

UNDISCLOSED, the State v. Terrance Lewis
Episode 3 - On the Testimony of One
January 15, 2018

[0:21] Rabia Chaudry: For the past 20 years, Terrance Lewis has been behind bars as the result of the testimony of a single witness. A woman named Lena Laws, known to most as Star, testified at his trial that three young men came into the house the night her boyfriend Bernard Howard had been shot and killed, and she told the jury that the co-defendant in the white shirt had been one of them. That single line in testimony is the only evidence the jury heard that linked Terrance to the crime.

And while there are a lot of good reasons to allow a single witness to establish factual matters before a court, there's a good reason many prosecutors prefer to avoid a single witness case situation when they can, and make it a multi-witness case instead. And single witness cases have been a source of unease for legal systems around the world for as long as the concept of the legal system has existed. The Bible addresses the subject at length. For instance, the Bible says at:

Deuteronomy 19:15

"A single witness shall not suffice against a person for any crime or for any wrong in connection with any offense that he has committed. Only on the evidence of two witnesses or of three witnesses shall a charge be established."

And in

2 Corinthians 13:1

"Every matter must be established by the testimony of two or three witnesses."

And in

Matthew 18:16

Jesus reminds his disciples of the importance of ***"every matter may be established by the testimony of two or three witnesses."***

Roman law carried on this tradition, but ultimately the common law system would come to reject it, and so too does American law today, with certain exceptions. In fact, for one offense, the U.S. Constitution enshrines a bar on single witness cases. Article 3,

Section 3 provides, "No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."

But there are no such limitations when it comes to crimes like murder. As the Supreme Court of Pennsylvania has repeatedly held, it is well-settled in Pennsylvania that the identification of defendant by a single witness is sufficient for conviction even if half a dozen witnesses testify that the defendant had an alibi.

The judge instructed the jury at Terrance's trial

[2:31] Susan Simpson reading Jury Instructions:

"You should recognize that it is entirely possible for a single witness to give truthful and accurate testimony and that his or her statement may be believed even though a greater number of witnesses of apparently equal reliability contradicted him or her. The question for you to decide, ladies and gentlemen, based on all the considerations I'm discussing with you, is not which side produced the most evidence, but instead, which evidence you believe."

The jury believed Star. Terrance Lewis, and his co-defendants, were all convicted. And though her testimony alone was legally enough to support a conviction, the jury never heard from any of the many witnesses who have come forward to tell the court that Star was wrong.

[3:12] Rabia Chaudry: Hi and welcome to Undisclosed: The State v. Terrance Lewis. My name is Rabia Chaudry, I'm an attorney and author, and I'm here with my colleagues Susan Simpson and Colin Miller. Hi guys!

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 EvidenceProf Blog.

Susan Simpson: Hi, I'm Susan Simpson. I blog at the ViewFromLL2, and I also podcast with Rabia at "The 45th."

[3:40] Rabia Chaudry: Lewis' case is a very simple case, by almost any measure. A simple shooting with a simple motive, and just the one eyewitness to tell the jury who had did it. And in a murder case, it really doesn't get much simpler than that.

But for such a simple case, there remains one big gap in our knowledge of what happened: how the police actually found the defendants they would eventually arrest for

the crime. We know that everything started with what Star told the police on the night of the murder in August 1996, about how Mellow and JR and Stink had been the killers. And we know that Star later identified the three defendants out of lineups she was shown, in March and June and July of 1997. But what we don't know is what happened in between. How the police ever found those three defendants to put them in a lineup in the first place.

Which means the case can't quite be as simple as it appears on the surface. I mean, I guess it's possible the police just put a couple dozen random young black guys in a bunch of photo arrays and then went and arrested whoever Star ended up pointing at, but it doesn't seem like that's what happened here. It seems like someone or something pointed the police in that direction, and off they went.

So how did the police get from Point A to Point B in this case? How did they go from the nicknames Mellow, J.R., and Stink, to identifying the men behind those nicknames as Jimel Lawson, Jehmar Gladden, and Terrance Lewis?

While we still don't have the complete picture, in recent months Terrance's attorney was given, for the first time, a document that contains a partial answer: Crime Stoppers. Or rather, Philadelphia's equivalent: the Citizens Crime Commission of Delaware Valley.

The document is a page of notes from a detective's notebook, from Terrance's case file, and it says, "From Montecalro – dash – Crime Commission." That's spelled C-A-L-R-O, by the way, but I think that's just a mistake and it's supposed to be "Monte Carlo." And we can only guess it's referring to the type of car driven by the three men who killed Bernard Howard, because that is the model that Star tells police she thought they were driving that night, but it's also hard to see what that would have to do with the source of the Crime Commission tip, like the note seems to imply. In the line underneath it though, the note says,

"Doer is Terrance Lewis – 3853 Lancaster Ave, 18-19, Light complexion, black male, 6 feet 156 pounds.

Accomplice, JR. Five foot zero inches, 130 pounds. Dark complexion, black male. Went south after the murder but has since returned."

Below the note is written the name of one of Bernard Howard's brothers. But whether that means the tip came from him, it's not really clear.

Still, it does seem like at some point, someone picked up a phone to call the crime tip line, and told whoever answered that Terrance was "The Doer."

But whether or what significance this might have is impossible to evaluate, based on what we have now. The JR the note references is someone who is 5'7" tall, not 5'0" like the tip claims, so right away there's reason to question the accuracy of the tipster's information. It also seems to be claiming that Terrance is the main perp, the one who actually pulled the trigger, but no one ever identified Terrance as the actual triggerman.

But the Crime Commission note is our best guess as to how Terrance got involved in this whole case in the first place. It's as good a theory as we've got at the moment, anyway. An unknown person with unknown knowledge and unknown motives said his name in a phone call, and from there a chain reaction was set into motion, ending with Terrance's arrest and conviction.

