilbert: The first time we asked *Undisclosed* Listeners to support GIP’s work was just over two years ago, when Joey Watkins’ story on Season 2 was wrapping up. GIP was such a shoestring operation then, with a tiny budget, struggling to raise just barely enough money to hire a staff attorney. And now – only 2 years later – thanks in HUGE part to the profound dedication and generosity of *Undisclosed* listeners, we’ve hired not only one, but *two* staff attorneys. I tell everyone, and I’m delighted to say it now directly to you: *Undisclosed* listeners saved GIP. We are so deeply grateful for your support.

Colin Miller: And while GIP’s capacity to help innocent people in prison is only growing stronger, there is still so much work to be done. You’ve now heard the stories of just two GIP clients – Joey Watkins and Dennis Perry – told over 45 episodes and almost as many addenda. Think of how dense and complicated these cases are. And now think about the fact that GIP has 88 other cases in investigation and litigation stages, with 240 application stage cases and more coming in every day. 88 other late stage cases! GIP still very much needs your help.

Clare Gilbert: When you text the word *Dennis* to 91999, and donate even \$5 or \$10, you’ll help us continue to work behind the scenes, once the podcast ends, to fight for justice and freedom for Dennis, Joey and so many others. We’ll stay connected with you and keep you updated on their cases and others. As we’ve seen so clearly over the past 2 years, when a large group of dedicated people give what they can, even if only \$5, it makes a HUGE, transformative impact on our ability to represent the imprisoned innocent. And for those who supported us recently, thank you, thank you, thank you.

Rabia Chaudry: So if you have been moved by Dennis' case, before you listen to this final episode of Season 3, pick up your phones and text the word *Dennis* to 91999. You'll get a link right back where you can donate in any amount, however small, to help the Georgia Innocence Project continue fighting for Dennis and Joey and the many, many other people imprisoned in Georgia and Alabama for crimes they did not commit.

CHICKEN MAN

[3:40] Rabia Chaudry: Donnie Barrentine became a suspect in this case on July 15th, 1985, when his friend Jeff Kittrell told investigators that Barrentine had confessed to him to being involved in the murders at Rising Daughter. Barrentine wasn't the shooter, Kittrell claimed, but he'd gone to the church that night with a blond-haired, cold-blooded friend. Barrentine had waited outside, Kittrell said, while this friend and gone inside, where he shot and killed Harold and Thelma Swain.

There have been many attempts over the years to figure out the identity of the friend that Jeff Kittrell told investigators about, but they've all failed. That's assuming, of course, this friend ever existed in the first place. Jeff Kittrell was hardly the most credible witness himself. Plenty of things he claimed about the Swain case over the years have turned out not to be true.

But if Kittrell's story about the blond-haired cold-blooded friend has any truth to it, there's one person still around who'd know the man's identity.

Susan Simpson, in background:

Excuse me -- do you know where I can find...

That's why earlier this year Susan found herself driving around on some back roads in Florida that weren't very well marked, hoping to find people out on porches who might be able to give some directions.

Neighbor:

What's the name?

Susan Simpson:

Barrentine?

Neighbor:

No.

Susan Simpson:

Is that the right place? Do you know if it's over there or...

Neighbor:

This is O'Brien, and O'Brien, and O'Brien.

Susan Simpson:

You don't know the name Barrentine at all?

Neighbor:

Is the lady a teacher? What's the little boy's name?

Susan Simpson:

They don't have a kid, that I know of.

Neighbor:

Oh. Do they own chickens?

Susan Simpson:

They do own chickens!

Neighbor:

Oh. So the chicken man?

Susan Simpson:

Yes! [laughs]

Donnie Barrentine has, historically, not been particularly cooperative with investigators looking into this case, and there were no guarantees he'd be willing to talk about it now. But there were lots of questions about this case, and about the 33 year long investigation, that Donnie Barrentine is probably the only person with the answers to who is still around today. So, it was worth a try anyway.

Susan Simpson:

So, the chicken man?

Neighbor:

Yeah, I don't know him as anything else.

Susan Simpson:

Really!

Neighbor:

You keep going, right here on this road, keep going all the way around, and then...

[6:09] Rabia Chaudry: Hi, and welcome to Undisclosed. This is the final episode in our series on *The State v. Dennis Perry*. My name is Rabia Chaudry, I'm an attorney and author of the *New York Times* best seller *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 at [TheViewFromLL2](#).

Colin Miller: Hi, this is Colin Miller, I'm an Associate Dean and Professor at the University of South Carolina School of Law, and I blog at [EvidenceProfBlog](#).

[7:26] Susan Simpson: As instructed, I kept heading down the bumpy hilly road until eventually I came across some chickens, and figured, this must be the place. When I knocked on the door, Berrentine's wife answered, and when I told her why I was there, she said Donnie was out working in the yard. But if I wanted to wait, he should be in soon.

Inside, the Barrentines had a pack of rescue dogs of every shape and size, and a very pudgy tabby cat who decided that, the whole time I was there, I was going to have to keep petting him, or else he'd fuss. And while I waited, I chatted with Donnie Barrentine's wife, who was busy making dinner. She told me that she and Donnie hadn't met until the 90s, long after all this mess I was there about, but she knew a little about it. She'd even read the transcripts, she said, or at least the parts that had Donnie in it. She'd seen the *Unsolved Mysteries* show too. As far as she knew, she said, the only thing they had on Donnie was that someone identified his boots. But she knew the DNA at the crime scene hadn't been his, and she thought he'd been at work the day of the murders anyway -- there'd been a timecard to prove it.

A few minutes later, Donnie Barrentine came in. When I told him why I wanted to talk to him, I can't say he was exactly thrilled about it, but he wasn't unfriendly. And he agreed

to talk to me about what he knew. Although, probably not surprising, he didn't want to be recorded.

[8:42] Colin Miller: When Susan spoke to Donnie Barrentine, it was hardly the first time someone had questioned him about the Swain case. Over the past 33 years, Donnie Barrentine has been interviewed about the Swain case dozens of times, off and on. At least a few of these interviews were recorded, but today, almost all of those recordings have been lost. There's only one that still exists.

Interviewer 1:

What is the date?

Interviewer 2:

The 22nd of February

Interviewer 1:

Today is Feb 22, 2002, and the time is approximately 15:45. We're at the Wayne County District Attorney's office...

After Dennis Perry's attorneys had made it clear that their defense at trial would be to try to blame Donnie Barrentine for the murders, the State decided it needed to interview Donnie Barrentine again. After a bit of coaxing, they convinced Barrentine to drive up to John Johnson's office in Jesup, Georgia, where he was given an immunity agreement to sign and then brought into a conference room to be interviewed. Though most interviews were recorded on audio cassette, or not recorded at all, for some reason this interview was videotaped.

When the grainy video footage begins, you can see Donnie Barrentine and three investigators gathered around a conference room table in the DA's office. Barrentine is at the far end of the table, leaning back comfortably in his chair. Dale Bundy is closest to the camera -- he pulls out a pocket watch to check the time and start the interview, and then begins taking notes. Which is kind of interesting, given that Bundy has also claimed the reason there are no notes from him in the case file is because he doesn't take notes during interviews, at least not when GBI agents are present. And there is a GBI Agent there -- a guy named Mike Trull, who was relatively new to the case. He'd been brought in a few months before to replace the previous GBI investigator, Agent Ron Rhodes, when he left to join the ATF. And, mostly out of frame, there's also a DA's investigator, Vicki Moore, though she doesn't say much.

[10:25] Susan Simpson: A lot of what Donnie Barrentine said during this interview at John Johnson's office matched up almost exactly with what he had told me when I spoke to him down in Florida.

GBI Agent Mike Trull:

Do you know of anyone who was involved in this, or who you think would be involved in this? Anyone that would want to kill Harold and Thelma Swain?

