

UNDISCLOSED; The State v. Greg Lance
Episode 9 - The Defense Rests
November 4th, 2019

Rabia Chaudry: Hi Undisclosed Listeners, thank you so much for tuning into the Greg Lance case and for tuning into all of our cases. We couldn't continue to do our work to help the wrongfully convicted without your support, and here's two more ways you can support us and our work. First, please support our sponsors, because they support us. The products and services we bring to you, they are sponsors that we love. So be sure to patronize them for yourself, for family, for friends, as a gift. And a big thank you to our sponsors who have stood by us for nearly 5 years. Another way to support us, a really important way, by the way, is to actually subscribe to our podcast. Subscribe to us on iTunes, Stitcher, Spotify, or wherever you listen to your podcasts. And please make sure to leave us a 5-star review. Because that helps other people discover this podcast, and the more people that listen, the better it is for our work. Thanks again, and now let's get into this week's episode.

[02:08] Rabia Chaudry narrates:

"I went to bed with my wife. Someone killed Victor and Alla Kolesnikow and set their house on fire with them in it. When I woke up I was a murder suspect....I have wonderful wife and daughter, parents, and siblings. They are all very supportive and believe in my actual innocence. My wife has been by my side throughout this terrible ordeal. Becky knows I am innocent. She was at home in bed with me where we both belonged when someone committed this terrible crime...

Even though the defense put on the affirmative defense of an alibi, which was totally uncontested by any evidence whatsoever at the trial, the jury ruled against the clearly established laws of nature and physics as they are presently know, ie that the defendant could not possibly have been in more than one place at one time. If I was guilty, I would have taken the State's plea offer and possibly be out this time next year.

I have received no justice from the State. I have received no justice from the Judge. I have received no justice from the jury. I have a wife, a fourteen month old baby girl, and a family that have also been denied justice. My wife has been denied her husband, my

baby girl has been denied her father, and my parents have been denied a son. This is not justice, that the innocent should pay for the crimes of the guilty.”

This was from Greg's written statement, given in response to the TBI's presentencing investigation report, that was prepared a few months after he was found guilty. This document was prepared for the Court to assist in determining how to sentence Greg.

But Greg had much more to say before that sentencing actually took place.

[4:21] Rabia Chaudry: Hi and welcome to Undisclosed. My name is Rabia Chaudry, I'm an attorney and author of the New York Times bestseller *Adnan's Story*.

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

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 Evidence Prof Blog.

[04:50] Rabia Chaudry: Greg's sentencing hearing took place on June 8, 2001, six months after that report was written, but on that day the court didn't just consider the matter of the sentence. The judge also had a motion for a new trial pending before him and he wasn't quite sure how to proceed, which issue to tackle first, but Greg's new attorney Michael Galligan suggested they start with the motion for a new trial.

Greg's motion for a new trial was based on ineffective assistance of counsel by his previous attorneys John Nisbet and Marshall Judd for failing to meet and interview a slew of witnesses before trial, witnesses like Fire Marshal investigator Phillip Gentry and Erik Tanner, failing to call any expert witnesses, like an arson or ballistics expert, failing to develop a theory of the case, and failing to prepare their client to testify, if he chose to.

And the motion also rested on this: that the trial court had erred in not allowing the testimony of witnesses who were able to point the finger of guilt to someone else. But more on that in another episode.

Only three witnesses testified at the hearing, but today we're only going to go over one of them: Greg Lance himself.

Greg testified about how his previous attorneys had handled his trial, how upset he was at their lack of preparation, and how terse his relationship was with them. He also testified about his relationship to the Kolesnikows, the foreclosure and bankruptcy proceeding, and his movements in the days leading up to and after the murders.

[06:26] Susan Simpson: Here's what he told the court:

On Sunday, August 2nd, the day the State alleged Greg was practice shooting on the Heron farm, he awoke around 5:30am and prepared to go to National Guard drill. He hitched a trailer to his truck because Erik Tanner and Dave Anderson would be using it to do some moving that day. He arrived at National Guard around 7am and everyone was dismissed at 10:30am to go attend a cookout nearby.

At that point, Greg swapped vehicles with Dave and Erik, and took Erik's car to the cookout. Greg left the cookout around 12:30 and headed home to the trailer park, where he arrived a bit after 1pm. Keith was at the trailer park, and was waiting for his girlfriend Kay to arrive from work so they could go fishing.

After they left, Greg went and spoke to a tenant who was concerned about Victor taking over the trailer park, but Greg assured him that he didn't think there was any chance of it because the bankruptcy court would help restructure the debt and Greg would keep the property. Greg then fixed another tenant's stove and then went over to Becky's grandmother's house, who lived in a trailer not far from Greg's place.

He stayed there until around 4:30 or 5, and around that time Kay and Keith returned. They hadn't been able to go fishing that day because their boat motor had fallen off. Not long after, Dave and Erik returned with Greg's truck loaded up with clothes and furniture stacked up on it.

Because it was the first weekend of the month, Greg just stayed at the park the rest of the night, knowing he needed to be around as tenants came by to drop off their rent. He did not, he testified, go to Mike Heron's farm that day at all.

The following day he worked in Livingston putting up trusses for Ed Dixon from 7am until 4pm, after which he went and rented a secure storage facility.

"Why did you do that?" asked defense counsel Galligan.

"Well, I had some tools that disappeared, and I was concerned about it. And I was ready to go to work with Mike, so I was looking for someplace to store my tools that was safe."

After renting the storage unit and dropping off some tools in it, Greg then ran some errands, stopping to get some construction supplies, and then headed home for the evening.

[08:57] Colin Miller: On Tuesday, August 4th, he again was up at 5:30am, went by the storage unit to pick up his tools, and headed over to the Dixon project, arriving again around 7am. He left work around 4pm, filled up gas at a pump that shot some gasoline at him in Livingston,

dropped off tools at the storage unit, and then returned to the mobile home park, where he saw Victor heading out from his handyman Claude Wright's trailer and driving off.

He waited around, thinking Victor might return but he never did. Around 7:30 Keith headed out and Greg got ready to meet a woman he knew from the National Guard. This was the first time the defense was disclosing the existence of Debbie to the court or to the State.

Debbie, he testified, was passing through town and wanted to see him. He met up with her at a truck stop and they spent the evening together, getting drinks and then heading to the Knight's Inn.

He left the motel a little after midnight and stopped to grab beer from the Minit Mart, and then headed home. When he got home he had a beer at the kitchen table and was chatting with Becky when Erik, who was sleeping on the sofa, popped up and asked him what time it was.

Greg pointed to the microwave clock and told him it was 1:30am.

After that they all went to sleep and Greg awoke, as he always did, around 5:30am to get his tools. But that day he didn't head to Livingston for the Dixon project, he stayed at the trailer park doing paperwork until the authorities showed up to question him about the Kolesnikow murders.

Greg's direct examination ended with this exchange:

Q: Greg, did you kill those people?

A: No.

Q: Did you have anything to do with it?

A: No

Q: Did you ask anyone to do it for you?

A: No

Q: Did you know anything about it beforehand?

A: No, I did not.

After cross examination and the presentation of the other two witnesses who didn't do anything to sway the Court in any way, the motion for a new trial was denied, and Greg was sentenced to two concurrent life sentences.

Despite his many appeals over the years, and despite how hard he has fought from behind bars and often without an attorney to find new evidence and raise new issues, he remains in prison today, serving out those life sentences.

[13:15] Danielle Murdoch

He just doesn't, you know, his demeanor doesn't...I don't remember anything about his demeanor saying that he had a violent hair in him. I knew a girl that dated him, and he was good to her. He was good to us when we worked for him.

Kay:

I still couldn't understand why they would think Greg had done it, because I know a few days before all this had gone down, he was going through some papers, and I had walked in, and I said "Hey, how ya doin'?" And he said "I'm OK." And I said, "Well, I know you're getting ready to go to court, are you OK with that?" And he said "Yeah, I'm going to win my case. There's no problem, I'm not worried."