It was a slow chain reaction, though. Terrance was first put in a photo array in March of 1997. One of his co-defendants was arrested in July, and an arrest warrant was prepared for the other one in August, though he was already in jail on unrelated charges. And then in December, Terrance was arrested. But it would be a long while yet before his case finally went to trial.

That there would be trial at all might not have been a foregone conclusion, though. Terrance was given a court appointed attorney, and at first, Terrance thought his attorney had seemed upbeat about Terrance's odds at trial. That maybe he could actually win this case. But then, the second time Terrance's attorney came to see him, things seemed to have changed, and Terrance doesn't really know why -- what happened to cause this shift? But at his habeas hearing, he testified about what his attorney said:

"Listen," Terrance's attorney told him, ***"I can't win this case."*** The attorney told Terrance that all was not lost, though. ***"I can get you a deal,"*** he said. And then his lawyer started talking about Terrance's co-defendant, Jimel Lawson, aka Mellow, aka the one who had actually shot Bernard Howard. As Terrance later recounted, the attorney told him, ***"This guy, he's evil. He's evil. But I can get you a deal. You just have to testify that he did this or he did that. This is what I'm going to need you to do. I need you to take the stand."***

Terrance's lawyer told him he thought he could get him 10 years. And if he was right, and if Terrance had accepted, that would have made Terrance a free man over a decade ago, back in 2007.

But Terrance said no. At his habeas hearing, Terrance testified that he'd cut his attorney off halfway through his speech, and told him he wouldn't do it. "I wasn't there," Terrance said. "I'm not putting myself there at that crime, man. I wasn't there." And although ten years was a lot less than life, ten years was a lot for something you hadn't done. So Terrance decided to take his chances at trial.

And looking back at the evidence the police had going into Terrance's trial, it seems like his chances might've been pretty good. The prosecution's whole case was made up of one shaky witness with a very shaky story, with nothing else to back it up. In the past two episodes, we went over some of the big problems with what Star had told the police. But unfortunately for Terrance Lewis, the prosecution was able to find ways of turning those mountains into molehills when Star was put on the witness stand.

[11:27] Colin Miller: On the night of August 6, 1996, Hulon Bernard Howard was shot in his rowhouse in West Philadelphia. Almost three years later, in May 1999, Terrance Lewis went on trial with two co-defendants for Bernard's murder. Each of the three had their own attorney, and all three defense attorneys crossed witnesses and gave opening and closing statements, though none of the three called any witnesses for the defense.

The prosecutor, meanwhile, called five witnesses in all. Four of them worked for the state -- one was the medical examiner who testified about the autopsy; one was the ballistics expert who identified the casing and bullet recovered from the scene as consistent with a shot fired from a 9mm; one was the police officer who'd processed the crime scene; and the last was one of the first officers who'd arrived on the scene after Star's 911 call. None of them gave evidence that so much as hinted that Terrance Lewis existed, let alone had been involved. According to Officer Shaun Butts, the officer who had been one of the first ones on the scene, when he'd arrived at the house a woman had been there, the victim's girlfriend, and she had told him, "MELLOW SHOT HIM. MELLOW SHOT HIM. MELLOW SHOT HIM," and just kept repeating that.

That woman was Star, and really the case all came down to her. She was the only witness who knew anything about the killers. None of the state employees did anything beyond giving some additional background information on the case, and the jury could've just as easily convicted him without it. Even Officer Butts, who'd heard Star

talking about Mellow when he went to the crime scene, never heard her say anything about a Stink or a JR.

[12:46] Susan Simpson: So it was up to Star, the single eyewitness, to testify that the three men had come into the house that night, before Bernard had been shot, and to identify who they were. She told the jury that the man she knew as Mellow had been the triggerman, and she identified 24 year old Jimel Lawson as him. She said the man she'd known as J.R. had been the one without any firearms, and at trial she identified 21 year old Jehmar Gladden as JR. And she said the man she'd known as Stink had been the one with the shotgun that night, and at trial she identified 20 year old Terrance Lewis as Stink. Only Terrance Lewis hadn't been a man when Star says she'd last seen him before the trial. He was 20 by the time trial rolled around, and 19 when he was arrested, but he'd still been 17 when Bernard was killed. Though he was tried as an adult and his status as a juvenile had no impact at the time, this would later come to matter a great deal, as we'll discuss later in the episode.

But the prosecutor's decision to make this case against Lawson, Gladden, and Lewis a single witness case -- it ended up working. He got convictions against all three of them. To do so, though, he had to make sure the jury would believe Star's story -- something that was complicated by the fact that there were many reasons to think that Star wasn't all that reliable. Back in episode 1, we discussed three of the biggest problems with Star's testimony as a witness. First, she'd told police that Stink, the one with the shotgun, had fired that shotgun into the ceiling before the murder, and that actually hadn't happened at all. There was no shotgun fired. Nothing in the ceiling. It just didn't occur.

Second, she'd said that Bernard had been shot in his stomach, and that hadn't happened either. He'd been shot in his back.

And third, Star admitted to police that she'd been smoking crack not that long before the murder, which could call into question the reliability of anything she perceived that night.

[15:10] Colin Miller: The prosecutor addressed all three of these issues at trial, effectively down playing these issues to the jury, so that they apparently accepted that they weren't reasons to doubt what Star had to say.

With regard to the shotgun, Star testified that she'd simply been mistaken. At some point, the shotgun had made a loud noise that, to her, sounded like the gun was being fired, and at the same time as that had happened, she'd seen sparks coming out the

end, and she didn't know too much about guns, so, therefore, according to the prosecution, she must have assumed this meant the shotgun had been fired. She'd been too nervous to look at the ceiling, she said, so she didn't realize the shotgun hadn't left a mark. Later, in interviews with detectives, they explained to her the shotgun hadn't been fired, and also explained to her what it meant to rack a shotgun, so, Star testified, that's when she realized no gun had been fired at all.