Donnie Berrentine:

No. I don't know the people, never knew them.

GBI Agent Mike Trull:

Never even heard of them prior [No] , prior to them being killed? How about Larry Brown, Lawrence Brown. Did you ever hear of Lawrence Brown?

Donnie Berrentine:

Not till the cops started asking everybody, you know, I don't have a clue who he is.

I'd gotten the same answer about Lawrence Brown, too. And I got the same answer about how it was Barrentine had gotten mixed up in this case in the first place.

GBI Agent Mike Trull:

Is there any reason you can think of, outside of these statements at the party, why these people might say you would have done this?

Donnie Berrentine:

Well, a lot of these people was startin' to get off in trouble. You know, they say whatever they need to say to get out.

For the most part, the things Donnie Barrentine told me, well, they seemed to be true. Or at least, the things he said matched up well with everything else I knew about the case from other sources. Actually, when we first started talking, I thought I *had* caught him in a couple of lies -- for some of the questions I'd asked him, about things like what the Wilkes County mafia had been up to, or why he'd been in Georgia when he was arrested back in 1985, he'd given answers that I knew couldn't be true. And that I knew he knew couldn't be true.

Only, it turned out those lies had not been meant for me. As soon as his wife stepped out of the room, Barrentine had circled back, speaking in a low voice, not quite a whisper. "Actually," he'd say, "here's how that *really* went down." And then he'd tell the story again, this time matching the facts as I knew them.

Of course, that's not to say Donnie Barrentine answered all of the questions I had. He didn't. Questions that he didn't want to answer, he'd sidestep, or he'd just start talking about something else entirely. Also, his favorite answer to any question is, "Well, what do *you* know about that?" And unless I'd give him a clue about what I already knew, it'd be hard to get him talking on it.

Still, at least for the things that Barrentine told me that I could independently verify, it all seemed to check out. And as for the things Barrentine told me that I couldn't independently verify, well, that part of his story was simple. No, he hadn't killed the Swains, he said. No, he didn't know who had. But he did know that whoever had done it was a damn fool. It was an insult to even have been accused of such a sloppy murder, Barrentine told me. And besides, he'd never be caught dead wielding anything as pitiful as a .25 caliber, like the one used to kill the Swains.

When I asked him about his arrest with David Roberson and Jeff Kittrell up in Telfair County, he told me about how annoyed he'd been to be arrested there of all places. Later, when the Telfair County Sheriff had come by to see him, Barrentine told me about how he'd given the sheriff a piece of his mind: "I told that son of a bitch, we're all in the same business here. Why're you doing this to me?" Barrentine actually has a good point here. This particular sheriff was one of the biggest drug traffickers in the county. And I guess, as a matter of professional courtesy maybe, Barrentine had expected the sheriff to let him go. That hadn't happened. Though, five years later on, it's worth noting, this particular sheriff would find himself on the other end of the stick, when he himself was arrested for his role in a drug conspiracy.

Still, even though the Telfair County Sheriff hadn't let him walk out, Barrentine had thought, at least initially, that he wouldn't be in jail for too long on these charges. He told me a deal had been worked out, and a price had been agreed upon: for \$30,000, Barrentine, Roberson, and Kittrell would go free of the charges.

Things had not worked out as planned. Donnie's cousin Greg Barrentine had been the one who was supposed to make the payment, and he'd gotten the money together, \$30,000 in cash. But when Greg Barrentine had walked into the sheriff's office, instead of the sheriff there he found nine federal agents waiting for him.

I was able to confirm the last part of Donnie Barrentine's story, anyway, about how Greg Barrentine was arrested. Because not long after Donnie Barrentine had been arrested in Telfair County, Greg Barrentine had been indicted, along with 38 others, for their role in a drug conspiracy based out of Wilkes County North Carolina. And on July 12th, when Greg Barrentine had gone in to see the sheriff about some kind of business, the feds had been tipped off and they were there waiting for him, to arrest him.

So Donnie Barrentine hadn't gotten out of jail, and eventually, due to the Swain case, he was transferred down from Telfair County to Camden County. He told me a bit about what it had been like at the jail there, and a story about what he'd heard from other inmates about some of the petty corruption they'd witnessed from the Camden County Sheriff's Office. The story was about something ridiculous that Sheriff Smith had done, that had nothing to do with Donnie Barrentine in particular, but while telling me about it, Barrentine made a stray comment that I've been thinking a lot about ever since.

"You see," he said, in an almost exasperated tone. "You could do just about any damn thing in southeast Georgia back in those days, if you had the money to give the sheriff."

[15:24] Colin Miller: Because so many records from the Swain case have gone missing over the years, we don't know a lot about what was said during most of Donnie Barrentine's interviews with law enforcement. In fact, we don't even know when all interviews with Barrentine took place. For some of them, there's no paper record whatsoever -- just the memories of the investigators who were involved.

Take, for instance, two interviews of Donnie Barrentine that were done sometime in mid-August of 1985, probably on August 16th and 17th. Butch Kennedy told Susan about it the first time she spoke to him. "I don't know if you know this", he said, "but I brought in an outside investigator at one point who interviewed Barrentine". He'd gone to a law enforcement seminar not long before, and he'd been especially impressed by one of the instructors, a police officer from Atlanta who taught interrogation techniques. After Donnie Barrentine's arrest, Butch Kennedy had reached out to him to ask for his help on the case.

Deputy Butch Kennedy:

There was a speaker there -- by the name of -- his last name is Foster. I called him, and he came down and interviewed Barrentine. He told us what to do. He said isolate him, for 24 hours. He came down and we went to Glynn County, that's where he was at. Glenn Foster.

Glenn Foster was his name, Butch Kennedy remembered. He'd driven down to Camden County, and on the evening he'd arrived, he'd gone over to the Glynn County jail, where Barrentine was being held, and interviewed him there. Then the next day, Barrentine had been brought back over to the Camden County courthouse, where he was interviewed again. And afterwards, Butch Kennedy remembers, Glenn Foster had seemed convinced that, in pursuing Donnie Barrentine as their suspect, the Camden County investigators were on the right track.

Deputy Butch Kennedy:

And he said: that's your man. That is your man. From his interview. And we talked, and he's gone forever.

[17:24] Susan Simpson: Glenn Foster was gone forever from the case file, too, because there are no longer any written records today that mention this interview taking place.

Susan Simpson:

What do you recall him saying in that second interview, with Glenn Foster?

Deputy Butch Kennedy:

Actually, he was with him by himself, Glenn was.

Susan Simpson:

Oh.

Deputy Butch Kennedy:

Foster. Foster was with him by himself. And after that, you know, we came back here. And Foster says, you know, that's your man. I wanna think that Foster followed up with a document. In fact, Glenn Thomas had the follow-up that Foster had sent back, or sent to us.

[18:18] Susan Simpson: If District Attorney Glenn Thomas and a follow-up report on this interview, he didn't put it in the DA's case file. At any rate, it's gone now. So if I wanted to find out more about this interview, I'd have to track down Glenn Foster, and cross my fingers and hope that he actually still recalled the case.

Glenn Foster:

Well, how can I help you, ma'am?

Susan Simpson:

Well, first off, do you even recall this case at all?

Glenn Foster:

Yes, ma'am, I do.

Susan Simpson: This case, Glenn Foster told me, is not one he'd ever be able to forget. He remembered it. He was still angry about it.

He told me about getting the request from a deputy in Camden County, and agreeing to come down to help with a case. He remembered a deputy and a GBI agent had briefed him on the Swain murders, and that they'd had a suspect in custody. That's who he'd interviewed.

Glenn Foster:

What we went through was just the basics, that apparently they'd come up with some leads, they thought that they had the three guys- one of the three guys- this kind of stuff, and I did talk to the one, who described how the killing went down. It was too coincidental. He gave me a ton of stuff. He was arrested that night.