Mike Heron:

Greg: I'd be behind that kid till the bitter end. I mean, just honest, as nice, and I mean I couldn't believe when they came down with all this stuff on him. There was just, there's no way that he did this.

Marlinda:

The truth does need to come out and I text people that go to church, and I have a lot of people praying.

Lester Clouse (Pokey):

I honestly believe Greg is innocent. I'd put my life on it. If I didn't think Greg was innocent I would have never drove down in Florida and talked to his mother and them, after I met him in jail up there. He's real quiet, real laid back. Do anything he could to help you. Just gullible as hell, you know, 'bout half goofy. One day they offered him five years, time served, leave the state of Tennessee and don't look back. That spoke volumes. You know, who in the hell is gonna give you five years on two murders, an arson and a robbery charge or whatever, and you leave the state of Tennessee?

[15:24] Susan Simpson: We've spent the past eight episodes building the layers of the State's case against Greg, bit by bit, witness by witness, but now is the point in the season where it's time to unravel it all.

In last week's episode, we went over the forensic evidence in the case, but let's quickly summarize it again:

First, the TBI lab found that the green cord from Greg's tree was inconsistent in color and diameter with the cord attached to the gun.

Second, the fingerprints found on the batteries in the flashlight strapped to the weapon did not match Greg or any of his associates. The fingerprints were never matched to anyone, in fact.

Third, the flashlight was inconsistent with the kind Erik Tanner said that Greg owned.

Fourth, Greg had gasoline on his socks and/or shoes.

Fifth, an undetermined number of hairs shaved from Greg's hands were found to have been singed on the ends.

Sixth, no GSR residue was found on Greg's hands.

Seventh, no fibers from Greg's shoes matched any samples taken from the crime scene.

Finally, according to the TBI lab, bullets found at the Heron farm matched the bullets that killed Victor and Alla Kolesnikow.

Beyond those things that were tested in a lab, let's not forget that on the day of the murders Greg's home and truck were searched, and a number of his guns were taken to be tested as well, which apparently yielded nothing of value.

[17:02] Rabia Chaudry: As we said before, you can look at this evidence in different ways, but none of it conclusively ties Greg to the murders. And also as we said before, it was probably the many different witness statements, by people who don't even always know each other, that may have been much more damaging to him.

Most of those statements involved three distinct time periods, time periods that were all relevant to the crime as far as the state was concerned, and all of these time periods need to be examined separately:

First, there's Sunday, August 2nd, the day Mike Heron's neighbors heard gunshots on his farm and Jerry Gardner saw Greg there when Gardner stopped by so his lady friends could relieve themselves.

Second there's the evening of Tuesday August 4th going into the early morning hours of Wednesday August 5th, the night the Kolesnikows were murdered

And finally, there's Tuesday August 25th, the day the Heron neighbors saw smoke coming from his farm and Brian Brinker and Marlon Ray testified to having seen Greg there burning dresser drawers.

Let's start with Sunday, August 2nd.

Now a number of people gave information about what happened that day: the neighbors Judy Wells and Joe Brown, Jerry Gardner, Keith Herbstreith and Kay, and Erik Tanner. Then there were those attorney notes from the defense file in which Greg provided a timeline of his movements that day.

Someone else who testified at the trial about Sunday August 2nd, someone we haven't mentioned before, was Staff Sergeant Jackie King, Greg's senior officer in the National Guard, who testified that Greg was at Guard duty that morning in Gordonsville, Tennessee.

Now if we are to construct a timeline from all these witnesses here's what we know:

According to Stg. King, Greg, Erik, and Keith, Greg was at National Guard on the morning of August 2nd. The Guard was let out early that day, around 10:30am, to attend a cookout, which Greg also attended until about noon, after which Greg said that he returned to the trailer park. The drive home was about 45 minutes long.

Now in these same morning hours, about 45 miles away in Rickman, TN, Judy and Joe heard gunfire at the Heron farm. Judy left her home around 1pm and she passed a group of people at the farm, including what looked like two drunken women and a man standing next to brown car with a vinyl top, which later turned out to be Jerry Gardner and his crew.

She also saw a small red car parked on the property, which Joe also later saw, though he didn't see any of the people that Judy did.

This would be around the time Greg said he arrived back home, and he saw Keith. Keith also testified to seeing Greg return to the park around 1pm. Keith was planning on going fishing and he left with Kay after she returned from work. Now Kay clocked out of work at 2:03 pm and she was likely at the trailer park by 2:20 at the latest.

Both Kay and Keith affirm that Greg was still at the trailer park when they left, close to 2:30pm.

And about twelve miles away, around the same time, Judy Wells called the police at 2:36pm.

Now, if you take just these statements, it's clear that Greg was not at the Heron farm that morning. He was either 45 miles away at National Guard duty, on the 45 minute drive back to Cookeville, or at the trailer park when Kay and Keith saw him.

Greg's entire morning, up through the time Judy made that call at 2:36pm, is accounted for. And the police knew that, so putting Greg at the farm later that day was kind of important.

Which is exactly what they managed to do with Jerry Gardner's testimony that he stopped at the farm between 3 and 4pm, and Keith's testimony where for the first time, at trial, he said that Greg told him he was going to be going to the Heron farm to do some target practice that afternoon.

The problem of course is that both Keith and Jerry are wrong. Either they're lying, or they're forgetting. Because they cannot overcome the hard evidence of Judy's phone call at 2:36pm. Everything they are saying happened had to have happened before 2:36pm.

Now, you could argue that maybe Joe and Judy heard gunshots by someone else early in the morning, but Greg actually went to the farm in the late afternoon, time he wasn't really able to account for anyways. And sure that's a possibility, especially if you want to make the argument that he fired the bullets that the investigators later found on the farm that matched the ones from the murder.

But then there's two reasons that doesn't work. First, Judy and Joe didn't hear any more gunshots after she made that call at 2:36pm. Remember, the police even swung by around 3pm to check out the farm and they saw no one and nothing.

Second, there's the red car. Judy saw the red car in the morning, before she made that call, the car that the State said Greg had that day. But if he wasn't at the farm that morning, whose red car was it?

Well, it took some digging, but we think we figured it out.

[21:41] We tried first to figure out who was renting the house from Mike Heron and if that tenant maybe had a red car. But that didn't really pan out.

Then Joyce, Greg's mother, happened to mention something that peaked my interest the last time I was out in Cookeville. Joyce works in real estate and back in 1998 Mike Heron was trying to sell the farm. So back around the time they were preparing for the trial, she was actually able to connect with Heron's real estate agent and he checked his appointment book, and it showed that he had indeed showed the Heron farm that weekend.

In fact he had taken out a couple, a husband and wife, and the wife's parents, to take a look at Mike's property.

Unfortunately his appointment book didn't note the time or the exact date. He wasn't sure if they were there on Saturday, August 1st or Sunday, August 2nd.

Well we tracked down the couple, which is no longer together, and I spoke to the ex-wife, who wants to remain anonymous for personal reasons, about seeing the farm.

She remembered had only seen one single property with her husband, she said, and it was shortly after she learned she was pregnant late that summer. So according to her, the weekend of August 2nd was very likely.

Her husband had been interested in living out the country, but she was a city girl, and she was kind of unimpressed with the Heron farm.

Female Witness:

I remember it having some kind of building, shed, barn, some structure. And it was looked at, I don't recall spending much time there, and again, my impression was this is nowhere I'd ever be comfortable living. I just remember bein' shocked at the condition of the place, nowhere I would want to be.

She remembered that her parents had also come out to see the place with them, but couldn't recall if anyone else other than the real estate agent had been at the farm that day. It looked abandoned, she said.