[15:33] Susan Simpson Yeah and Colin, the defense, all of the defense attorneys really, did try and cross her on this, and didn't make much headway. Although it's hard to see what else they could have done, other than point out the fact that she was definitely wrong about it.

Colin Miller: Yeah, and they even point out that the word "rack" comes from the detectives and not from Star, which I thought was an effective point but obviously not one that was able to take the day at trial.

Susan Simpson: But it's hard to imagine how you could confuse that noise, of a gun being racked, with the loudness of a gun actually going off.

Colin Miller: Yeah, which of course goes back to the other point, which is Star's both habitual drug use as well as smoking crack cocaine minutes, maybe 20, 30 minutes before the shooting in this case. And basically the way the prosecution tries to wave that away at trial is to say, well Star really hadn't smoked that much crack cocaine that day, according to Star, she had smoked much less than she usually did, only about \$5 worth, and so, seemingly, the jurors thought that wasn't enough to disturb her perceptions in the case.

Susan Simpson: Yeah. And what is, and should have been in the case, a truly problematic part of Star's story kind of comes off as nothing more than a minor quibble with the defense. The prosecutor handled that well.

Colin Miller: Yeah. And then the third claim, that Susan had mentioned a second ago, is obviously Star had said, I watched in pretty close range Bernard getting shot in the stomach, and for that one the prosecutor at trial pretty much just fussed over the issue, basically trying to claim to the jury that this inconsistency alone wasn't enough to make this a suspect testimony by Star. Because Bernard had unquestionably been shot in his back, and Star was adamant she'd watched him get shot in the stomach, that seems to create some issues. But, in this case, I mean Susan, how does the prosecutor really deal with it?

Susan Simpson: I mean, he doesn't. You know, again, the defense, what can they do? Put their hands up and try to point out the inconsistency? The jury knew she got it wrong, but at the end of the day they didn't care.

Colin Miller: And I think, Susan, the way that I read the transcript is the state and Star sort of try to have it both ways, where at certain points Star is saying I definitely saw him get shot in the stomach, and then at other points she's saying well, I saw blood on the stomach so I assumed he was shot in the stomach, and they're trying to have it both where she's an eyewitness to the murder and at the same time well she says he was shot in the stomach, he wasn't, maybe she just assumed that, and yeah, I guess they just sort of throw it to the jury, and the jury says, eh, she was there, she must have seen it.

[18:10] Rabia Chaudry: Well, there are plenty of problems with Star's testimony, In addition to the repairs made to these problems with Star's statements to the police, there were other parts of her testimony that had changed a lot from what she had originally told the police. One in particular could've been a big deal, if things gone differently at trial, and it has to do with Star's story about the other man who'd seen Bernard get killed, a guy she identified as Omar. Detective Hughes noted how Star had told him how, shortly before the murder, Bernard had returned home and brought his friends Denise and Omar with him. But at trial, she insisted she'd never told the police any such thing. In fact, Omar had already been in the house with her that night when Bernard got home. It was her and Omar in the house when Bernard and Denise walked in.

And it sounds like a sort of small detail, but if this hadn't been a single witness case, it would have been a huge problem for the prosecution. Because the other known eyewitness to the case, Denise, had told police that Omar had never come to the house at all. That Omar had dropped her and Bernard off, and they'd come in the house to find Star there along with a guy named Sam, another of Bernard's friends.

But it was a single witness case. The state didn't call Denise to testify, and the jury never heard about how Omar was most definitely not in the house with Star that night when Bernard and Denise walked in, so the problem with Star's story was easy to gloss over.

[19:26] Susan Simpson: And then, after the State called its five witnesses, it was the defense's turn. All three defendants would get a chance to make their case, and were

called in turn. Lawson's attorneys stood up and rested, without introducing any evidence at all. And then, Terrance Lewis' turn came. His counsel then told the jury that he had a stipulation to enter, that is, a factual agreement, that both sides had agreed to be introduced as evidence, and he read off a list of 12 names, stating that if those people had been called to testify, they would say that they are familiar with Terrance's reputation, and his reputation was for being a peaceful, law-abiding citizen. And then, Terrance Lewis' attorney also rested his case. Gladden's counsel stood up and did the same as Terrance Lewis', giving the same stipulation and a list of six names. And that was it. All three cases rested, the jury returned a verdict, and all three were convicted, and all received life sentences.

[20:28] Colin Miller: The following year, Terrance Lewis' co-defendant, Jimel Lawson, aka Mellow, made a direct appeal based upon his convictions. Among other claims, he argued that his trial counsel had been deficient for failing to investigate his case or call any witnesses, for failing to investigate the pager number that Star had initially given to police and told them it belonged to Lawson, and for failing to request that a juror who had fallen asleep during the trial be dismissed. All three claims were rejected. In connection with the pager, the court concluded that even if Lawson had proven at trial that the beeper number belonged to someone other than him, it wouldn't have mattered, because "The Commonwealth's witness positively identified appellant at trial as the person who shot the victim, without the assistance of the pager number information." And as for the sleeping juror, well, that wouldn't matter either, because who's to say that Lawson's counsel, far from being negligent, had not instead made a strategic call to let the juror sleep? So that appeal failed.

Terrance Lewis made a direct appeal as well, but it also was denied. It wasn't until 2005 that Terrance Lewis would, through a post-conviction motion for relief, try to make the case that this had never been a single witness case, and had the jury heard what all the other witnesses had to say, he would not have been convicted.

[21:36] Rabia Chaudry: Last episode, we told you about how, in the years since Terrance's trial, numerous witness have come forward and stated that they witnessed either the shooting or its aftermath, and that Terrance Lewis had not been in the house on Sansom Street that night. Two of them were Terrance's own co-defendants.