Susan Simpson: I realized suddenly that Glenn Foster must be thinking of some different case all together. Because what he was describing to me, about a suspect who'd described how he'd done the murder, definitely couldn't be the case I was working on. Or at least that's what I thought at first.

Susan Simpson:

What do you recall Barrentine telling you in the interview?

Glenn Foster:

He went through a description of what happened at the murder, how the three of them had come up to shut up a relative. A relative who was going to testify, apparently, in a trial- in a drug trial. And they wanted to come up... these guys were apparently hired... I'm vaguely remembering this, again, I may be half off on this, I'll try and do the best I can. When he was brought in- when they went to the church- They called him to the outside, he came to the outside, and he was shot. And as he went down he grabbed the button off of... either he grabbed it or one of the guys grabbed it, or the elderly black gentleman- "The Saint" - as I

called him, to my dad, that he grabbed the shirt when he went down and there was a button in his hand.

And that's about as far as I can remember about that interview. That's just about as far. And then he talked about how the gun was thrown off a bridge as they left that scene. How the gun used for the killing was thrown off of a bridge. I had to get him to narrow it down, and as to my recollection that bridge was not checked for the gun. For the weapon.

[20:50] Rabia Chaudry: What Glenn Foster was describing was a confession. Like, an actual confession. And it was definitely about the Swain case. Susan suddenly found herself in the middle of a very different conversation from the one she had been expecting.

Susan Simpson:

Butch Kennedy remembers thinking that it was very important, but I did not know he'd actually confessed.

Glenn Foster:

Yes, ma'am. He confessed. He did admit that he was there. He did admit that that gun was thrown away. He described the death scene. He also described the wife coming out there and then she's shot to death.

Susan Simpson:

So, when you had your interview with Barrentine, did he start talking pretty quick, or... how did that go?

Glenn Foster:

I had to play a game with him. I had to play a game and manipulate him. I had to make him think I had something that he did not know about.

[21:39] Rabia Chaudry: What Foster remembers now is that, in this interview, he'd set the stage for Barrentine to blame his accomplices for the murder. This was, presumably Roberson and Kittrell, though this many years on Foster doesn't recall any specific names.

Glenn Foster:

And a guy like that will give up other people. That's my observation. And once I

trapped the other people through him, then I came back on him. It took a little bit of time. But he did talk.

Okay, but, wait. If Barrentine confessed to the murders, then why was this not a big deal? Because it seems like it should've kind of been a big deal.

Glenn Foster had thought so too. After he got the statement from Barrentine, he'd figured the case was pretty well solved at that point, so he was already on his way out of Camden County when he got the call. The DA wouldn't sign the arrest warrants, he was told. There would be no case against Barrentine and his accomplices.

Glenn Foster:

I said, what are you talking about? I said, we've got so much probably cause it's a joke. I said, I've got this, I've got this, I've got this... and I said, it's been heard and everybody's in agreement we've got PC. And I said, what are you talking about?

When Foster found out that DA Glenn Thomas was refusing to charge Barrentine in the Swain case, he was convinced something had gone horribly wrong in Camden County. And he decided that in order to address it, he had to escalate the matter.

Glenn Foster:

I was so angry. Matter of fact, after it was over, when our beloved District Attorney would not give a warrant, when I left, I went to Atlanta, made some phone calls, and I got in to see that one of the chief investigators for the State, for the Attorney General's office and we had a long meeting. The first thing he told me, "I've heard about a lot of corruption in Brunswick. I've heard about the District Attorney." So, I told him what I had, and then he went down. And they did not tell the truth. I'm not talking about the police. I'm talking about what they went down and did. Because I had him call me later. And he said, "Glenn, nobody was talking." And I said, "Here's what I've got. And that's different than what you're hearing."

From what Glenn Foster can remember now, after he'd tried to get the AG's office involved, they had gone down to Brunswick and looked into it. But even then, in 1985, not long after, whenever it was this took place, the record of Glenn Foster's interview was already gone.

Glenn Foster:

I then made a phone call to the US Attorney. To the Attorney General's office through some connections, and got the Chief of the Civil Rights Division on the phone, laid out what I had. I said, "This is unbelievable. There's enough to arrest all these guys." and I said, "The one told me the following..." and I went through all the details on that. After about an hour, 45 minutes to an hour of talking, he said, "Glenn, it doesn't meet Civil Rights violation." and I said, "In other words, killing an innocent black man in a church is not Civil Rights. These were whites that did it. Is there any angle that you can come up with? Is there any way I can help you?" and he said no. And I said, great, nice to talk to you. So that was the end of it.

[24:32] Rabia Chaudry: The FBI was right, though. This isn't a case that would provide grounds for federal jurisdiction. And after the FBI turned him down, Glenn Foster had no higher authorities he could appeal to. And the report he'd filed in the matter no longer seemed to exist anywhere.

Glenn Foster:

That was Thomas that destroyed it, guarantee it. 100%. You can quote me on that. It's the only way because he's the last one that had the records and he was dumping stuff. That's the only thing that makes sense. And they do have the wrong guy in jail, because this guy told me too much stuff that only the killer would know. The buttons are the secret, ma'am. Because they came off of the shirt. They came off of a shirt. I'm trying to remember if it was his or if it was the bad guy. He told me about that, and nobody knew that but us.

[27:14] Susan Simpson: I can understand why this detail about the button stands out so strongly in Glenn Foster's memory, even if he can't recall now exactly why the button had been significant. Buttons were a key detail about the crime scene. During the brief but frantic struggle in the vestibule, Harold Swain must've ripped the killer's shirt open at some point, popping off five navy blue buttons and sending them flying, cast out in an arc to every corner of the small room.

But the killer must have been pulling at Harold Swain's shirt too. Because in addition to the five navy buttons, there was a single white button that was also found. It had been pulled off of Harold Swain's shirt, and had fallen just beside his body. On Harold Swain's shirt, the button below the missing one had also been pulled loose too, though was still hanging on by a thread.

And this is not in any of the reports I've seen in the case file, but here's one reason that a confession referencing a button could be a big deal. Harold Swain was shot in the chest three times, and all three shots went through the right side of Harold Swain's shirt. But only one shot went through the right side of Harold Swain's chest. One of the shots was in the middle, but the third shot was four inches left of middle.

Which means that at the moment shots were fired, the right side of Harold Swain's shirt must've been pulled over to the left side of his body. The image that keeps playing in my mind is of the killer grappling with Harold Swain in the vestibule, grabbing hold of the other man's shirt with one hand, and firing his gun with the other. And, as Harold Swain falls, a button pulling free of the shirt, and into the killer's hand.

Maybe, anyway. Or maybe not. Without Glenn Foster's report, there's no way to know now what exactly Donnie Barrentine said about these buttons, or how much it really matched the crime scene.

After talking to Glenn Foster, I had more questions than I did answers, but probably the *biggest* question I had was how come Butch Kennedy had never thought to mention this whole confession thing to me. Next time I was down in Camden County, along with Dennis Perry's GIP attorney Jennifer Whitfield, we met with Butch Kennedy and I asked him again about what he could remember of the Foster interview.

Susan Simpson:

What happened after that?

Butch Kennedy:

I remember him telling us that if he wasn't the person that committed this offense that he was there or he was part of it.

Susan Simpson:

Did he tell you what was said in that interview?

Butch Kennedy:

No. If he did, I don't recall.

I'll admit I'd wondered if perhaps Butch Kennedy had been trying to subtly tip me off somehow, when he told me about Glenn Foster. If maybe Kennedy *had* known about the confession, but for some reason, he couldn't tell me about it directly, and instead had only hinted at it.

Susan Simpson:

So, I spoke to Glenn Foster.

Butch Kennedy:

Okay.

Susan Simpson:

And what he told me... he came down, he did the interview, and he says that Barrentine confessed to him.