She also wasn't sure how they got to the farm, if her and her husband and parents drove together, or they drove separately, and she wasn't sure how many cars they took to the farm.

But I asked her, did she remember what kind of car her and her husband owned back then?

Oh definitely, she said, because she had driven her car for fifteen years.

Female Witness:

Yeah sure, it was bright red, it was a Toyota, two-door Camry.

Rabia Chaudry: Oh my God... Okay. That is, well, that's exactly the description of the car that was seen on the property that has been tied to this defendant.

Female Witness:

Yeah, my ex-husband, at the time, would have also driven a red, um, Honda Prelude, 2 door, a little sportier than what I drove, red.

[26:07] Colin Miller: Now, are we positive that the red car that Judy and Joe saw on the Heron farm on the morning of August 2nd belonged to the couple that came out to see the farm about buying it? No.

But is it a strong possibility? Absolutely.

What is certain is that Greg couldn't have been at the farm that morning, when all the suspicious activity went down, and that red car at the farm couldn't not have belonged to Dave Anderson.

Next, let's take a look at the other time frame tied to the Heron farm - the whole burning dressers or shed panels or logs or whatever it was the State thought that Greg was burning out there on August 25th.

Now to refresh your memory, TBI Agent Russ Winkler called Mike Heron, who was out in Arizona, on August 24th to get his permission for the authorities to search the farm. Mike gave that permission, but the police didn't start their search until two days later, on August 26th.

But on that one day between the phone call and the search, on August 25th, neighbors saw smoke coming from the Heron farm.

Roberta Powell saw it first, through a lot of thicket and from a heck of a distance apparently, and thought she saw a blue and white truck but couldn't see anyone actually doing the burning. Her husband Steven arrived from work just then, around 4pm, and saw the smoke too. Like his wife though, he didn't see anyone.

They called Judy and Joe, who confirmed seeing the smoke and also told investigators they saw a blue and white truck as well, though again, how they saw it given the distance and all the buildings in the way, is unclear. Anyway, someone was burning something, sometime around 4pm on August 25th and all the neighbors reported it.

Which brings us to the other two witnesses who were on the Heron farm that day - the rabbit guys, Brian Brinker and Marlon Ray. And, by the way, they had driven there in a blue and white pickup truck, the same one they drove the next day when they were looking for rabbits at Joe's place.

That may explain the blue and white truck that Roberta Powell saw when she tried to see who was burning whatever at the farm - it belonged to Brinker and Ray, though she didn't see either of them. Both Brinker and Ray testified they saw a "mexican looking man", later identified as Greg, burning dresser drawers between 3 and 4pm that day.

Now, two days after the smoke at the farm, Agent Winkler called Mike Heron again and asked if he had told anyone about the earlier call, and that the police would be searching his property.

Yes, Mike responded. He had called and told his friend Greg Lance on August 25th.

Now it all made sense to investigators - Agent Winkler called Mike Heron on the 24th to tell him they needed to search the farm, Mike called Greg the next day, and Greg then immediately rushed out there on the 25th to burn the evidence of the shooting he did weeks earlier on August 2nd.

Greg had no other way of knowing the investigation was honing in on the farm before Mike Heron told him, so it was important to see if Heron really had called Greg, and what time he had called him.

They subpoenaed the phone records for the La Quinta Inn, where Heron was staying in Arizona as he began his big Jack In The Box construction project. And, indeed, there was an 11 minute call to Greg's house from Arizona on August 25th. It was the only call made to him after Mike Heron had spoken to Agent Winkler the day before.

The call was made from Heron's hotel room at 4:23pm local time.

In the summer months, during Daylight Savings Time, the time difference between Phoenix, Arizona and Cookeville, Tennessee is 2 hours. Cookeville is 2 hours ahead, meaning when Mike Heron called Greg on August 25th, it was actually **6:23pm local time in Cookeville**.

So the phone call that the State said prompted Greg to rush to the farm actually took place **nearly three hours after** all the witnesses, the Powells and Judy and Joe and Brian Brinker and Marlon Ray, all said they saw smoke and the "Mexican looking man" out there.

The only way that could have happened was if Greg time traveled back to burn the evidence hours before he got the call from Mike Heron. In other words, the dark-complected man burning dresser drawers who neither Brinker nor Ray were initially able to identify as Greg, but later identified in court as Greg, was almost absolutely not Greg.

[30:22] Susan Simpson: And that takes us to the night of the murders, obviously the most important time period in the entire case. That's the evening of Tuesday August 4th to the early morning hours of Wednesday August 5th. We have statements about this evening from Greg himself, his girlfriend Becky, Keith and Kay, Erik Tanner, Claude Wright who was Victor's handyman, and of course, Greg's affair partner Debbie.

Here is the timeline as we are best able to corroborate it: on the late afternoon of Tuesday, August 4th, Greg left work at Ed Dixon's project around 4pm. He then filled up his gas in Livingston, and then went to a storage unit to drop off his tools.

The storage unit's records show his unit was entered at 4:47pm and exited at 4:53pm.

Greg arrived at the trailer park around 5:00 and saw Victor Kolesnikow exit Claude Wright's trailer and leave the park. Thinking that Victor would probably return to conduct the inspection they had planned that week, Greg waited around with Keith. Keith and Claude both corroborate this.

Kay and Becky had a night planned together so they left to buy alcohol. Then, according to Greg and Keith, Greg washed up around 7:30 and left the park to meet Debbie. But before he did this, according to his testimony at the hearing on a motion for a new trial, he loaded up a

power trowel, a large piece of equipment worth a couple thousands of dollars, into his truck and decided to drop it off at the storage unit to keep it safe.

The storage unit records show that he stopped there a second time at the storage unit at 8:13pm and exited the unit at 8:20pm.

Greg then met up with Debbie at the truck stop and from there they spent the next few hours together. Greg and Debbie were together at the Knight's Inn, as verified by defense investigator Ron Lax, until around midnight according to Greg, but until much later according to Debbie, maybe even up until around 4am.

A few things refute Debbie's account though. There's Greg of course, but there's also the fact that Erik Tanner and Becky both say Greg returned home later that night. Becky said Greg arrived back around 1am and Erik Tanner, who had been sleeping on the couch, testified that when he woke up and saw Greg there, it was around 12:30am.

But, after testifying to this, Erik Tanner was challenged by defense counsel who showed him a prior statement he had made, in which he said it was 1:30am when he saw Greg at the house. That hour difference might not seem like a big deal, but put a pin in that, because there's a very specific reason that it matters, a reason we'll get to in two more episodes.

For now though, there is one more piece of evidence that refutes Debbie and actually also refutes Erik on the timing. It's that stop Greg made to the Minit Mart to pick up beer.

[33:14] Rabia Chaudry: If you remember all the way back to episode 2, the police visited the Minit Mart the same day of the murders and the clerk categorically told them, when he shown pictures of Keith and Greg, that he didn't recognize them and they hadn't come into the store the night before.

It wasn't until the following year, after Greg's arrest, that defense investigator Ronald Lax visited the Minit Mart. He saw the store had numerous cameras and asked the manager if they still had the video from August 4th, 1998.

The manager told him that there was indeed video from that night, but it had been turned over to the police. The manager didn't know when it was turned over or what happened to it after that, but they didn't get it back. And the State certainly didn't offer it to Greg.

Well, Greg's defense team was able to get a hold of the video by demanding it through discovery. And the video, a grainy black and white mess that you can barely make out, shows Greg entering the store at 12:41am.

He's wearing shorts, a white polo shirt with a few horizontal lines across the chest, and white socks and sneakers. The next time you see Greg in the video is when he's approaching the

cashier with a case of beer in hand at 12:42am. He waits in line, checks out, and leaves the store at 12:43am.

Now, while it's possible that Erik woke up at 12:30am and saw Greg, and then Greg went to go pick up the beer, according to Becky Greg never left again after he came home around 1am.