The first to come forward was Jehmar Gladden, a.k.a., JR. He was in the house that night and was there when Bernard was shot and killed, JR acknowledges, but Terrance had not been. And after Terrance's federal habeas hearing, his other co-defendant made a statement too. Jimel Lawson, aka Mellow, did not acknowledge having

witnessed the shooting himself, but he did provide an affidavit stating that the first time he'd ever seen Terrance was at their trial, and to his knowledge Terrance wasn't someone who had been involved in the drug trade.

But the big one, the witness who testified at Terrance's federal habeas and whom the judge found to be credible, was Kizzi Baker. Kizzi first learned of Terrance's conviction when she ran into Terrance's sister at a club, and she had been shocked to learn that Terrance had been convicted for Bernard's murder. She'd been out that night on the same block, and had seen three men flee from Bernard's house -- and none of them were Terrance.

Like we discussed in episode 2, though, although the judge who heard the testimony found Terrance's witnesses to be credible and thought he was innocent, his claim failed procedurally.

But in the years since Terrance Lewis' habeas failed, witnesses have continued to come forward. That August night in 1996, there had been a lot of activity on Sansom street. There had been a lot of people out on the block who had seen the men that went to and fled from Bernard's house. And the police had never tried to question any of them. And over time, as chance encounters and the internet have made them aware of the fact that Terrance Lewis had, somehow, been one of the three convicted of the murder, they've stepped up to say that no, they had seen the three shooters -- and none of them were Terrance.

Horace Timmons

[23:36] Colin Miller: First, in 2014, a woman named Danielle Johnson began writing to Terrance. She'd grown up in a nearby neighborhood, but she hadn't known him back in 1996 and 1997, when everything related to the case was happening. They did have some friends in common, though, which is how she got in touch with Terrance in the first place.

After Danielle wrote to Terrance, they began corresponding, and the two of them hit it off. After the two of them got married, Danielle posted a photo of her and Terrance on Facebook, and that's when she got a message from one of her Facebook friends, Horace Timmons, someone she'd known since middle school. Horace, it turned out, had been friends with Terrance in high school, and while scrolling through his Facebook feed one day, he'd been surprised to see two old friends from school had gotten married to one another. So he sent a message to Danielle on Facebook, and that's when

Horace learned that Terrance had been convicted of murdering Bernard Howard. Horace had himself gone to prison in early 1997, so he never knew of Terrance's arrest, and by the time he got out a few years later, Terrance had already been convicted and sent to prison himself.

But Horace was shocked. He knew Terrance hadn't done the murder he was convicted of. Because he himself was a witness.

On the night of Bernard's murder, Horace had been hanging out on that block of Sansom Street, and he saw three men enter the house, and then after the shot went off he saw three men leave. And none of those three men had been Terrance.

Horace told Danielle what he knew, and agreed to sign an affidavit describing what he knew.

In his affidavit, Horace wrote that he'd been out in the street that night, and had seen the three assailants enter Mr. Howard's home, that's Bernard, shortly before the gunshot went off, and then leave the house thereafter, and that Terrance was definitely not one of them. He had never been questioned by police, or by anyone else, and in fact hadn't been aware that Terrance was convicted until that day on January 22nd, 2015 when he saw the Facebook update from Danielle Johnson. Horace affirmed that he'd never reviewed any materials from Terrance Lewis' case, and that the only people he'd spoken to about it were Danielle Johnson and her lawyer.

My name is Horace Kevin Timmons. My address is 2313 Redner Way, Philadelphia, PA 19121.

I have known Terrance Lewis since 1993. We went to high school together. I have not seen or spoken with Terrance Lewis since at least April 1997.

I was arrested in April 1997 and was not released from prison until September 2005.

After I got out of prison, I learned that Terrance Lewis was in prison, but not any specifics about the crime or his imprisonment. I only recently learned that Terrance Lewis had been arrested for the murder of Bernard Howard.

I learned this through the internet.

I am a facebook "friend" with Danielle Johnson. She and I have known each other since middle school, since approximately 1991.

In January 2015, Danielle Johnson posted a picture of herself and Terrance Lewis on her facebook page. This is when I first learned that Danielle Johnson is married to, or had any connection with, Terrance Lewis.

I reached out to Danielle Johnson on the internet to let her know that I also knew Terrance Lewis.

I then had several communications with Danielle Johnson, during which I learned that Terrance Lewis was in prison for the murder of Bernard Howard.

On or about January 22, 2015, I explained to Danielle Johnson that, in the Summer of 1996, I often hung out on Mr. Howard's street, that I was there on the night that he was murdered, and that I saw the three assailants enter Mr. Howard's home shortly before the gunshot and leave the house thereafter. Terrance Lewis was not one of the assailants.

I was never questioned by the police or anyone else in relation to Bernard Howard's murder.

I was not aware that Terrance Lewis was arrested for the crime until January 22, 2015. I knew that this was a mistake, as Terrance Lewis was not present when the murder happened and could not be guilty.

I have never reviewed any of the official materials from Terrance Lewis's case, such as pleadings, evidence, transcripts, witness statements, etc. No one has told me any specifics of the evidence presented at trial or any post-trial evidence.

I have not spoken with Terrance Lewis since 1997.

Other than Danielle Johnson and the lawyer, I have not spoken with anyone about Terrance Lewis's case.

After I spoke with Danielle Johnson, she contacted the lawyer who had most recently represented Terrance Lewis. I then went to meet the lawyer and explained to him everything that is in this Affidavit.

Keith Christian

[25:24] Rabia Chaudry: And then, a year later, in February 2016, someone else came forward. This time, it was someone who didn't know Terrance Lewis at all. Keith Christian had known Bernard Howard, because he grew up on the same block as him, and had lived there for 22 years. In 2016, he was incarcerated in the same prison as

Terrance Lewis when he had a conversation with another inmate about juvenile lifers, and how they had recently been given a chance at resentencing. That's when the other inmate brought up Terrance Lewis' case -- and although Keith Christian didn't know Terrance, he knew Terrance hadn't killed Bernard, because he had been a witness too.