Butch Kennedy:

Really?

Butch Kennedy was just as surprised about this as I'd been about all this. And just as confused about why he hadn't known about it already.

Susan Simpson:

So, you didn't know that Greg had confessed to him?

Butch Kennedy:

No. I would think that he would have shared that with me. And something that important, you know... Did he tell me??

I don't think Glenn Foster did tell Butch Kennedy about it, though. Foster hadn't known that Kennedy didn't know about the confession, but he didn't have any specific memory either of telling Kennedy about it, either. And Foster and Kennedy did not know each other socially. They had no relationship beyond the fact Kennedy had once attended a seminar taught by Foster. After Foster left Camden County that day, believing that an arrest warrant was being issued for Donnie Barrentine, he and Kennedy had never crossed paths again.

[30:50] Rabia Chaudry: And if Butch Kennedy had been told about a confession from Donnie Barrentine, is that really something he could've forgotten? Even after three decades?

Susan Simpson:

What would you have done? If he'd told you that. If you'd known.

Butch Kennedy:

A double back flip.

Whatever it was, though, that Glenn Foster told Butch Kennedy about his interview with Barrentine, it does seem as if it prompted Butch Kennedy to take some action in the case.

Jennifer Whitfield:

It's interesting because it seems like you drafted a arrest warrant not long after those interviews and so I'm curious what... ultimately what happened with that arrest warrant.

Butch Kennedy:

That is the arrest warrant that Joe Gregory carried to the District Attorney and you know the response that we got from that.

Rabia Chaudry: "I'm not going to have crackheads and whores in my courtroom." That was the response they got from the DA. Which is why Donnie Barrentine was not charged with the murder, and instead handed over to federal custody on the weapons charge.

Jennifer Whitfield:

Does it surprise me that he didn't share with you those details, or with Joe Gregory, as far as you know?

Butch Kennedy:

It does, it really does. And, I don't know that he did not.

Jennifer Whitfield:

Okay, and what do you mean by that?

Butch Kennedy:

I don't know that he may have told us that, and that we worked on that. I just don't remember him saying-- but I DO remember him saying, "That's your guy. That is your guy."

There's one other person that Glenn Foster might've told about this interview, and that's GBI Agent Joe Gregory. Susan called him up to ask about whether there was anything he remembered about an outside investigator who'd come in to interview Barrentine.

Susan Simpson:

Does that ring any bells?

Joe Gregory:

No.

When Susan started to tell him what happened, Joe Gregory's instant guess was: Oh, don't tell me, some federal agent cut Barrentine a deal, didn't they? Someone had come in and decided to convince Barrentine to cooperate by getting him cut loose on the Swain case, something like that? Well, no, she told Gregory. That's not quite it.

Susan Simpson:

He ... actually, Donnie Barrentine confessed to the murder.

Joe Gregory:

To Foster?

Susan Simpson:

Yeah. To Glenn Foster.

Joe Gregory:

Okay. I wouldn't doubt that a bit.

Susan Simpson:

You didn't hear that?

Joe Gregory:

No. Why didn't Foster come forward with that?

Susan Simpson:

He did. He gave it to Glenn Thomas.

Susan told Joe Gregory that, after Glenn Thomas had done nothing about Glenn Foster's report, Glenn Foster had tried to pursue the matter further. He'd gone to the State Attorney General's office and the FBI about it.

Joe Gregory:

He didn't go to the right state or the right local. But I can see where he's coming from. We had the same problem ourselves, who we could trust and who we couldn't.

[33:56] Colin Miller: Today, there are no documents in the case file that reference Glenn Foster's interview with Donnie Barrentine. But that case file also had that videotaped recording of Barrentine's 2002 interview with investigators. And in that video, towards the end of the interview, there's an interesting exchange that happens.

GBI Agent Mike Trull:

Many years ago, when you were in jail with all this mess, up there in McRae and all that, you were interviewed by a man named Dixie Foster. Do you remember that?

Donnie Barrentine:

No.

That's GBI Agent Trull that's speaking there. He asks Donnie Barrentine if he remembers an interview with someone named "Dixie Foster," and after a long pause, Barrentine shakes his head slightly. No. He doesn't remember that.

As for who or what Dixie Foster is, well, that isn't explained, and we'd never seen that name before.

GBI Agent Mike Trull:

I believe he interviewed you twice.

Donnie Barrantine:

Who is this? I don't know.

GBI Agent Mike Trull:

I think he's someone brought in by the Sheriff's Office? Correct?

Dale Bundy:

Yes.

The grainy video footage obscures Barrentine's face some, but not so much that you can't tell how unhappy he is about the questions Agent Trull is asking. In fact, Barrentine is so unresponsive that it seems to make Agent Trull doubt his own questions. "I think

he's someone brought in by the sheriff's office," Agent Trull tells Barrentine. And then Agent Trull turns his head to look directly at Dale Bundy, who is sitting beside him. "Correct?", Agent Trull asks. In the audio, the sounds all blur together, but in the video recording, Dale Bundy's response is clear. He nods his head twice. Yes, Dale Bundy confirms. Dixie Foster was someone brought in by the sheriff's office.

GBI Agent Mike Trull:

When you talked to Mr. Foster, years ago, apparently at some point in the interview, according to what I've read in the previous case file, you said: "I did it," but then immediately you went back and said, "I'm just kidding." Do you remember that? [Bundy is taking notes during this section]

Donnie Barrantine:

No.

[35:41] Susan Simpson: The very first time I watched this tape, before I'd spoken to Glenn Foster, this section of the interview had seemed curious to me, and confusing, but it didn't strike me as necessarily super important. I had no context for any of it, and the way Trull asks this question, it makes it seem like nothing that big of a deal. It was as if Donnie Barrentine had, at some point after his arrest in 1985, told some random investigator: "Hey, guess what? I killed the Swains. PSYCH!"

But listen again to what Agent Trull is saying here.

Agent Mike Trull:

According to what I read in the previous case file, you said ...

According to what he'd read in the previous case file. Yeah, that's a big deal. Agent Trull is confirming that there was a written report about some guy or something, named Dixie Foster, who had interviewed Donnie Barrentine. There was a report. The state had it in 2002, less than a year before Dennis Perry's trial. It was in the case file.

So what the hell happened to it?

[38:04] Rabia Chaudry: It's at this point in the interview tape, right after Agent Trull asks about the Dixie Foster report, that you can see Donnie Barrentine suddenly lean forward in his chair, hands resting on the table in front of him. He redirects his gaze from Agent Trull to Dale Bundy -- it is Dale Bundy that Barrentine starts questioning.

Donnie Barrentine:

Were you involved in that?

Dale Bundy:

No, I was not.

Donnie Barrentine:

You knew what was going on up there?

Dale Bundy:

No.

Donnie Barrentine:

Alright, the deal was, I was taken up there and booked in under John Doe. What I got from this guy was: you stay here, until you either confess or go crazy. And it probably would've went down that like, except there was some old jailer, I never know his name. He was real old, he's probably retired now. This was the deal -- no contact.

The strangeness of this whole exchange between three investigators and a witness they're interviewing is even more pronounced when you watch the video.

Excerpt from Donnie Barrentine Video:

Alright, the deal was ...

Butch Kennedy:

He's running the show now [laughs].

Jennifer Whitfield:

That's exactly what I said when I watched that video [laughs]. It's almost verbatim.

Donnie Barrentine is running the show, and he knows exactly what this whole Dixie Foster thing is about. "I was taken to the Glynn County jail," he says, "and booked under the name John Doe." And that did happen. We know that because, in the DA's file, there are copies of three letters that Barrentine wrote to his family while he was in Glynn County, and in those letters he talks about how they'll have to write to him as John Doe now, if they want to reach him. His letters to his family are signed, "Love, Donnie Barrentine. Or John Doe. Whichever."