And if Greg was picking up that beer on the way home, well, then all of those timings line up. He should have reached home around 1am, like he said. There's also that call that Greg made to Becky after leaving the motel. The phone records show that the call took place at 12:23am. Greg called from his cell phone to the house. And according to what he's told us, that was him calling Becky to let her know he was on his way home. So if he was calling her at 12:23am, it seems pretty clear that Greg was not home at 12:30am, he was on his way to the Minit Mart, where he arrived 17 minutes later.

There isn't a single witness that saw Greg leave the house again that night, and according to Erik and Becky, Greg was there in the morning when they woke up. Greg said he woke at 5:30am, as he usually did, and went to the storage unit to pick up tools for the day.

The storage unit records show that he accessed it twice, first at 5:47am and then at 6am. Actually, the first time he *tried* to access it. Mary Hobson, the woman who rented Greg the unit, testified on the stand that the storage gates were only open for customers between 6am to 9pm, so the first time Greg tried he actually couldn't get in.

The second time, at exactly 6am, he did and he was inside for six minutes. He then returned to the trailer park and Keith arrived to work at sometime after 8am, when he got the call from the city inspector David Daniels, telling him about the fire at the Kolesnikows'.

Now, if we are to believe the State, Greg snuck out of the house that night after Erik and Becky went to sleep, and killed the Kolesnikows around 3am. If that was the case, that basically meant Greg didn't sleep all night, because remember he was at the storage unit by 5:47am, and then his day began, and it didn't end until he was booked later that evening and then released at 10:55pm. And Erik Tanner backed it up, when he testified that Greg was wearing the same clothing that he saw him in on Tuesday night, as he was Wednesday morning, the day of the murders.

But there's a mugshot of Greg from the day of the murders, when he was booked for the road rage incident. And while it's not completely clear, it looks like he's wearing a button down shirt, and not a polo like he's wearing in the video from the Minit Mart.

In fact, just to make sure it wasn't just me thinking it looked like a button down shirt in the mugshot, I tweeted it out and asked others to chime in on whether they thought it was a polo or a button down shirt. Over 1000 people tweeted back saying, without question, it was a button down.

So Greg was in fact not wearing the same clothes both days, on the night of the murders he was in a striped polo and shorts, and the next day when he was booked he had on a button down.

Look, this may or may not be a big deal, but it's just one more detail you have to wonder why Erik Tanner added. Especially because if he's right, that means Greg committed the murders in the same clothes he was wearing in the Minit Mart video, in shorts and a short sleeved white polo. It's hard to imagine a fire that began with the kind of explosive force that took down the Kolesnikow house not leaving burns on his exposed arms and legs, or hair singed on his extremities, or any kind of mark at all on his clean, white polo shirt.

And that's basically it, that's all the information we have about the night of the murders. We know Greg was definitely at the Knight's Inn, definitely at the Minit Mart at 12:40am, definitely home around 1:30am, and definitely at his storage unit at 5:47am.

It's not enough maybe to clear Greg completely, but it's also not enough to condemn him.

I mean, did he really have a one night stand and casually stop by a convenience store for beer on the night he was planning to commit these horrific murders? Did he go home so Becky could be an alibi, when he actually already had an alibi with Debbie? An alibi that he then refused to even use because he knew Debbie was getting it wrong, that she wasn't remembering that night correctly? Did he really stay awake for 48 hours straight? Did he really consent for the authorities to search his home and truck and take evidence from his body hours after committing the crime? Did he really go target practicing days before the murder and tell Keith and Jerry Gardner that's exactly what he was going to do so? And finally, did Greg really ask numerous acquaintances to help him find a hitman to kill the Kolesnikows, leaving a wide open trail for authorities to follow after the murders?

Well, while we have a strong hunch we know the answers to most of those questions, as you dear listener must also have, we can't be completely sure. But the answer to that last question, about whether he really solicited a hitman from so many different people, may be kind of clear.

[41:54] Colin Miller: As our listeners know by now, it's not uncommon in wrongful conviction cases, cases that often rely exclusively on circumstantial evidence in the form of witness testimony, and not direct evidence, that those witness statements have changed over time.

And almost always, those changes serve the prosecution. The real question then, in these scenarios, is to figure out why someone's statement changed. What happened between their initial law enforcement contact and the time they took the witness stand at trial?

In this case, that question looms large for the four witnesses who knew Greg as friends or acquaintances, whose testimony that he approached all of them to solicit help with murdering the Kolesnikows just couldn't be a coincidence.

The first witness to fold, to come forward with some semblance of the truth, was Rocky Harmon.

Remember Rocky had testified that he and Greg went back to childhood, they were friends all the way back to school, and that he suffered from multiple personality disorder and was on ten different medications at the time of the trial. He also told the jury that it was hard to be there to testify against him. But he did.

Rocky testified that during a drunken conversation before the murders, Greg had asked him how much he thought it would cost to kill someone. Rocky responded he thought it would cost around \$10,000.

But the day after testifying, Rocky wrote Greg a letter. This is what he said:

Hi Greg,

Hope your getting out soon. I've prayed for you. I regret that I ever said a word to the TBI but you gotta understand they scared me shitless. I don't think you'll be convicted. Man I hope you get off. I'm facing time myself around 7 or 8 months probably for violation of probation.

Anyways Greg it was hell for me for me on the witness stand. I thought I was going to lose my marbles.

I would have come and visited you but the TBI said that wouldn't be smart. If I can and you want me to, I'll visit you and at least write you. I'm still and always will be your friend no matter what. Write back and let me know what I can do for you."

[44:11] Colin Miller: Now, Rocky didn't spell out whether his testimony was false or not, but he did imply that he testified under pressure.

Greg did write him back, but not until after he was convicted and sentenced the following year. He thanked him for reaching out and told him he wasn't angry at him, he knew he had been scared by the police. Rocky didn't write back and two years later in February of 2002, Greg wrote him again, hoping Rocky would respond with more explicit information about how the police got him to say and do what he did. Greg wrote:

"I don't know if I will ever get a new trial. Unless people start stepping forward and telling the truth, I will never get out. I will be 80 years old when I am eligible for parole. There is no way I will live that long. The truth will set me free..."

I am not mad at you Rocky because I know Robert Kroffsik put you up to it. I need to know everything the police said to you, anything they offered, promised you, any threats they made and anything else. Why did you come to Becky wearing a wire? I love Becky very much. We have a beautiful daughter together that is perfect. Becky has every right to be mad at you. The police were trying to take her baby and her husband away. You were trying to help them in it. What did they say to make you do that?"

Once again, Rocky never responded. And on April 14, 2010, Rocky Harmon died from a heart attack.

We were hoping to be able to speak to Michelle, Rocky's wife at the time this all happened, but as of yet we haven't been able to connect to her. But we have spoken to Stony Harmon, Rocky's younger brother, and here is what he had to say about why Rocky testified against Greg:

[45:45] Stony Harmon:

"... because he was feeling bad about it, and like I said, he didn't want to talk about it, which was unusual for him because he usually talks about everything. But, he said that the cops had come to his house, it seems like, and there were some drugs laying out- he said they just busted up in there- which, I guess they just kinda walked in on him, after he opened the door. And basically threatened him to testify or they were gonna charge him with the drugs.

Basically, what I got from it is that they were holding it over his head. The thing is, like I said he was never shy about talking about anything. He was very open about everything, very bold. But he clammed up when I was asking him details. I remember asking him, 'Do you think he did it?' and he said, 'I don't wanna talk about it.' He did not want to talk about it.

Rabia Chaudry:

Did you actually know what he testified to? Do you have any idea?

Stony Harmon:

No, no. He wouldn't talk about it. I asked him.

Rabia Chaudry:

I can tell you, if you want to know.

Stony Harmon:

Okay.