Keith tracked down Terrance to tell him what he knew, and as he would later attest in an affidavit:

"In the Summer of 1996, I often hung out on my and Mr. Howard's street corner. I was present on that street on the night that Mr. Howard was murdered. That evening, I was selling marijuana on the corner and watching a dice game involving several men. There were several other people out on the street that night as well. I remember that a tan or beige car came down the street, drove past where I was standing and then parked several car lengths away from me. I recognized the passenger as a person who I knew as "Naim." I had previously sold marijuana to Naim on several occasions. The driver of the car was a person I knew as someone called "Manny." He was known around the neighborhood as a gunman, although I did not know him well. Terrance Lewis is not Naim or Manny. Naim and Manny entered Mr. Howard's house, which was an obvious and notorious crack house. I remember wondering why Naim and Manny would be going into the house."

[26:53] Rabia Chaudry: Now, not long after, another young man walked down the block and went into Bernard Howard's house. In his affidavit, Keith wrote, "I did not know this man, although he was clearly not Terrance Lewis," although how Keith could've known that isn't clear. He didn't know Terrance either, either back in 1996 or in 2016 when he heard about his case, so it's not completely clear how he could be sure that the third man he saw that night ***wasn't*** Terrance, unless from seeing Terrance in 2016 he was able to tell that it wasn't the same guy he'd seen that night back in 1996.

[27:23] Susan Simpson: Or, alternatively, it seems that Keith Christian might have known who JR was.

[27:26] Rabia Chaudry: Whatever the explanation, Keith wrote in his affidavit that a little while after the third man walked into Bernard's house:

"I heard a gunshot. Mr. Howard's door opened fast and Naim and Manny burst out and hurried to their car. They got in and drove away. The younger

African-American guy came out of the house next. He looked scared and walked away quickly."

And after the three men had fled, the next out of the house was Star, and she came out yelling, though about what exactly Keith couldn't be sure. She was, quote, a notorious neighborhood crackhead, and from experience he knew she was hard to understand, but thinks she was yelling something like 'help' and 'they shot him.'

And after Star left the house, Keith said, then an older African American couple came out. They looked like they were high on crack, Keith wrote, and quickly walked away.

Marcia Whitlock

[28:33] Colin Miller: Next, another woman who came forward was Marcia Whitlock. Only, she didn't come forward to Terrance Lewis -- he wasn't someone she knew. But she'd known J.R., and she wrote to him in 2016:

Susan Simpson narrating:

"Dear JR, How are you, little brother? . . . It's Marcie," and then added in parentheses, "smile." "You better remember me, I got on your nerves often enough, LOL. [Big Randy] told me that you were locked up with him in Albion, and I got your information from him."

Colin Miller: After a bit, Marcia's letter gets to the point: she's writing him because she too remembers the night of Bernard's murder.

Susan Simpson narrating:

After those two guys came running out of the house that night, you just left me standing out there. . . . I still remember it like yesterday, literally like yesterday. I remember paging you and you calling back telling me to meet you at the corner of 60th and Sansom Street, that you had to drop something off and you had a pack for me, you remember? I waited for you for like 10 minutes! Lol. I guess no matter how you look at it, those assholes was going to do what they wanted to do.

Colin Miller: And then, finally, her letter concludes with the following:

Susan Simpson narrating:

I was OUT THERE! I know for a fact that you didn't get in the car with those guys. So how do you get conspiracy? It don't make any sense.

Colin Miller: So, after getting this letter, JR wrote Marcia back, and asked her to write a letter for the judge describing what she knew, and she agreed, drafting a longer letter, addressed "to whom it might concern."

Marcia described how she'd paged JR that night, and he'd told her to meet her at Bernard's.

[29:51] Susan Simpson narrating:

From the time I got there a little while later a light brown car pulled up and two brown skin guys get out and went into Bernard's house. A couple minutes later, J.R. walked up. He was walking on the same side as Bernard's house. The 2 guys had parked on that side, too. There was guys playing dice over there and I just stood and watched.

[30:08] Colin Miller: Not long after, Marcia wrote, J.R. arrived and went into the house, and Marcia was just hanging around waiting for him to be done.

[30:15] Susan Simpson narrating:

"10 or 15 minutes passed, and then I heard a loud pop. That's when the two dudes came running out of Bernard's house and jumped in their car and took off down the street. A few seconds later, J.R. came walking out because everything was happening so fast, I called J.R. from the garage that faces Bernard's home, to get his attention. He was walking so fast, he just went back up the street from the way he came."

Basically, I took everything in and tried to figure out what went down. Then, Star came out, the people on the block corner started gathering. Sam and some girl came out and started walking down the block. I then ran up to Sam and asked him what happened and he told me that they got robbed and they shot Bernard. I was shocked and I said, "Who... J.R.?" Sam said, "No, the 2 guys pulled guns on J.R. too."

[30:58] Susan Simpson: Now, I'll admit, I don't know entirely what to make of Marcia's story. And, to my knowledge, no one associated with Terrance's defense has ever actually spoken to her, and these letters are all we have to go on at the moment.

And of course, Marcia's letter doesn't really have anything to say about Terrance's innocence, because Marcia doesn't know who Terrance is, and presumably for all she knows, Terrance could've been one of the first two guys who went into Bernard's house that night. But the part of her story that seems important for Terrance isn't who she saw going in to the house, but who she saw coming out. Because she says that one of them was an older African American man named Sam. And that's potentially a big deal, because that's the same person that Denise, the other witness to the shooting, says was in the house that night. Not Omar, like Star claimed. A different man entirely.

So even if Marcia can't say if Terrance was or wasn't there, from her letters to JR, it does seem like, though, she could say that **Star** had been wrong about who she said was there. That it was Sam, and not Omar. And if Star had misidentified one of her boyfriend's friends, who else might she have misidentified that was in the house that night?