And what Donnie Barrentine describes in those letters sounds exactly like what he's telling Bundy in this interview, 17 years later. He says the same things word for word, even. He writes in one letter:

They want me to confess to some murders. I am not going to do it I am not going to say I did because I didn't do it. So they they're going to keep me in the hole until I confess or go crazy. I'm gonna go crazy already. It's cold in here.

Donnie Barrentine also makes frequent references to being interviewed by someone. In one letter to his wife, he writes:

I need to see the lawyer bad. The man I've been talking to won't tell me what his name is. I don't know why.

In these letters, Barrentine begins to refer to this interviewer as "the man with no name." As in, *The man with no name is saying a lot of things about Gregg. Or, The man with no name wants me to confess. I didn't kill them and I ain't gonna say I did.*

And it's clear from what he's writing home that Donnie Barrentine is very worried about the situation he's in. He writes things like, "It looks like I'm gonna be in jail for a while," "Tell Marty I'll see him in 20 years," and "They [tell me] if I don't fry in Georgia I'll fry in Florida, but that's crazy. Besides, on death row, you can at least have visitors," and "My hair is starting to fall out, I don't know why." He also asks his family repeatedly: "Find out where I was March 11th"; and "Call [my employer] and find out about March 11th and 12th if you can, it was either then or when Boo and Jeff painted Jeff's sister house." In other words, someone needs to go and check on his alibi.

[41:14] Susan Simpson: The timelines here aren't entirely clear, but based on what we know of when Barrentine was transferred between various jails, these letters were written on Monday, August 19th, 1985. That's two days after the day that Glenn Foster would've had his interview with Donnie Barrentine, and Glenn Foster, I think, must be Barrentine's man with no name. In these letters, Barrentine never directly references what he told the man with no name, but based on what Barrentine is writing home about, it's obvious that something didn't go well, and Barrentine is severely stressed about what's gonna happen to him now. And throughout these letters, he makes multiple references to serving 20 years in prison.

[41:50] Colin Miller: In the taped interview, Donnie Barrentine never actually answers the question about what happened in this interview with Dixie Foster, or the man with no name, or whatever name it is that Donnie Barrentine knows him by. Instead Barrentine just skips ahead further in the story, avoids it entirely. And Dale Bundy is fine with this -- he makes no attempt to get an actual answer out of Barrentine. Actually, Dale Bundy does the exact opposite. He steps in to give Barrentine an out.

Donnie Barrentine:

Them days were kind of ... fuzzy.

Dale Bundy:

Is it fair to say that you weren't real fond of the police back in those days?

Donnie Barrentine:

I still ain't.

Dale Bundy:

I know. Uh, would you have been prone to jerking police around maybe a little bit if you thought you could get away with it?

Donnie Barrentine:

Back then, yeah.

You were just jerking the police around a little bit, right? Dale Bundy asks. The implication is clear: if Barrentine happened to make any confessions while talking to this Dixie Foster, they don't actually mean anything, because Barrentine was just trolling the police. It's a nonsense idea, though. And it's not based on anything Donnie Barrentine told Bundy when he described what happened at the Glynn County jail.

[42:58] Susan Simpson: From what is said in the Barrentine tape, it seems as if Dixie Foster and Glen Foster and the man with no name must be all one in the same person. But where did this name Dixie Foster even come from?

I've got an answer to that question, at least. While trying to schedule a call to talk to Glenn Foster about it, I ended up talking to Foster's business partner first, and I asked him, hey, by the way, do you know who Dixie Foster is? There was a pause, and then a ventured guess: "I think that's Glenn's wife?" He tried to puzzle it out for a moment, and then suddenly started laughing. "No wait, that's Glenn!", he said. "Dixie is his first name. But please don't tell him I told you that, because he doesn't like using that name."

[43:39] Rabia Chaudry: Dixie Glenn Foster. That's who Dixie was. But knowing that only solves part of the mystery.

Glenn Foster:

What's this about my name? I don't remember ever filing a report, ma'am, with the name Dixie on it. I don't know where somebody came up with that. Maybe they'd heard it somewhere, because I never go by that name.

Glenn Foster was just as confused as we were was about where Agent Trull could've gotten the name Dixie from. And just as confused by Agent Trull's claims that Barrentine had been playing some kind of practical joke when he confessed to the murder.

Susan Simpson:

At the very end, it's casual, the GBI Agent asks Barrentine, "What is this about an interview you had with Dixie Foster? I read the report. And you confessed. But then you said, 'I'm just kidding.'"

Glenn Foster:

No! No, it ... see, Susan, it's like I told you, he admitted the button. I remember that part. He remembered it. And that was the reason we had enough PC when I trapped him, you know for warrants and things like this. And I filed a report. I know I did, because I would always file something on a case

Glenn Foster acknowledges that after 33 years, there's a lot about the Barrentine interview he might not remember now. But Donnie Barrentine confessing to him, and then immediately saying, "just kidding" -- that is *not* something that he thinks could've happened.

Susan Simpson:

You don't recall that, about him saying, "I'm just kidding?"

Glenn Foster:

No. No, nobody kids about confessing, ma'am. I'm sorry [laughs].

But the "just kidding" stuff aside, what Agent Trull's comments in the Barrentine tape confirm is that somewhere out in the world, there's a document that describes how, in August of 1985, Donnie Barrentine was interviewed, and he told the interviewer, "I did it."

So why did this report disappear? And why was it never given to Dennis Perry's defense?

JOHN JOHNSON

[45:32] Susan Simpson: I can't explain why, back in 1985, DA Glenn Thomas would've wanted to hide the existence of the Foster interview. But as for why, in 2003, the DA's office would've wanted to hide the existence of the Foster interview, well that's pretty obvious. Assistant DA John Johnson wanted Dennis Perry to be convicted and executed, and it would make his job a lot harder to do if it was known that another man had confessed to the murders.

[45:54] Colin Miller: John Johnson couldn't avoid handing over the videotape of Barrentine's 2002 interview, though, and when Defense Attorney Dale Westling watched the tape, he too was confused by Agent Trull's questions about Dixie Foster. So Dennis Perry's attorney followed up with a letter to John Johnson about it:

In again reviewing the Donnie Barrentine tape, I picked up the name "Dixie Foster." Apparently Mr. Foster interviewed Barrentine early on in the case. I do not have any reports or notes of the interview. Please forward them to me at your earliest convenience. Also, I need Donnie Barrentine's address. Although he wrote it down for Mr. Bundy, he did not state it aloud.

John Johnson received this letter on April 17th, 2002. As far as we can tell, he never sent a response to Dennis Perry's defense about it, but Johnson did respond to someone else. The very next day, on April 18th, he sent an email to Donnie Barrentine.

This is the same email, by the way, that we discussed earlier on the show, in Episode 18. The one where Prosecutor John Johnson writes to Barrentine to give him a heads up: hey, just so you know, the defense is looking for you. Don't worry, I won't give them your address just yet, but they'll probably find you eventually. And oh, John Johnson writes to Barrentine, by the way. If you deny you said those things that people have said you said, then the defense can bring in those people and have them say you did say those, and make it look like you killed the Swains.

[47:07] Rabia Chaudry: And John Johnson's plan -- because it's impossible to see this as anything but a plan -- was successful. At Dennis Perry's trial, when Donnie

Barrentine got on the stand to testify, the defense did bring this issue up. They asked him, "Did you ever confess to a gentleman named Dixie Foster, a police officer?"

And Donnie Barrentine responds, "Not that I know of."

And that's that. The defense attorney, apparently deciding not to continue asking questions he doesn't already know the answer to, moves on to other matters, and never raises Dixie Foster again. Besides, it probably wasn't important anyway. John Johnson had told the defense that he'd handed over all *Brady* material, and since Johnson hadn't handed over anything about this interview with Dixie Foster, well, it must not have been anything important.