Rabia Chaudry:

So, the police got him to say that at some point, Greg had approached him that summer and asked, 'Do you know how much it would cost to kill somebody?' and Rocky told him, 'I think \$10,000.00.' So they were trying to show that Greg was premeditating this, and then--

Stony Harmon:

Rocky wouldn't know that. That's not something he would know.

Rabia Chaudry:

That's what I was wondering. How would he know that?

Stony Harmon:

He wouldn't.

[47:19] Susan Simpson: Next let's look at Mike Shawn Snow, the man who was in prison for assaulting his girlfriend Danielle multiple times, who said that Greg had given him a \$2500 downpayment to hire a hitman and then he had spoken to a person who had spoken to a person who had told him that \$2500 was not enough.

Well, Mike never came forward to tell Greg or his family anything over the years, but a man named Lester Clouse, who was known commonly as Pokey, did. Pokey had been incarcerated with Greg shortly after Greg was arrested, and heard about the trial and case from him.

He was released on bond in May of 2001 and a month later in June of 2001 ended up at a yard sale in Cookeville, Tennessee. There, he ran into a man who introduced himself as Shawn Snow. Pokey asked Snow if he was the same Mike Snow who had testified against Greg and the man said yes, he was. Mike told Pokey he felt bad for lying about what he said Greg had done, but that Detective Gary Roach and TBI Agent Robert Kroffsik had coached him on what to say before trial.

In exchange for his testimony, they had offered Mike Snow released from prison. Snow told Pokey that he was released 7 months earlier than he would have been because he agreed to testify for the State. Snow also told Pokey that he was willing to testify to the truth of what had happened if he was called to the stand again.

In 2007, Pokey documented this exchange in an affidavit for Greg's family.

[48:53] Rabia Chaudry: Today, Pokey is in prison again, and incarcerated, actually, at the same place as Greg- again. I spoke to him about what he remembered when he met Mike Snow:

Lester Clouse (Pokey):

I was at a woman's house named Gale Jones, in Cookeville, she lives on Langley Creek Road, in Cookeville, Tennessee. I used to buy, like, all kinds of different junk, yard sale stuff and everything. Gale hurt her back one time and she wasn't able to work, and I would buy all kinds of different stuff and she'd set up a yard sale in her front yard and sell stuff. Her and Dionna's brother used to be real good friends. Shawn Snow and XXX Dionna stopped over there at Gale's house at the yard sale one day and I was over there.

Me and Shawn Snow got to talking and I had read Greg's case then, and I asked him, I said, "Did you testify against Greg Lance?" and he dropped his head, and I said, "Look, man. If you do dope, and you sell dope and you do cocaine and sell cocaine and everything else," and I said, "You're one of them self righteous sons of bitches that thinks it's cool for you to do everything you want to do and wrong for anybody else to do anything. But you got a man two life sentences in prison when you testified against him. And I will blast your name all over Hell and half creation and blast that case out and let everybody know you're just a no-good, snitchin' son of a bitch if you don't tell me the truth about this shit."

He said, "Man, they told me that they wanted to convict Greg. That they didn't have enough evidence on him to convict him. That they had him on camera at his storage building, and had him on camera in a store, and that there was no way he could've went from Point A to Point B, and killed two people, and burned a house down, and whatever, in the time frame."

He said, "But they told me what to say and they would let me go." and he said, "I went to court and testified."

[50:53] Rabia Chaudry: Now, the fact that no one has been able to get Mike Snow on the record directly may cast some doubt on Pokey's claim. But I was able to track down Danielle, the girlfriend he repeatedly assaulted and went to prison for, and asked her whether Snow had been offered anything in exchange for his testimony.

Danielle:

No, I don't remember them saying that, but they could've, I don't know.

Rabia Chaudry:

Did he come home soon after?

Danielle:

Oh, yeah. They let him out- I think they let him out because of that. Because he ended up getting out like, really early. Way before he was supposed to.

Rabia Chaudry:

And I don't know if you know, but all those charges against him were dismissed.

Danielle:

Oh, really? Well. There you go.

Rabia Chaudry:

Okay, right when we started talking right now, I asked whether you'd- I said you didn't testify, but he did. And you said, 'Yeah, he falsely testified.' Can you tell me what you meant by that?

Danielle:

Well, just because he... 'cause, 'cause, he... got out of jail early for that. I mean, I don't know- I don't know that- I wasn't there for any of the conversation that him and Greg had, but I can remember him getting out of jail early, and it seems to me like he did tell me that that's why he got out. Because he signed statements on him.

And then I asked her about her own statement, the one she gave after the cops showed up at her house, hauling Snow from jail along with them, to apparently search the place for the letter that Greg had given him with the Kolesnikows names on it.

Rabia Chaudry:

The police asked you specifically, 'Was there ever a time that Shawn told you that Greg offered him money to kill some people?' and you said in your statement, "Yeah. One time he told me that Greg offered him \$10,000. So..."

Danielle:

And he did.

Rabia Chaudry:

Greg did do that?

Danielle:

He told me that.

Rabia Chaudry:

Shawn told you that?

Danielle:

No- [crosstalk, responding to earlier question] I don't know-- Yeah. Shawn told me that.

And I don't know if Greg did that. I wasn't there. Shawn is a habitual liar and a manipulator. I couldn't believe it. I kind of didn't believe it just because Shawn's such a liar, man.

Rabia Chaudry:

Why would he make that up, though?

Danielle:

Oh, I don't know. I really don't know. There are things- he was my old man at the time, and we had been together for a couple of years. I can't remember if we had our daughter or not, yet. So, I was--

Rabia Chaudry:

No, you were pregnant. You were actually pregnant at the time.

Danielle:

Okay. I was probably trying to protect Shawn at the time, as well. You know?

Rabia Chaudry:

Yeah.

Danielle:

I don't feel like- I never felt anything negative from Greg. I never felt like he was the kind of guy that could do something like that.

[53:30] Unfortunately, there isn't too much about that time that Danielle remembers today. Although she's sober and in recovery now, it was an entirely different story back in the late 90s. Her and Snow were both heavily involved in drugs. Shawn not only took them but he dealt them too:

Rabia Chaudry:

Was Shawn a dealer, too?

Danielle:

Yeah.

Rabia Chaudry:

What did he deal?

Danielle:

Whatever he could find. Cocaine, acid, pot, meth, whatever.

I was hoping Danielle could put me in touch with Snow, but they had not been in contact for a few years. According to her, she had cut him out of her life after he assaulted their teenage daughter three years ago, the same daughter she had been pregnant with in 1998.

[54:41] Colin Miller: As we said earlier in the season, of all of Greg's friends who turned against him, Keith Herbstreith may have been the most valuable one to investigators, primarily because he was able to tie Greg to the green cord by identifying the burn marks as having come from the firecrackers he had tied to the cord on the most recent 4th of July.

Keith was valuable in other ways too, testifying that Greg told him directly that he would have to kill the Kolesnikows not long before the murders.

Now, you may recall, when he was cross examined on the stand, he was asked about his outstanding child support payments. Defense counsel implied that perhaps the DA's office wasn't enforcing the obligation in exchange for his testimony. Now, just to be clear, this child support was for a daughter Keith had with a different woman a few years prior, not any children he had with Kay, his then girlfriend.

Keith responded that he had recently returned to the State, so maybe that's why they hadn't enforced it. In closing arguments, Marshall Judd had this to say about it:

"I forgot to mention Herbstreith. What dog has he got in this show? He's got 11,000 dogs in this show. He owes \$11,000 in child support. If I or you owed \$11,000 in child support, we would be in jail. Keith Herbstreith is not in jail. He has been here 6 months, he still is not in jail. He doesn't have a dog in this show, either? He has 11,000 of them."

[56:01] Now, it's just a theory but over the years this issue has popped up again a few times. The grapevine kept circulating that Keith's testimony was in exchange for something to do with the child support he owed.