[32:12] Colin Miller: Yeah, and the other thing I find interesting about Marcia, is she mentions the dice game like a few other witnesses, including Kizzi Baker, and that dice game is something that is also mentioned by a final street witness, and that is a street witness named Tiffany Davis, who also submitted an affidavit on behalf of Terrance.

Now, when I spoke to Davis, she told me that her family and she lived in the same neighborhood where Bernard Howard was shot for years before the night of the murder. Her accounting of that night is pretty similar, as I said, to the accounting given by Kizzi Baker:

[32:46] Colin Miller:

And, on the night that he was shot, what do you remember?

Tiffany Davis:

I actually just remember, like, hanging out on the block, and um, watching basketball games, talking with friends. And um, the event taking place, and like, pretty much, um, not at first, knowing what exactly happened. Ya know seeing 2 gentlemen leaving from the [inaudible]. One went in one way, and the other one went another, and um, next thing you know, someone said- come out saying' someone was shot.

Colin Miller:

There were people playing basketball in the street, do you remember?

Tiffany Davis:

Yeah. There were people playing basketball, and if I'm not mistaken, I wanna say it was guys that was gambling out there, too.

Colin Miller:

Okay.

[33:34] Colin Miller: And, like Baker, Davis remembers 2 young men arriving at 6120 Sansom Street by car and 1 arriving on foot, or maybe it was the other way around:

Colin Miller:

Do you remember if they drove up in a car or what type of car it was?

Tiffany Davis:

No, I don't, but it-it was a car. It was a car. I don't recall what kind of car it was, but they did, you know, get out, uh, I think it was like two men that got out of a car. Or, maybe it was like, one that got out the car and then the other two walked up to the house, but, where it was people that must've had met each other inside or whatever, but had came differently.

[34:26] Colin Miller: And finally, like Baker, Davis also remember the men going in different directions after leaving the house of Bernard Howard:

Tiffany Davis:

But, at some point, I remember seeing them going separate which made me pay attention, like, you know what I'm saying? I'm like, that's kinda different.

Colin Miller: That said, Davis didn't know Kizzi Baker, so she can't corroborate that she was there that night, but she was able to give us a lead on another potential street witness:

[34:49] Colin Miller:

Now, we've gotten some statements from a few other witnesses who say they were there on the block that night, and I don't know if you knew them or remember seeing them that night. One of them was Kizzi Baker, did you know Kizzi Baker at all?

Tiffany Davis:

No... No. I just- I used to hang with, uh, a young lady named Leah. Leah Brooks, and that's who I was hanging with around the area, but no. I don't remember Kizzi.

Colin Miller:

Her name was Leah Brooks?

Tiffany Davis:

No, the person that I was around there was.

Colin Miller:

Uh-huh. So she was there that night? Leah Brooks?

Tiffany Davis:

We was hanging outside right around there. The young lady that I grew up with named Leah Brooks.

Colin Miller:

Do you know if she remembers anything, or have you talked to her since...

Tiffany Davis:

Uh- I haven't talked to Leah in years. So, I wouldn't know where to begin with that.

Colin Miller:

Do you know where she used to Live? Back then??

Tiffany Davis:

She lived in... she used to live on 61st Street. On 61st and Chestnut.

[35:43] Colin Miller: We've gotten a few possible leads on Leah Brooks, but we haven't been able to locate her yet. We're going to keep trying.

So, let's now get to the heart of it; why is Davis convinced that Terrance Lewis wasn't one of the three men? Well, let's start with proximity. Davis says that the three men got close to her...really close.

Tiffany Davis:

And then when, um, they turned the corner, was standin' like, on the corner, you know what I'm saying? A car came close, so it was like, something to pay attention to, like, thinking to myself -- Damn! You could've hit me. You know?

[36:13] Colin Miller: And then there are physical characteristics. As our phone call was cutting in and out, Davis told me that the three men had different builds and looked different from Terrance. As the reception on the call got better, I followed up on this point:

Colin Miller:

And you said the three men who entered the house, they were sort of different build and looked very different from Terrance-- and what do you mean by that? How did - how did Terrance look, how is he built, and how did that differ from the three men?

Tiffany Davis:

I mean, he was slim, he was slender, um... light-skinned. None of those men were light-skinned.

Colin Miller:

They were all dark-skinned?

Tiffany Davis:

Yeah. Dark-skinned and brown-skinned, so I mean... That's kinda complete different. And to be honest with you, light-skinned guys - back then was a little bit more cooler than dark-skinned guys, so you kinda stand out like a sore thumb.

Colin Miller:

Right.

Tiffany Davis:

They were kind of looked at a little bit softer than the dark-skinned guys.

[37:12] Colin Miller: As I wrapped up my call with Davis, this is the point that she returned to.

Tiffany Davis:

And the thing about it is like, he was so light-skinned, and when you use this, like- none of them was light-skinned.

Colin Miller:

So you would say that they all had very dark skin, all the three men.

Tiffany Davis:

I mean, it wasn't light as he was. He was like, REAL light.

Colin Miller:

Uh-huh. Yeah, I gotcha. [Tiffany laughs]

Tiffany Davis:

Um, you like, you know, when a person- his complexion stands out, like, you know, a sore thumb

Colin Miller:

Right.

Tiffany Davis:

He was kinda still being goofy? To be honest with you, so. I don't know. I guess things like this happen.

Colin Miller:

Right.

Tiffany Davis:

Been happening for years in these communities.

[38:14] Rabia Chaudry: So, where does all of this leave Terrance, legally? Well, it's complicated. As we told you in Episode 2, Terrance initially argued that he was entitled to a new trial based upon ineffective assistance of counsel, specifically that his trial counsel failed to locate street witness Kizzi Baker, who said that she saw the three men involved in the death of Bernard Howard and that Terrance Lewis wasn't one of them.