DALE BUNDY

[48:07] Susan Simpson: But what about Dale Bundy? When I interviewed Bundy down at the Sheriff's Office in Camden County, I hadn't know anything about Dixie Foster or Glen Foster or any kind of confession that Barrentine had made to law enforcement, and Bundy obviously never volunteered anything about it. Bundy told me that he'd *cleared* Barrentine, and that the reason Butch Kennedy and Joe Gregory had never solved this case is because they had tunnel vision on Donnie Barrentine, and that had stopped them from making real progress.

But in 2002, Dale Bundy had definitely known about Dixie Foster and the Barrentine confession. We know this because there is literally a videotape of Dale Bundy confirming that he knew about Dixie Foster and the Barrentine confession. So why didn't Bundy mention this in any of his reports? And why didn't he make any effort to investigate it?

I talked to Dale Bundy about it, hoping he might be able to explain more about what happened, or, not to get my hopes up too much, but possibly maybe even he'd be able to give me some ideas on where that written report might be today? So I called him and asked him about it, but well, mmm, let's just say the conversation didn't go all that great. Long story short, Dale Bundy is not going to be able to give us any answers here. Bundy denies that he ever had any knowledge of the Foster interview, and it's going to take a lot more than just a videotape of him confirming he knew about it for him to change his mind on this.

While working on this case, there was a story I'd heard from someone who'd known Barrentine back in the 80s and 90s that I hadn't really been able to make sense of at the

time. This man I was talking to, was not close to Donnie Barrentine and had never spoken to him directly about the case, but he was close to people who *had* spoken to Barrentine about it, and they told him about some of their conversations with him.

Everything this man knew was second-hand and fairly vague. All he knew, he said, is that Barrentine had told friends and relatives they both had in common, that he'd done the murders up in Georgia at the church. But, Barrentine had said, they'd messed up somehow -- they'd gone to the wrong church and killed the wrong people. And, he said, Donnie Barrentine had told people that, while he was in jail up in Georgia, he'd confessed to doing the murders, but they wouldn't believe him.

At first, I'd assumed what the guy meant was that Donnie Barrentine had confessed in jail to another inmate. Or maybe a jailhouse informant had claimed Barrentine had confessed, something like that. That made sense to me. After all, Jeff Kittrell kinda had said that. But then the man clarified: no, like, to the police. The confession was to the police. Barrentine had confessed while he was in jail, only the police hadn't believed him.

When I heard this story, I kind of dismissed it. Everything this man knew was second-hand, and it was so easy to assume that this story about Barrentine confessing to the police and the police not believing it -- well, the obvious explanation is that this is just a second-hand story that's gotten garbled around in the re-telling. Something like that.

After talking to Glenn Foster, though, I realized this story about Barrentine confessing and not being believed, it actually makes a lot of sense. Especially because, from the perspective of Donnie Barrentine, that might've been what this all seemed like. He'd known he'd confessed, but he'd never gotten charged with anything, so for some reason the police must not have believed him.

And then there's another story I heard that seems to corroborate what Glenn Foster told me, at least a little bit. This story came from someone who'd called in to *Unsolved Mysteries* in 1988. I've mentioned this tipster before, actually, in a previous episode -- it was the *Unsolved Mysteries* tip that, out of all the tips, I was most fascinated by. It was the tip that I most wanted to know more about. Because the tipster had called in some very specific info about how someone in the Barrentine family, it's not clear who, had committed the murders because the Swains had a relative who might testify against the Wilkes County mafia.

But I couldn't find this tipster. No one could. I knew from the files that, over the years, both before and after Dennis Perry's trial, attempts had been made to find him, but the caller could never be located. I spent a lot of time on it, but had to stop, because I just wasn't getting anywhere.

Then one day, while thumbing through some files, there was a stray line in one of the documents that caught my eye. I'd read this line probably a dozen times before, but for whatever reason, when I saw it this time, everything clicked into place. I knew who the Wilkes County Mafia tipster had been.

So I called him, and although he was surprised to hear from someone about a 30 year old *Unsolved Mysteries* tip, he confirmed that yes, he'd been the one to call that tip in. And he was willing to tell me what he knew.

Back in the late 1980s, he said, not long after when Donnie Barrentine was released from federal prison on the weapons charge, he and Barrentine had been friends, and Barrentine had told him all about the murders at a church in Georgia.

Though, Barrentine had never claimed that *he'd* done the murders, the tipster said. Barrentine hadn't been telling the tipster that he was personally responsible for the crime. He was telling the tipster that he'd known who had done it, and why they'd done it. And according to the tipster, that reason was, "The motive is the preacher had a son who was supposed to testify. The son snitched on the Wilkes Mafia Family, but the mafia could not touch the son because he was in a witness protection program, so they got back by killing the preacher and his wife."

It's almost the same story that Glenn Foster recalls Donnie Barrentine telling him back in '85. And, it would seem, Donnie Barrentine kept telling that story, even after he got out of prison.

[53:12] Susan Simpson: At some point in August of 1985, Donnie Barrentine made a statement implicating himself in the murder of Harold and Thelma Swain. That much I feel very confident about at this point.

But the question of whether Donnie Barrentine confessed to the murders is a different question from whether Donnie Barrentine committed the murders. The first question is answered, but the second is not.

First off, Donnie Barrentine has almost definitely falsely confessed to murders before. Not ever in a custodial context before that I know of, but in social settings, decades ago? Yeah, Barrentine has claimed to do murders that he probably hadn't done. Or at least I think he probably hadn't done. And I know this because a few people have told me that Barrentine had implied to him he'd done a certain crime, but at this point, I am 98% never even happened in the first place.

Or take the unsolved shooting of a man in Marianna, Florida, who was summoned to the front door of his house one night, and shot at six times. The man survived, somehow, but when he tried to call for help, the phone lines had been cut. That happened in June of 1985, and Jeff Kittrell said Barrentine was responsible for it. When I got the case file for this shooting, there Barrentine's name was in the police notes -- someone had called in and said Barrentine had claimed to them that he'd done it. Although, that's also the only evidence really that I've seen that Barrentine was involved in the case somehow.

So, putting these other cases aside, what about the contents of Donnie Barrentine's statements in the Swain case? Is there anything to corroborate the story he told Glenn Foster is true?

Unfortunately that's not really a call we can really make right now, since we don't actually know what Donnie Barrentine's told Glenn Foster. Glenn Foster remembers some of it, but not the specifics, and not enough to independently evaluate how credible the statement really was.

The basic story about Donnie Barrentine that we know comes from Jeff Kittrell. And no one I've talked to who knew Jeff Kittrell has described him as credible. Just the opposite in fact. His brother told me that Jeff Kittrell had always had a helluva imagination -- you give him one detail, and he'll tell a story that runs miles with it. "I wouldn't convict nobody on what he said", he told me. I asked him, if your brother had testified a trial, should a jury have believed what he said? "God I'd hope they wouldn't", Kittrell's brother told me.

But probably the most ominous message in Barrentine's letters home, and the one that makes me wonder the most about whether I've been too quick to discredit anything said by Jeff Kittrell, comes from a letter where Barrentine explains to his family why he's in the Glynn County jail, and not in Camden County where he'd been before: "I think the real reason I'm here is Jeff is talking, so they separated us. They know things only he could have told them."

Which suggests that there must've been some truth to what Jeff Kittrell was saying, if the information he gave led Barrentine to conclude "Jeff is talking." Though, the way Donnie Barrentine writes about Kittrell in these letters seems bizarrely sympathetic, given how contemptuous Barrentine is of Jeff Kittrell today. Barrentine knew these letters were being monitored, so that might explain it, but Barrentine writes things like, "I never would have believed that Jeff would break. But he had a reason. I will tell you about it later," and he writes "I'm not mad at him. Jeff... just took all that he could and finally broke." And part of me wonders. Given that, probably just two days before he wrote these letters, Barrentine himself had made statements implicating himself in the murders, is Barrentine talking entirely about Kittrell here, or could he be talking also about himself?