There is in fact a May 15, 2007 statement signed by a Mr. Ronald Black in which he states two things of significance: "Keith Herbstreith told me that on the trip from Nashville that Keith testified about when Greg and Keith stopped to talk, Greg told him that he didn't do it. Also Kay Herbstreith told me that Keith got some knocked off of his child support for testifying."

Ronald Black doesn't appear in the case until now, but to place him in the scheme of things, he was Kay's sister's boyfriend in 1998. He was also the person who introduced Kay to Keith.

Well, because Keith passed away long ago, we did the next best thing and reached out to Kay to talk about what she remembered about that time. She began by explaining that before she was with Keith, and before Greg and Becky got together, *she* had been dating Greg:

Kay:

Greg and I had decided that, being friends, we didn't want to lose our friendship. Keith had banged on the door, Keith actually cornered me at my sister's house and told me I should be with him and not Greg. Not a lot of people know about that.

Kay of course knew that Keith was talking to the police, after all she gave two statements herself, but she didn't know exactly all that Keith had told the authorities. Most time, she said, the TBI agent didn't want her around when he was speaking to Keith. And Keith himself didn't talk much about the case or his involvement either. But it did seem like it had an impact on him:

Kay:

He didn't really talk much. He drank a lot. He got where he really drank. I'd say that after all that happened, he drank a lot. At nighttime, he'd wake me up in the middle of the night. It could be 1:00 in the morning, it could be 3:00, anywhere from the time we went to bed at all hours, for like a month. He would wake up, and we'd have to go riding around.

I'd be like, what is wrong? He said, "They're gonna come after me. They're gonna get me. They're gonna blow the- burn the house down around me and kill me." and I'm like, who are they? And he would never tell me any more than that. He did not want to talk to me. Because he knew that if I knew anything, I would tell.

Rabia Chaudry:

So, he was scared for his life, from somebody.

Kay:

Yeah. But I don't know who. And I never ever would assume it was Greg. Because what I did know of Greg and what people said about Greg in the trailer park, they all had respect for him that I knew of. Anyone that talked to me.

Kay and Keith went on to get married, and stayed married for four years.

[58:55] Rabia Chaudry: And then, as Kay told me what she remembered about the morning of the murders, well she said something that caught my attention:

Kay:

I remember waking up, he was in bed with me, and he jumped up and said that he had

to get back to work and we were getting dressed. And as he was throwing his clothes on- and I can't remember if there was a cell phone, 'cause I don't even know that they were- you know, if he had one or not--

Rabia Chaudry:

There were. There were some around. Yeah.

Kay:

But, I'm kind of thinking it was my phone that rang, and he picked it up? I don't know who he talked to, but then he started getting in a hurry, and I'm like, 'What's going on?' and he said, 'I gotta get back over there to the trailer park, NOW.'

So, we went back over- you know, he wanted me with him so we could keep talking, trying to fix our relationship- and we got there and Greg was pulled up into the parking lot, I think. That's where- he had his truck pulled closer to the house, I do know that. And he was cleaning it out and going through papers, reading them. Some he kept, some he just pitched over in the fire that he had going in their burn barrel.

Rabia Chaudry:

So you actually remember him burning papers that morning.

Kay:

Oh, yeah. I do remember that. He was burning stuff when we got there. He was already up.

This detail is something Greg has been trying to drive home from the time he was arrested until today. The singed hair on his hand likely came from his burn barrel, which he used numerous times a week, including the week of the murders- in fact- the morning of the murders. But there were only three people who could have testified in court about him using it that morning - Greg, Kay, and Keith. Greg and Kay never testified, and Keith told investigators early on that he couldn't recall if Greg had been burning anything that day.

Finally, I asked her about Keith and the child support issue:

Rabia Chaudry:

Did you ever hear anything about Keith owing child support? I mean, did he pay child support?

Kay:

Oh, yes. No, he did not. Not that--

Rabia Chaudry:

So, tell me about that.

Kay:

I know that he did have a daughter. He talked about her. But, at that time I did not know he wasn't paying any child support, but after we got married, I got a letter in the mail from the IRS, they wanted me to say that I would pay what he owed.

I did not sign that paper because I felt that this was something that he owed before I even got with him and he needed to pay it himself. And I also had found out at that time that he was not paying any child support on his daughter, because when it came to our money, I had to do some billings because I was the one that paid the bills.

After I had left him and he had wrecked his car, he got on a disability check. And he got back pay and the money for our daughter, Sarah. And the back pay and money from where he had filed, and he put it in a checking and a savings account, and the government froze it and took the money, and that's when I knew for sure he had to pay child support, and his daughter even told me that's when she finally got all the money that-- he never did help her mom out.

[01:02:24] It's hard to say for sure whether it was enough for Keith avoid getting arrested and prosecuted for failing to pay child support that got him to testify. But it may be a good guess that it was a combination of factors, including that he himself was a lead suspect in the case. Remember, the police even took his car for three months, not returning it to him until after he had given damning statements against Greg. The pressure of facing murder charges may have been too much for Keith, and maybe he was just trying to save himself.

And then there's one more possibility - maybe Keith was actually convinced by the police that Greg was guilty. After all, Keith really didn't have any idea where Greg was the night of the murders. He didn't know about the storage unit. And he didn't know Greg's exact movements on the day of the shootings at the Heron farm, or the day someone was burning something out there. And maybe, just maybe, he really did think the dark marks on the murder weapon cord were from being burned with his fireworks that Fourth of July.

That's what it certainly seems like, because in 2007, Keith was approached by a new friend of Greg's, a woman named Jarrah who worked with his mother Joyce, and who ended up getting sucked into the case and helping investigating it, herself.

Jarrah asked Keith about whether he thought he could have been mistaken about the green cord. He didn't think so but there was only one way to find out. He would re-enact the 4th of July firework rigging.

And Jarrah was there to videotape it.

Audio from video:

[Fireworks exploding]

Keith: *We need a longer fuse.*

Jarrah: *You alright, Keith?*

Kay: *I can't hear you!*

Jarrah: *Oh my god. I'm deaf and I was all the way over there.*

Kay:

Let's see what kind of damage we had done to our roof.

Keith: *How about to my head?*

[all laugh]

Keith: *Well. I don't see any.*

Jarrah: *We got some down here. But that's where it was tied.*

Keith: *Yeah. That's where it was tied.*

Jarrah: *We got anything?*

Keith: *I don't see anything. I don't see any damage. It may not be a completely scientific test, but for the best that we could do with what we had...*

Jarrah: *I think it proves our point.*

Keith: *I don't see any damage.*

[1:05:08] Susan Simpson: Well, Keith wasn't satisfied with the results. He wanted to give it another shot, maybe he hadn't tied up the fireworks the right way.

Now, this next clip is rather long, so have a little patience getting through it because we just want to show how many fireworks there were, and how long they exploded for:

Audio from video:

[Fireworks exploding from 01:05:24 - 01:05:45]

Jarrah: *Woo! I got hit in the eye.*

Child: *By what?*

Jarrah: *A firework.*

Child: *She got hit in the eye by a firework! Let's see all that stuff. Let's see where it all landed.*

Keith: *A lot of it did fall to the ground. Okay. That's where it was just tied. This is the immediate area. It's got a small burn mark right there. It's got a small burn mark right there. It's got burn mark here, here, here. ... But that's right up by the edges of them. I don't feel any more.*

Child: *Oh! I see some.*

Jarrah: *That's a crinkle, I think.*

Keith: *Okay. ... It's kind of a crinkle. [Aside, to child: Thank you, honey.]*

Child: *You're welcome. I see no more.*

Keith: *Just a few at the top. Just a few burn marks at the top, that's all I saw. I didn't see a... it doesn't look anything like the rope that was tied to the gun. So, this is a very good reenactment. I guess if this is "MythBusters," I'd call it busted.*

Jarrah: *So, uh. What do you think now, Keith?*

Keith: *I don't think that was my string.*

Kay: *Hallelujah!*

Keith: *I don't think it was my string.*

Child: *Everybody Hallelujah! [all laugh]*

Keith: *[through crosstalk] And a friend... I don't think it was my string. The reason they thought it was my string is an invalid reason.*

Susan Simpson: Keith was still not happy. Maybe he had the wrong kind of rope. The next day he went and bought another spool that was a different color, but otherwise the same kind. And he gave it a third shot:

[1:08:23] Keith Herbstreith:

There's a little bit of a burn mark, but it doesn't look anything like the burn mark that was on the rope of the gun. The burn marks that were on the rope of the gun were about every three-quarters of an inch to an inch, and they were just a solid, black spot.