But, unfortunately, whether due to error by Terrance's appellate attorney at the time or error by the Pennsylvania courts, there was no state evidentiary hearing at which Baker and other witnesses could testify, and so Terrance was denied relief at the state level. And as we noted, this then led Terrance and his new appellate attorney, David Laigaie, to file a petition for writ of ***habeas*** corpus in federal court. And the federal court did hold a ***habeas*** hearing, at which Baker testified. So did Terrance's alleged accomplice

Jehmar “JR” Gladden, who admitted being present for the murder of Bernard Howard and claimed unequivocally that Terrance was not there.

Well, now, based on these three new affidavits from Keith Christian, Horace Timmons, and Tiffany Davis, Terrance’s attorney has asked for another bite at the apple. Specifically, he’s claiming that these three witnesses constitute what’s known as “newly discovered” evidence that was unknown to the defense back when there was the alleged failure to timely ask for a state evidentiary hearing. And substantively speaking, there’s a pretty strong argument that the evidence is sufficiently exculpatory to require a new trial because all three witnesses say something similar to Kizzi Baker, thereby both supporting Terrance’s innocence and corroborating each other.

But there’s a double edged sword that’s currently preventing the courts from considering these claims. To understand this quandary, we need to start by going back to 2005, the year in which a seismic shift started in juvenile justice. In that year, the US Supreme Court issued its opinion in Roper v. Simmons, in which Kentucky high school student Christopher Simmons was given the death penalty based on his conviction for murdering Shirley Crook. According to the Court, the death penalty is an unconstitutional punishment for minors.

[40:18] Justice Anthony Kennedy

....in accord with that view we now hold, that consistent with the 8th and 14th Amendments, the death penalty may not be imposed on offenders who are under 18 when they committed the crime.

Three general differences between juveniles and adult offenders diminish the culpability of juveniles. First: The susceptibility of juveniles to immature and irresponsible behavior means their wrongful conduct is not as morally reprehensible as that of an adult. Second: Juveniles’ comparative vulnerability and lack of control over their immediate surroundings mean they have a greater claim than adults to be forgiven for failing to escape negative influences. Third: The realities that juveniles still struggle to define their identity mean it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From the moral standpoint it would be misguided to equate the failings of.....

[41:16] Susan Simpson: Five years later, in 2010, the Supreme Court confronted a related issue. In Graham v. Florida, 16 year-old Terrance Graham was involved in two robberies in Jacksonville, Florida, one at a private residence and one at a barbecue

restaurant. No one was killed during either robbery, but one of Graham's accomplices struck the manager of the bar with a metal bar. Based on these crimes, Graham got a life sentence without the possibility of parole. Once again, the Court concluded that the sentence was unconstitutional.

[41:44] Justice Anthony Kennedy:

Penological theory is not adequate to justify life without parole for juvenile non-homicide offenders. This determination, the limited culpability of juvenile non-homicide offenders, and the severity of life without parole sentences all lead to the conclusion that the sentencing practice under consideration is cruel and unusual. The court now holds that for a juvenile offender who did not commit homicide, the 8th Amendment forbids the sentence of life without parole.

A state need not guarantee eventual freedom to juveniles convicted of non-homicide crimes, but it must give them some meaningful opportunity to obtain release based on demonstrated....

[42:27] Colin Miller: This then takes us to the cases that are the most pertinent for Terrance Lewis. In Miller v. Alabama, 14 year-old Evan Miller was convicted of the murder of his neighbor Cole Cannon. Under Alabama law at the time, Miller was given a mandatory sentence of life without the possibility of parole, meaning that there was no discretion to give him a lighter sentence. In its **2012** opinion in the case, the Supreme Court synthesized its opinions in Roper and Graham to conclude that this mandatory life sentence was unconstitutional for a minor:

[42:51] Justice Elena Kagan:

In Roper v. Simmons we held that the 8th Amendment bars capital punishment for juveniles, and in Graham v. Florida we concluded that the amendment also prohibits a sentence of life without parole for a juvenile convicted of a non-homicide offense. Those cases demonstrate that the differences between children and adults diminish the justifications for imposing the harshest sentences on juveniles even when they commit truly terrible crimes. And most fundamentally, those cases make clear that youth matters in determining the appropriateness of certain penalties. That imposition of a state's most severe penalties on juvenile offenders cannot proceed as though they were not children.

[43:38] Colin Miller: This meant that, going forward, juveniles cannot be given mandatory sentences of life without parole and that such a sentence can only be given after an individualized sentencing hearing. But the open question was whether this holding applies retroactively, meaning that juveniles like Terrance Lewis, who were

given mandatory life sentences before Miller v. Alabama could have resentencing hearings. This issue turns on whether Miller announced what is known as a “substantive constitutional right,” and, in its 2016 opinion in Montgomery v. Louisiana, the Supreme Court answered this question in the affirmative:

[44:07] Justice Anthony Kennedy:

Before sentencing a juvenile to life without parole, the sentencer must take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison. A sentencing court might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole was justified, but, Miller makes clear, that appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. Because Miller determined that sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption, it rendered life without parole an unconstitutional penalty for a class of dependents, because of their status, that is, juvenile offenders whose crimes reflect the transient immaturity of youth. As a result Miller now is a substantive rule of constitutional law that is retroactive on collateral review.

[45:06] Colin Miller: So, as a result of Montgomery v. Louisiana, Terrance Lewis and more than 300 others in Philadelphia, the juvenile lifer capital of the country, will get or have already gotten resentencing hearings. In about half of states across the country, such resentencing hearings will result in reduced sentences because about a half of states have banned juvenile life without parole, period. Can't happen, any case. Pennsylvania hasn't gone quite that far, but last summer, in the case of Qu'eed Batts, who was given a life without parole sentence based on a murder committed at age 14, it came close, with the state's highest court finding such sentences are presumptively unconstitutional:

[45:41] News Reporter:

But what really helped his legal argument was a federal ruling banning mandatory life sentences for juvenile killers.