I called up Donnie Barrentine to tell him about what I'd found, and to ask him about the man with no name. I didn't know about him when I talked to you before, I said, but I found him and I talked to him, and he told me that you had confessed to him.

That never happened, Barrentine said. I have no idea what you're talking about. And whoever you're talking to, they're lying.

It was not so much the existence of the interview with the man with no name that Donnie Barrentine was denying. He more or less acknowledged that had taken place. He'd been interviewed by a man with no name, and that man with no name's goal had been to make Barrentine confess, or to make Barrentine go crazy, whichever came first.

But when I asked Barrentine if he could've said something to the man with no name that amounted to a confession, or maybe if he could've just pulling the guy's chain and pretending to confess to him for some reason, Barrentine was just as adamant.

No way no how, it didn't happen. Why would Barrentine have said a thing like that? He hadn't killed the Swains, so why would he confess to it?

People sometimes confess to things they haven't done, I told him. But Barrentine didn't budge on his denial: That'd be stupid, he said. Why would someone do something like that? Why would **he** do something like that? He wouldn't have. Wouldn't happen. And he definitely never would have pretended to confess to a murder as a joke, because that would be completely stupid. And well, I couldn't disagree with him on this last part.

But that Donnie Barrentine was so adamant that he couldn't have confessed to Glenn Foster actually kind of surprised me a little. Because one thing that had struck me when I'd talked to him before, was this almost implied acknowledgment that, yeah, in an alternate universe, the investigators might've succeeded in convincing him to falsely confess. Because for a time there, he'd been in a rough spot, while over the Glynn County jail. Confess or go crazy, the man with no name told him, and for a time, it had seemed to Barrentine like he might do one or the other.

Barrentine made similar comments to Dale Bundy back in 2002 as well.

[58:15] Donnie Berrentine:

What I get from this guy is, you stay here until you either confess, or go crazy. And it probably would've went down like that except there was some old jailer, I never knew his name.

It probably would've gone down like that, Donnie Barrentine had said. He either would've gone crazy, or he would've confessed to the murders, those were the options left to him. The only reason things hadn't gone down that way was because of the intervention of a kindly but unnamed jailer, who'd given Barrentine the support he needed to get an attorney and to put a stop to the interrogations. Or, something like that.

But what would have happened if this kindly jailer hadn't intervened? Or what if this jailer hadn't actually existed? Maybe he is real, but Barrentine has always been very vague on the details of this guy's existence. He never knew the man's name, he said, just an older man who'd shown Barrentine some kindness when he was in a bad spot. And this jailer had, at the exact right time, come to Barrentine's rescue. He hadn't liked the way Barrentine was being interrogated, Barrentine told me. He hadn't thought it was right. So somehow, in some vaguely defined way, this kindly jailer had done something that had stopped the man with no name, and the man with no name hadn't bothered Barrentine any more.

I wondered, though. Could the kindly jailer's intervention have been nothing more than an alternate ending that Donnie Barrentine had written for himself? One where the story ends the way he wishes it had, rather than the way it actually did?

Because, at least according to Glenn Foster, the kindly jailer in Glynn County must've come too late. He hadn't succeeded in stopping Barrentine from confessing to the man with no name.

[59:55] Colin Miller: When it comes to the Donnie Barrentine's stories about how or why he could've been involved in this, the most consistent theory of his motive has to do with the Swain's relative, Lawrence Brown. But confirmation that some kind of connection might exist between Barrentine and Brown has proven elusive.

Not long after the Swains were killed, Lawrence Brown was arrested for his role in a drug trafficking conspiracy that imported drugs from Jamaica. He pleaded guilty and was sentenced to 10 years in prison. From the records we have about his arrest and the case against him, there's nothing that obviously links what Brown was involved in to any of the known activities that the Wilkes County mafia was involved in.

From Lawrence Brown's prison records though, there is at least a suggestion that some kind of link could exist between the two.

[1:00:33] Rabia Chaudry: After Lawrence Brown's arrest in April of 1985, he made bond and was released, and pled guilty in May. Two months later, on July 15th, 1985, Brown surrendered himself to a prison in the Florida panhandle to serve his sentence. The same day, in fact, that the grand jury in the Western District of North Carolina had returned their 39-name indictment in the the Wilkes County mafia case.

In October, one week before the Wilkes County mafia trial was scheduled to begin, Lawrence Brown was transferred out somewhere on a writ from the prison in Florida. The problem is, we don't know where -- the paperwork doesn't specify it. One week after the Wilkes County mafia trial was over, Lawrence Brown was transferred back again to his original prison, from wherever it was that he had gone to. But even though we don't know where he went, we do have a clue about what he was doing while he was there. In a progress review report for Lawrence Brown, a prison official wrote:

"Good work and behavior. Recently returned from writ -- inmate expecting reduction in sentence."

Lawrence Brown's expectations were correct. Eventually, his ten year sentence was cut in half, and after serving two and a half years in all, he was released from prison. After that, he was a confidential informant for law enforcement -- paperwork shows that he helped the GBI out on at least a couple of cases.

Reading between the lines here, it is very likely that Lawrence Brown was a cooperating witness on some investigation or trial that was going on somewhere. And this was all taking place at the exact same time as the Wilkes County mafia trial.

But while that's intriguing, it doesn't prove anything. None of the records from the Wilkes County case that we've been able to obtain so far have mentioned Lawrence Brown, and none of the people involved in the conspiracy have remembered him. At the same time, though, there's no guarantee that Brown's name *would* be there if he was an informant. In fact there are people in the Wilkes County group who we have confirmed were working with the government to build a case against others involved in the Wilkes County operation, but you can barely find any reference to them whatsoever in their investigative records.

[1:02:35] Susan Simpson: Which is why the whole Lawrence Brown angle to this case has been so completely maddening, every step of the way. Even though everything we've found has shown that it's *possible* that Lawrence Brown was cooperating with the government somehow in connection with the Wilkes County mafia case, nothing we've found has confirmed that it actually *was* the Wilkes County mafia case, and not some other drug case somewhere.

Which means for now, this part of Donnie Barrentine's confession to Glenn Foster remains unconfirmed.

[1:03:02] Colin Miller: Of course, none of this matters anyway, if Dennis Perry isn't allowed to ever tell a court about what happened to him. None of what we've discussed in this entire season matters.

Right now, as the law stands, a prosecutor can do anything to win a conviction against the defendant -- plant evidence, bribe witnesses, whatever it takes -- and just so long as the prosecutor manages to convince that defendant to waive every possible constitutional or statutory right he has to challenge that misconduct, there's nothing the defendant can do about it.

And that's what John Johnson has argued is Dennis Perry's inescapable fate here. It doesn't matter what John Johnson did to convict Dennis Perry, all of that is beyond judicial review. Because Dennis Perry gave up his right to ever tell a court about what happened to him.

[1:03:44] Rabia Chaudry: When Dennis Perry was convicted on February 14, 2003, his attorneys told him that if he didn't accept the sentencing agreement that the State was offering, he would almost certainly be executed. During the 45 minute span between his conviction and his acceptance of the sentencing agreement, the defense attorneys told Dennis that when a defendant had been convicted, there's really only two people a defendant can blame: either the judge for making an error, or defense counsel for being ineffective. And in this case, he said, he was unlikely to succeed in appealing on either issue. Which meant: you either take the sentencing agreement, or you die. Dennis Perry told them he did not want to die.