Okay, I've been humored. Thank you for your time.

Jarrah:

Does that make up your mind, Keith?

Keith Herbstreith:

It sure does. That ain't it. Wasn't my ... wasn't my string. I mean, it could have been my string if somebody else, ya know, caught fire to it or something. But I didn't ... my firecrackers did not catch fire to it and burn it and put those black marks on it, so ... I don't want to be guilty of perjury, but I was incorrect. If ... if it would have had the burn marks then ... I ... wouldn't have done Greg wrong. But it didn't have the burn marks so ... I did him wrong.

Jarrah:

Now you get to do him right.

Having tried his firework experiment three times, it seems like Keith was deeply perturbed that he may have given false testimony about the cord. And, to settle his conscience, he called the cord manufacturer and found the exact same green cord that he had used in 1998 to tie up the fireworks, and he gave the experiment a fourth shot. Once again though, Keith's experiment failed to produce the results he was hoping for.

Fireworks, it turns out, do not leave the kind of marks that were found on the cord attached to the murder weapon. And Keith might have known that all along except for this, which he told Jarrah after that fourth attempt:

[1:10:42] Keith Herbstreith:

The fact of the matter is, after I did the fireworks, Greg had picked up the string. It was cleaned up. I never actually saw that string after the fireworks display that we used it for. So I really don't have a reference point as to what it should've looked like after the fireworks. The string I saw, which was in the middle of my testimony, and only had a minute and a half to formulate an answer, that I said was my string ... no, I don't know that it was my string because I never really saw that string. That string got cleaned up along with firecrackers and ... so I don't know. But I do know one thing -- the string that was on that gun had A LOT of burn marks on it, and after doing this experiment, we come up with one burn mark on the thing. I just ... I think that Bob Kroffsik and the DA, they showed me that rope for a reason, so that I wouldn't have time to formulate an answer, I wouldn't be prepared for it, and ... and I feel really bad that I let them

manipulate me, 'cause I made a bad testimony of what I thought to be the truth at the time, and now I know not to be the truth now. So ... Greg, I'm sorry man.

But, for any lawyer who might be looking at this that needs to know, that testimony was wrong. I didn't have time to think about a proper answer.

Erik is the only one left of this group of men who knew Greg and testified against him. And while we have attempted to speak to him, even gone to his home in Kentucky, we haven't had luck yet in contacting him directly.

In a way, though, it doesn't really matter because we already examined and debunked Erik's testimony about the flashlight being Greg's and about Greg asking him for a "hot gun." Erik's testimony also contradicted his prior statement to Agent Kroffsik where he admitted that Greg never specifically asked for hot gun and that Greg's flashlight took C size batteries, so we know he didn't really have anything damning to offer in terms of evidence against Greg.

Unfortunately the jury didn't know this, because Erik's statements on these issues weren't impeached on the stand by Greg's lawyers.

Still, the why does matter. Why did Erik change his statements? Was something offered him? Was he threatened?

Erik has no criminal record that appears in the online Tennessee system, but it does seem that there were some dark things in his life that the police could have used against him:

[1:13:45] Dave Anderson:

Yeah, well here's the thing, is Erik's had his issues in the past. Um, substance abuse. And, um, when he was going downhill in Waverly, you know we kind of ... I didn't talk to him for awhile. When he started spiraling out of control is when I stopped ... you know, I'm like, "Dude, you're going in a bad direction. You need to get yourself straightened out." So I kind of like ... he kind of became a vampire and went with these friends that he was doing that stuff with, and me and the rest of his friends kind of just ... you know -- Oh man, I wish him best, you know, but we're not gonna be involved in that.

That's Dave Anderson, the same Dave Anderson whose red car investigators thought Greg used to go target practicing at the Heron farm.

Dave reached out to us on our tip line after hearing the podcast, and told us that despite the record not showing a single statement or interview conducted with him, he had been interviewed once by a TBI agent. It was, Dave said, mostly a "non interview." He'd had nothing to offer, he wasn't around the night of the murders and knew nothing about the case whatsoever, and they'd never contacted him again.

Dave Anderson barely even knew Greg, actually. Erik was the only person in the entire group that he knew because they were both from Waverly.

[1:15:00] Dave Anderson:

I only stayed with Greg for a very brief amount of time, and it was Erik who actually invited me 'cause we were friends from Waverly. Yeah, I didn't know any of these people. Um, the only people I knew, is because I met them at the park, were Keith and Becky and Kay, but I never really hung out ... I only hung out with Keith and Erik one time. But I never really, other than just seeing them at the house, hung out with anybody else.

Um, Erik had gotten into some ... ya know, he'd gone down a dark path in Waverly, and then I hadn't talked to him for awhile, and then I saw him at, I think a drill, and he said he was working with Greg and he'd straightened himself out, and he said, "You should consider coming up here 'cause Greg needs the help and he pays pretty good."

Dave reached out to our tip line because he wanted to correct some things he'd heard that were reported about him. The police investigative files have dozens of documents relating to Dave's car and also to his criminal record. But here's the thing:

[1:15:57] Rabia Chaudry:

I feel like what they did was they rounded up people who they could put some pressure on, and I'm wondering maybe if that just didn't apply to you. Maybe there just wasn't anything they could hold over your head?

Dave Anderson:

Well no, there wasn't. In fact, that's one of the reasons I wanted to talk to you is because that I was listening to the section that I was included in, and it ran down this rap sheet of drug possession and attempt to distribute ... that never happened to me. The attempted ... the break in stuff? Never! Not one time. Like, that's not me.

[1:16:36] Rabia Chaudry: To be honest though, handwritten on some of those criminal records are notes that say "NOT THE SAME DAVID ANDERSON", so it looked like we weren't the only ones who had trouble figuring out which Dave Anderson he was.

Now, given the fact that Dave never figured into the case in any real way, he wasn't a witness, he hadn't given any statements that we could see, and nothing in the files or the trial connected him to the crime, it was kind of low priority for me to correct the record on him. But it was great timing that we heard from him in time for this episode, the episode where we try to correct the record on a lot of things.

But for the purpose of Episode 6, where we first introduced Dave, we just wanted to show how the investigation was unfolding, how investigators, themselves, were encountering information

and evidence. Things like that that kind of awful murderous poem that the new trailer park manager Sherry Wilkins found and turned over to the police.

It was Wilkins who told the police she believed the poem was written by Dave Anderson, that she had found it in some of his belongings as she was cleaning up. And it was also Sherry Wilkins who had his little red car, totalled from a wreck and sitting under a tarp on the park, towed away by authorities.

Well, here's what Dave had to say about the poem:

Dave Anderson:

The poem? I don't know who that is. That's not me! I didn't leave poetry -- I didn't write poetry!

Rabia Chaudry:

Ahh.

Dave Anderson:

I certainly didn't write that!

Rabia Chaudry:

That's crazy (laughs).

Dave Anderson:

I don't even know that lady! And any backpack I would have had, I would have taken with me to Phoenix.

Rabia Chaudry:

Yeah, that's what ... she told the police that. That's in her statement. She said, "This was left by Dave Anderson."