Legal Commenter:

He was a child, and I think the U.S. Supreme Court in a series of decisions has really required that we treat children differently for the purposes of sentencing - that kids **are** different, under the constitution.

News Reporter:

Now, the state of Pennsylvania says its own prosecutors to prove without a reasonable doubt the felon is a rare example of someone that regardless of time and therapy could never be rehabilitated.

Legal Commenter:

It's really a presumption against juvenile life without parole and it places a very high burden on the state to prove that juveniles are essentially permanently incorrigible. They have to prove that by a standard of beyond a reasonable doubt, and that's quite a high bar.

News Reporter:

Next for Batts, another hearing to determine....

[46:33] Rabia Chaudry: Terrance Lewis is one of the hundreds of juvenile lifers who will be helped by the Batts case. But how much? As noted by the Philadelphia Inquirer, the Philadelphia District Attorney's Office has been offering juvenile lifers the following deal: rather than taking your chances at a resentencing hearing, we'll offer you a new sentence that makes you eligible for parole after serving 35 years. And, if that sounds like a raw deal, last September, Andre Martin, who was convicted of a murder at age 15, opted for a resentencing hearing and got a new sentence of 44 to life.

So, when is Terrance Lewis likely to get his resentencing hearing? Well, unfortunately, this is a double edge sword territory. These cases are supposed to be considered from oldest to newest, meaning that a defendant convicted in 1990 gets his case reconsidered before a defendant convicted in 2000 who in turn gets his case reconsidered before a defendant convicted in 2010. Given that Terrance Lewis has been in prison for over 19 years, his case should be heard next month, in February. But, perversely, the fact that Terrance Lewis still has a strong claim of actual innocence means that this is unlikely to happen. Here's Terrance's attorney, David Laigaie:

[47:39] David Laigaie:

Why then does a finding of 'actual innocence' not allow Judge Wells to adjudicate Terrance's claim that trial counsel was ineffective for not finding this missing witness who so credibly exonerated Terrance? The answer is that Congress passed a statute in 1996, as I recall, and it's called the Antiterrorism and Effective Death Penalty Act, AEDPA. And Congress intentionally severely limited the federal courts ability to review, correct, and second guess state court judicial processes in criminal cases. And explicitly in AEDPA is a provision that says, and

I'm not quoting verbatim, this is the gist of what it says. It says that a federal court cannot hold an evidentiary hearing on an issue that was not fully litigated below, in state court. Now in Terrance's case unfortunately, while his post conviction review act attorney raised the issue of whether trial counsel was ineffective for not locating missing witnesses, the state court never allowed Terrance's post conviction review act attorney to hold an evidentiary hearing. The state judge found that the petition had been filed untimely, and dismissed it without ever having a hearing. Let me say that the state court was 100% wrong in so holding, but counsel screwed up the procedure to appeal that decision and therefore that decision was affirmed on procedural grounds, not on the substance of the decision.

[49:58] Rabia Chaudry: So, the fact that Terrance has an open claim of actual innocence means that he's moved to the back of the line and might not get his hearing at all until he's exhausted that claim over the course of the next few years. Of course, this could all be much simpler if the court simply considered Terrance's claim as part of his resentencing hearing. But Cameron Kline, a spokesman for the prior district attorney, has said that resentencing hearings are not the proper venue for claims of actual innocence.

And here's what makes this so frustrating: As we noted, a federal judge has already found Terrance actually innocent and only denied him a new trial on procedural grounds. Well, here's the thing: A new sentence removes those procedural issues. If Terrance were given a new sentence of life with the possibility of parole today, he could bring the exact same claim he brought based on Kizzi Baker, Jehmar Gladden, and Jimel Lawson tomorrow, and the court would almost certainly grant him a new trial. But because of a bureaucratic nightmare, it might end up taking 3 or 4 years or more before these issues are actually resolved.

[51:14] Susan Simpson: So Terrance is caught in the appellate version of a Catch-22. His route to freedom might lie either through a post-conviction motion based on a claim of actual innocence arising from the six different witnesses now who have come forward now to say that Terrance was not present at the crime scene, or it might lie through resentencing, under the court's decision striking down mandatory life without parole sentences for juveniles. But in order to pursue the potentially quicker resentencing option, he'd have to forego his claims of actual innocence. But there may be a third route though: the Philadelphia District Attorney's office has a Conviction Review Unit, and the CRU provides another forum that defendants with claims of actual innocence can turn to. You've heard about the CRU before on Undisclosed, in our series on

Shaurn Thomas. And, Terrance's best hope now lies in convincing the CRU to give his case another look.

[52:33] Rabia Chaudry: A big, big thank you to everybody who made this very important series possible. I have to begin by thanking the folks at the Pennsylvania Innocence Project: Marissa, Riley, Jim - you guys do amazing work, and your entire teams. Thank you to Mital Telhan, as our executive producer, thanks for keeping us going. Baluki, thank you so much for designing our logo, a big thanks to Patrick Cortez and Ramiro Marquez for our theme music, thank you to all of our sponsors for making it possible for us to come back week after week. Audio production is done by Rebecca LaVoie of Partners in Crime Media, and she is the host of one of my favorite podcasts by the way, Crime Writers On. Do not miss it. Definitely check it out. Don't forget to send any questions you have to us over Twitter and use the hashtag #UDAddendum to tag those questions so we can respond to them in the addendum. And don't forget to follow us online. On all our social media our handle is @UndisclosedPod. That's Instagram, Facebook, and Twitter. Thanks so much for listening.

Transcript compiled by: @slowdawning, @_beebz, @TheWindAndRain, and @oldsinglebitter