When Dennis was brought back into court, Judge Amanda Williams asked him if he wanted to accept the deal that had been offered by the State. Judge Williams said:

“Okay. Do you understand for the record what has occurred here, that the State has said that they will withdraw their seeking of the death penalty in this case and that your attorney has basically said to the Court, for and in consideration of that, that you're willing to give up your right to appeal the sentence and all [] possible appealable issues in the trial of this case, and for your giving up those rights, the State is willing to give up its right to seek the death sentence here? Do you understand that?”

“Yes ma'am”, Dennis Perry responded. The deal was done.

Dennis' brother, Daniel, remembers that, that night at the courthouse, after Dennis had entered into the sentencing agreement, his family had not yet grasped its significance. He and some other family members were out in a court hallway talking to one another about what they should do next in Dennis' case.

[1:05:14] Daniel Perry:

One of the prosecuting attorneys came out, and he walked past, and he said “Y'all better stop talking about it because there is nothing you can do, even if the murderer walks up tomorrow and confesses, Dennis Perry will stay in prison”. Because of the “no appeal”, you know, we didn't know anything about that. We thought that was bogus. There's no way, and “You shut up, mister”...you know, and that's when we figured out, a little after that, that attorney was right.

Dennis Perry did attempt a legal challenge, though. A couple weeks after his conviction, he got a new attorney, Richard Darden, who filed a habeas petition on Dennis Perry's behalf. The habeas was limited in scope. Although a waiver of appellate rights is valid

and enforceable, that kind of waiver has to be made knowingly and voluntarily, and in his habeas petition, Darden argued that Dennis Perry had been coerced into the sentencing agreement, and therefore the agreement was invalid.

Dennis Perry lost. His waiver of appellate rights had been both knowing and voluntary, the court found. And that was that. According to prosecutor John Johnson, all of Dennis Perry's days in court were forever over, and he waived any right to challenge his conviction ever again.

[1:06:30] Susan Simpson: John Johnson is wrong about that. That's not what Dennis Perry agreed to. At the hearing on the sentencing agreement, John Johnson himself told the court that the State had made the offer to Dennis Perry that, quote, "If the defendant will give up his right to appeal the conviction and sentence in this case, the State will give up the death penalty."

[1:06:46] Colin Miller: But remember, appellate rights are not the only rights that a convicted defendant has. There are other post-conviction rights. And a habeas petition is not an appeal. It's not even a criminal proceeding. It's a civil action challenging a detention by the government. The government cannot ask a defendant to waive his appellate rights, and then turn around and claim, "Well, a habeas petition has some things in common, sort of, with a criminal appeal, so the court should conclude the defendant has forfeited all these rights as well".

Just last week, the Supreme Court of Georgia issued its decision in *Rawles v. Holt*, in which a defendant had entered into an agreement to waive his appellate rights, but was challenging a lower court's denial of his right to file a habeas petition. And in that case, the Court held:

"In this case, there was no written waiver, and the colloquy between the trial court and [the defendant] shows that [the defendant] understood that he was specifically waiving his right to appeal and that [the defendant] affirmed that he made the decision to waive that right freely and voluntarily. The record does not show, however, that he knowingly waived the right to petition for a writ of habeas corpus.

...

Because the State has failed to meet its burden of showing a knowing waiver of [the defendant's] right to file a petition for habeas corpus, we reverse the judgment of the habeas court[.]"

Now in the *Rawles* case, the defendant's habeas rights actually had been discussed as part of the sentencing agreement, but due to a confusing slip of the tongue by the trial court, those habeas rights weren't discussed effectively. But in Dennis' case, there's no indication whatsoever that, at the time of the sentencing agreement, a waiver of habeas rights had ever been contemplated by anyone in the courtroom. Dennis Perry's habeas rights weren't on the table, and not part of any deal.

Although, later on, weeks after the sentencing agreement was entered into, John Johnson does seem to have contemplated whether he should've asked for more when he negotiated Dennis Perry's sentencing agreement. Because Johnson filed a document that he purported to retroactively waive Dennis Perry's habeas rights, without Dennis Perry's knowledge or his consent. This happened on March 10th, 2003, one month after his conviction. Dennis Perry filed a motion for a new trial, and that same day, John Johnson filed a sentencing statement that memorialized the terms of Dennis Perry's sentencing agreement. In it, Johnson claimed that Dennis had waived his appellate rights **and** his habeas rights. It said:

"...the State, after conviction, [has] waived seeking the death penalty on the condition that the defendant waive and give up all of his post-trial motions, including but not limited to any of his appeal rights"

[1:09:01] Susan Simpson: This document was signed by John Johnson and by Judge Williams, and filed with the court. But it was never signed by Dennis Perry, or any of his attorneys. Its claim that Dennis Perry gave up his habeas rights is simply not true. That never happened. The transcript from Dennis Perry's sentencing agreement is clear -- the only offer made, and the only offer accepted, was Dennis Perry's agreement to waive his right to appeal his conviction and sentence. There was no waiver of Dennis Perry's habeas rights.

Which means that, just as an example, there was never any waiver of Dennis Perry's right to, say, challenge the constitutionality of a prosecutor's decision to hide the fact that another man had confessed to the murders that Dennis Perry is currently serving two life sentences for.

In other words, this may be the end of Season 3 of *Undisclosed*. But it's far from the end of Dennis Perry's case. His attorneys at the Georgia Innocence Project and King & Spalding continue to work on Dennis' behalf, and, as his case develops, we'll keep you updated on it every step of the way.

And oh yeah. If and when we ever get the full transcripts from Dennis Perry's trial, we'll do an episode on that too. Next time, eventually, on *Undisclosed*.

[1:10:12] Susan Simpson: And that's all for Episode 21, and Season 3, of *Undisclosed: the State v. Dennis Perry*. But don't forget, there's still a final addendum this Thursday -- so send us all your questions about Season 3 to us with the hashtag #UDaddendum.

To all our listeners: thank you so much for listening to this season, and while we don't have dates for you yet, we'll be back again before too long.

Mital Telhan, is our executive producer. Our logo was designed by Ballookey, and our theme music is by Ramiro Marquez and Patrick Cortez. Our miracle working audio producers for this season have been Rebecca Lavoie and Hannah McCarthy. And our incredible addendum host is Jon Cryer, who'll be back on Thursday for the final addendum.

Huge thanks goes to everyone over at the Georgia Innocence Project, which represents Dennis Perry, Joey Watkins, and many many other defendants in Georgia and Alabama who have been wrongfully convicted. If you'd like to support their work, please, pick up your phones now, and text the word Dennis to 91999. You'll get a link right back where you can donate in any amount, to help the Georgia Innocence Project continue its work.

Special thanks also goes out to Ed Costikyan, who interned at GIP this summer, and was a fantastic help in this investigation, and to former GIP attorney Cristina Cribbs, for her years of work on Dennis' behalf and her help with this investigation for this podcast.

Also, for their work all season, thank you to Brita Bliss, Erica Fladell, Dawn Loges, and Skylar Park, who have transcribed every episode of Season 3. You can find the transcripts and other case materials on our website, at undisclosed-podcast.com.

And thank you to our sponsors. We literally would not be here without you.

Oh and absolutely no thanks go to my cats, Ragnarok and Ghost, who do everything in their power to actively oppose the production of this podcast.

Even though Season 3 is over, our investigation into Dennis Perry's case is not. So, here's one final plea to our listeners. Over the past six months, I've heard from a lot of people who've contacted the podcast to tell us things like, "I don't know anything useful

and I'm sure this isn't helpful to you, but here's this thing that I know that I figured I'd pass along just in case." And like pretty much always it's been something that was absolutely helpful and I was really glad to know. So to everyone out there in Camden County or anywhere else who thinks that they may know something about the case but don't think it's important enough to tell us about: well, you're wrong about that, and I would love to hear from you. You can reach us at undisclosedpodcast@gmail.com, or reach me at susan.simpson@gmail.com. Or call and leave us a message at (410) 205-5563.