Dave Anderson:

No! She doesn't even know me. I've never wrote poetry. I certainly didn't write that.

Rabia Chaudry:

Okay. That's great to know. Thank you so much! This has ... you know, with all of our shows, we're always anticipating as the show's going on, for folks to reach out to us who were involved or who had some connection, so we can get new information. So this is perfect, this is great. This is great to know, thank you.

Dave Anderson:

No, and I know that ... I was bouncing back and forth from like being really pissed off to being like, well this is probably the information they had

Rabia Chaudry:

Yep, this is in the record.

Dave Anderson:

But it's still, it's still unsettling when it's about you, you know what I mean?

Dave contacted us because he wanted to make sure we didn't leave all that information hanging out there, making it seem like he was a criminal who wrote murderous poems, even if all of that amounted to nothing in terms of the case.

On Addendum 6 we actually did discuss that none of the stuff related to Dave had any evidentiary value, we just included it for the narrative, but Dave has a fair point.

After all, no one wants to be accused of something they haven't done.

Just ask Greg Lance. Or any of the defendants whose stories we tell on this show, week after week.

[1:19:27] Colin Miller: Finally, there are the witnesses who put Greg on the Heron farm, the men who directly identified him: Jerry Gardner, Brian Brinkler, and Marlon Ray.

Jerry Gardner, like so many others in this case, is dead. And with him is also dead the reason why he identified Greg as the man he saw on the farm on the day that he stopped there with three other people after returning from a weekend at a cabin. We already discussed, earlier in this episode, why it couldn't have been Greg - the timing was all off. Jerry said he was at the farm and saw him there between 3 and 4, but Judy Wells had seen them before she called the police at 2:36pm.

So we know that Gardner was there before 2:36pm, at a time when Greg was at the trailer park, but did he actually see anyone there at all? We don't know, but what we do know is that Gardner also had a criminal history and that Mike Heron, who knew him from childhood, didn't have very charitable things to say about him.

So maybe the investigators pressured Jerry into giving what was clearly false testimony. It seemed like they could have leverage on him, and that he may have been the kind of person to give in to that pressure.

And the other three people with him? Well the other man was Michael Staggs, who is also deceased. But his wife Christy was also there that day and so was her sister, Cindy. But of the four, it was only Gardner who testified, so maybe the other three just didn't work out for the TBI.

Defense investigator, Ron Lax, did manage to interview the two women a few months before the trial. They both said they arrived at the farm early to mid afternoon, having grabbed lunch a little earlier, between 11am and noon, in Gainesboro, about 30 minutes away from the farm. They both said there was a man at the farm, and while Cindy couldn't describe the man, Christy said that he had short dark hair and a dark complexion. And, they both said, they were only at the farm for a few short minutes.

Which takes us back to Brian Brinker and Marlin Ray.

In August of 2000, as Greg's team was preparing for trial, defense investigator Ron Lax met with Jerry Gardner. Gardner told him that he had been in touch with Brian Brinker. Here is what the Lax report says:

"Brinker told him that he saw Greg Lance at Mike Herron's house the same afternoon after Gardner had been there. I asked him how Brinker knew it was the same day, and Gardner stated because Brinker stated it was a Sunday. I asked Gardner if Brinker knew Lance and he stated that he thought so and I asked him why he thought that. He stated that when Brinker told him of seeing Lance on a Sunday, Brinker told him it was the guy who had been working with Mike Herron doing construction work."

[1:22:02] Susan Simpson: Now if Brinker saw Greg, or whoever it is he says he saw, on the same day as Gardner, that was weeks and weeks before the smoke at the farm. Of course, it could be that Brinker was just confused, but Brinker did describe, during his trial testimony, seeing a man at the farm that was "Mexican looking", presumably meaning someone with olive skin. And that's what Christy Staggs also said the man she saw at the farm looked like - dark complected.

Anyway, this detail does further muck up the story and it's hard to know who is telling the truth and who isn't, who is remembering correctly and who isn't.

Ronald Lax wasn't ever able to interview Brinker, and in fact, no one has been able to contact Brinker over the years. But Marlin Ray is a different story.

When Jarrah befriended Greg and began helping his family investigate the case, she wrote both Brinker and Ray letters. This is the same Jarrah, by the way, who made all those videos of Keith and the fireworks.

Ray wrote back to Jarrah in April of 2008.

"This judicial system really put the screws to me," he said. "I was really put into a place to say what I did in court."

But, he said, there was a man in the courtroom during the trial who he thinks was the man he saw at the burn pile on August 25th. And that man wasn't Greg.

"If you get a video of people going in and out of the court I could show you who I'm talking about. Black hair, wire frame glasses, kinda tall. After Brinker and I left we both said and talked about the guy there in the courtroom."

Jarrah wrote Ray back, asking if he would sign an affidavit to what he had stated in his previous letter, but that request made Marlin deeply uneasy.

He wrote back a few weeks later, saying that he needed to protect himself and if he did what Jarrah asked, he would be "opening a gateway for an onslaught of more police corruption to be brought to my door."

"I don't need this shit!" he wrote. *"If you are truly seeing the corruption then you know what I mean. But don't give up!"*

Look, he said, ask Greg who the guy in the courtroom was the day that Ray testified. He was sitting on the right side of the courtroom, was about 6 feet tall with wire rim glasses and had a pock marked face with a "goody boy" look.

"That's who I believe I seen that day," Marlon Ray wrote to Jarrah.

Unfortunately neither Greg nor Joyce remembered seeing anyone by that description in the courtroom, and there's no video footage of the courtroom either.

But whoever it was that Ray and Brinker saw at the burn pile on August 25, 1998, it seems clear it wasn't Greg.

[1:24:46] Rabia Chaudry: Greg, I must say, has always seemed to have a lot of clarity about what really happened in his case.

Even as early as the sentencing hearing, the one we talked about at the beginning of this episode, DA General Gibson asked him, "would it have been your testimony at trial that you were the victim of a huge conspiracy involving all of these people?"

Greg responded, "I don't think it was a huge conspiracy ... my opinion was, there are indications that -- my experience with these people was that they were intimidated quite a bit. They were led to believe that they were in imminent danger of being arrested for this offense, and so it caused them to basically tell Mr. Kroffsik what he wanted to hear, or what they thought that he wanted to hear. I am talking about Erik Tanner, Keith Herbstreith, and Rocky Harmon. Of course Mike Snow said what he said just to get out of jail, which is what happened."

And later that year, when Greg wrote back to Rocky Harmon, he said this:

"I am not in here because of anything I have done. I am here because of what Keith always said - 'no good deed goes unpunished'. I have tried to show people that you can succeed by working within the law and doing things the right way. I tried to give people the opportunity to get ahead legally. Keith and the many others I have trained, given them jobs, and a place to live, loaned them money, helped them up and out. What punishment do I get for these good deeds? Life in prison. I lose everything because the felons and dopeheads that no one but me would give a chance turned on me the first time it became expedient for them to do so.

The police scared Keith and Erik just like they scared you, just like I told you they would. I told you that Robert Kroffsik would threaten you, make you promises, force you to talk to him for hours, and put words in your mouth ... The people who have records, who are in a little bit of trouble, they threaten them as you have become acutely aware. Kroffsik knows how to get people to say what he wants them to."

Kroffsik did, indeed, have a knack for getting people to say what he needed them to. And he did intimidate people, as numerous witnesses have said in this case. But the rot in Putnam County didn't start or end with Kroffsik. And because of that rot, sometimes the good guys got locked up, while the bad guys got away with murder.

Next time, on Undisclosed.

Greg Lance has been in prison since 1999. If you'd like to drop him a note of support, or a card, or anything to let him know you are following his story and thinking about him, address your letters to:

Gregory Paul Lance
 ID# 00325463
 The Bledsoe County Correctional Complex
 1045 Horsehead Rd
 Pikeville, TN 37367

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